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INFORMATION MEMO

Community scope of the concept "workers"

Ruling by the Court of Justice

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On 19 March 1964 the Court of Justice gave a preliminary ruling in case 75/63 (UNGER v/ BESTUUR DER BEDRIJFSVERENIGING VOOR DETAILHANDEL EN AMBACHTEN).

Application had been made to the Court by the Centrale Raad van Bereep, (higher tribunal for social insurance cases in the Netherlands) for an interpretation of the Treaty and of Regulation No. 3 concerning the social security of migrant workers[1] on the following points:

(a) Is the concept of "wage-earners or assimilated workers" used in this regulation defined by national laws or has it a Community connotation?

(b) In the latter case, what is this connotation for the purposes of Article 19(1) of Regulation No. 3 providing for the grant of sickness benefits to persons covered by the regulation in the event of temporary residence in a Member State other than the one in which they are insured in so far as this connotation bears on the decision in a particular dispute.

In the case which gave rise to the request for an interpretation, the plaintiff in the lower court, a woman insured in the Netherlands as a wage-earner, had temporarily ceased to be in paid employment and consequently to be compulsorily insured under the health insurance law, but had been allowed to continue as a voluntary contributor under provisions in the same law for former wage-earners who intend to become self-employed or to resume work as wage-earners when occasion offers. The plaintiff was in the latter situation. During this period she fell ill in Germany and the Netherlands institution refused to pay her medical expenses in that country on the grounds of a provision in the Netherlands law which makes payment conditional on authorization to stay abroad, an authorization which, moreover, is granted only for convalescence.

The plaintiff submitted that this provision of the Netherlands law was incompatible with Article 19(1) of Regulation No. 3.

(1) Official gazette of the European Communities, No.30/58, 16 December 1958, p. 561.

The Court partly accepted the arguments of Advocate-General Lagrange and the Commission's observations and allowed the plea by deciding:

(a) That the concept of "workers" in Articles 48 to 51 of the Treaty and that of "wage-earners or assimilated workers" in Regulation No. 3 have reference to the Community;

(b) That the concept of "wage-earners or assimilated workers" covers persons in the factual situation of the plaintiff, that these persons enjoy the rights laid down in Article 19(1) of Regulation No. 3 irrespective of the reason for their stay abroad, and that the said Article 19 overrides any conflicting rule of national law.

The Commission had proposed in its observations, in which Advocate-General Lagrange concurred, that a distinction be made between two concepts: that of "wage-earners", the content of which depends on national law, and that of persons "assimilated" to wage-earners for social security purposes - widening the scope of the latter to include all persons covered in one way or another against any contingency under national insurance schemes for wage-earners, the term to have a distinctive Community meaning. The Court preferred to confine itself to the case before the national judge: that of a worker temporarily ceasing to be in paid employment and allowed to continue health insurance on a voluntary basis because he intends to resume paid employment.