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Court of Justice of the European Union

PRESS RELEASE No 39/13

Luxembourg, 11 April 2013

Judgment in Case C-443/11

Jeltes and Others v Raad van bestuur van het Uitvoeringinstituut
werknemersverzekeringen

A wholly unemployed frontier worker can obtain unemployment benefit only in his Member State of residence

*That rule applies even where the worker has maintained particularly close links with the State
where he was last employed*

A 2004 Regulation coordinates the national social security systems in the EU with regard inter alia to frontier workers¹. It replaces the former 1971 Regulation² and provides that wholly unemployed frontier workers are to make themselves available to the employment service of their country of residence. They may, as a supplementary step, make themselves available to the employment services of the country of their last employment.

The new Regulation also provides for a transitional clause concerning the general rules for determining the applicable legislation which does not however explicitly concern the specific provisions relating to unemployment benefit.

Mr Jeltes and Ms Peeters are frontier workers of Netherlands nationality who worked in the Netherlands while resident in Belgium and Mr Arnold is a frontier worker of Netherlands nationality who worked in the Netherlands while resident in Germany. They have all maintained particularly close links with the Netherlands. Mr Jeltes became unemployed in 2010, that is to say, *after* the entry into force of the Regulation. He submitted a claim for unemployment benefit to the Netherlands authorities but they rejected his claim, relying on the Regulation.

Ms Peeters and Mr Arnold each became unemployed *before* the entry into force of the new Regulation and received unemployment benefit from the Netherlands authorities. They each found new employment after the entry into force of that Regulation, before again becoming unemployed. The Netherlands authorities refused to resume payment of the benefit, relying on the entry into force of that regulation.

Those three individuals brought actions against those decisions before the Rechtbank Amsterdam (District Court, Amsterdam) which seeks an interpretation from the Court of Justice of the new Regulation. Under the system which applied pursuant to the former Regulation, the Court held³ that an atypical frontier worker – atypical in the sense that he has maintained particularly close personal and business links with the State where he was last employed – has better chances of reintegration into working life in that State. Thus, he may choose the Member State in which he makes himself available to the employment services and from which he receives unemployment benefit.

In today's judgment, the Court states that the provisions of the new Regulation are not to be interpreted in the light of its earlier case-law. It holds that the lack of express mention of the right to obtain unemployment benefit from the Member State of last employment reflects the legislature's deliberate intention to limit the taking into account of the Court's earlier case-law. It considers,

¹ Regulation No 883/2004 as amended by Regulation No 988/2009 of 16 September 2009 on the coordination of social security systems (OJ 2004 L 166, p. 1). Entered into force 31/10/2009.

² Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971(II), p. 416).

³ Regulation No 1408/71, above, was interpreted by the Court in Case [C-1/85 Miethe](#).

therefore, that the rule regarding the grant of unemployment benefit by the Member State of residence applies even in relation to wholly unemployed frontier workers who have maintained particularly close links with the State of their last employment. The possibility of making themselves available as a supplementary step to the employment services of that State does not cover the receipt of unemployment benefit from the latter State but only the use of those services in order to find new employment.

With regard to the freedom of movement for workers, the Court points out that the FEU Treaty provides for the coordination, not the harmonisation, of national social security systems. In that regard, the Court holds that the rules on the freedom of movement for workers must be interpreted as not precluding the Member State of last employment from refusing, in accordance with its national law, to grant unemployment benefit to a wholly unemployed frontier worker whose prospects of reintegration into working life are best in that Member State, on the ground that he does not reside in its territory, since, in accordance with the provisions of the Regulation, the applicable legislation is that of the Member State of residence.

However, the Court holds that the lack of a transitional provision applicable to workers, such as Ms Peeters and Mr Arnold, constitutes a lacuna which occurred during the legislative process. The transitional provision laid down in the regulation must therefore also apply to wholly unemployed frontier workers who, taking into account the links they have maintained in the Member State where they were last employed, receive unemployment benefit from it on the basis of the legislation of that Member State while the relevant situation remains unchanged. The concept of 'unchanged situation' within the meaning of the transitional provision of the Regulation must be assessed in the light of national social security legislation. It is for the national court to establish whether workers such as Ms Peeters and Mr Arnold satisfy the conditions provided for by that legislation in order to be able to claim resumption of payment of unemployment benefit.

Thus, the Court holds that a wholly unemployed frontier worker can claim unemployment benefit only in his State of residence, except where the transitional regime laid down by the Regulation of 2004 applies to him.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355