

Press and Information Division

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Judgment of the Court in Case C-311/01

Commission of the European Communities v Kingdom of the Netherlands

**COMMUNITY LAW IS INFRINGED BY THE REFUSAL TO ALLOW FRONTIER
WORKERS TO RETAIN THEIR ENTITLEMENT TO UNEMPLOYMENT
BENEFIT WHEN THEY GO TO ANOTHER MEMBER STATE TO SEEK
EMPLOYMENT**

The refusal prevents frontier workers from going to another Member State in order to find employment there and penalises them for having exercised their right to freedom of movement.

The Community regulation relating to the application of social security schemes to workers moving within the provides that frontier workers (that is to say people who cross a border when going to and from work) who become unemployed are entitled to benefits in accordance with the provisions of the legislation of the State in which they reside, as though they had been subject to that legislation while last employed, and that the authorities responsible for payment of unemployment benefit are those of that State.

That regulation also provides that workers who become unemployed and go to another Member State in order to seek employment, must be entitled to receive unemployment benefit for a period of three months from the date on which they cease to be available to the employment services of the State within whose responsibility they fall.

The practice of the Netherlands authorities is, however, to refuse unemployment benefit to unemployed frontier workers resident in the Netherlands who wish to go to another Member State in order to seek employment. The Commission applied to the Court of Justice of the

1 Council Regulation No 1408/71 of 14 June 1971, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6).

European Communities for a declaration that that administrative practice is contrary to Community law.

The Court points out first of all that, in the case of unemployed frontier workers who are not residing in the Member State where they were last employed, the Community provisions establish a specific attachment to the social security system of the Member State of residence as regards unemployment benefits. Those provisions thus require **the legislation of the Member State of residence alone to be applied** and not the legislation of the State where the frontier worker was last employed.

Since **the Member State of residence** thus has sole competence for payment of unemployment benefit to the frontier worker concerned, it follows, according to the Court, that that Member State, **likewise, is the only one able to ensure that payment of unemployment benefit to him may continue if he goes to another Member State in order to seek employment.**

An interpretation under which the Community provisions would not ensure that the unemployment benefit of such frontier workers is preserved for three months when they go to another Member State to seek employment would fail to have regard to the purpose of those provisions. The frontier workers would be at a disadvantage compared with workers in general, for whom the State of employment, where they reside or stay, is normally the competent State, and such treatment would accordingly conflict with the requirements of freedom of movement for workers.

Frontier workers would be deterred, or even prevented, from going to another Member State in order to find employment there since they would then be unable to carry on receiving unemployment benefit. They would also find themselves **penalised for having previously exercised the right of freedom of movement which the Treaty guarantees to them.**

As to the Netherlands' claim that this interpretation allows frontier workers to receive unemployment benefit from a Member State to which they did not pay contributions while last employed, the Court states that that is a consequence intended by the Community legislature which meant to increase workers' chances of finding new employment.

Unofficial document, for media use only, which does not bind the Court of Justice.

Available languages: FR, EN, NL.

*The full text of the judgment can be found on the internet (www.curia.eu.int).
In principle it will be available from midday CET on the day of delivery.*

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