Opinion of Advocate General Jacobs delivered on 25 March 2004

Roberto Adanez-Vega v Bundesanstalt für Arbeit

Reference for a preliminary ruling: Bundessozialgericht - Germany

Regulation (EEC) No 1408/71 - Determination of the applicable legislation - Unemployment benefits - Conditions governing aggregation of periods of insurance or employment - National measure not taking into account a period of compulsory military service completed in another Member State

Case C-372/02

European Court reports 2004 Page I-10761

1. In this case the Bundessozialgericht (Federal Social Court) (Germany) has referred a series of questions on the interpretation of Articles 3, 13, 67 and 71 of Regulation No 1408/71 (2) ('the Regulation').
2. In particular the Court is asked for guidance on, first, the legislation applicable to a Spanish national who, having lived for most of his life in Germany, spent nine months in Spain doing compulsory military service after which he returned to Germany where he sought unemployment benefit and, second, whether the Regulation requires that period of military service to be taken into account in determining the applicant's entitlement to such benefit.
3. The provisions of the Regulation which are at issue are Article 3 (which lays down the principle of equal treatment), Article 13(2) (which contains rules for determining the applicable legislation), Article 67 (which lays down rules for the aggregation, or taking account, of periods of insurance or employment completed in another Member State in determining entitlement to unemployment benefit) and Article 71 (which concerns unemployed persons who, essentially, were last employed in a Member State other than that of their residence). The text of those provisions is set out in so far as necessary at the beginning of the discussion of the question or questions to which it is relevant.
4. Article 80 of Regulation No 574/72 (3) is also relevant. That regulation lays down the procedure for implementing Regulation No 1408/71. Article 80 provides, in the context of Article 67 of Regulation No 1408/71, for the unemployment services of the Member State to whose legislation a person was last subject to issue a certified statement specifying the periods of insurance or employment which that person completed as an employed person under that legislation.

Relevant national legislation

5. Paragraph 100 of the Arbeitsförderungsgesetz (Law on the promotion of employment, 'AFG') provides that a person is entitled to unemployment benefit if, *inter alia*, he has completed the qualifying period. Paragraph 104 provides that the qualifying period is completed where a person has been in employment subject to compulsory contributions for 360 days during the reference period of three years immediately preceding the first day of the period of unemployment as from which the other conditions for entitlement to unemployment benefit are fulfilled.
6. Paragraph 107 provides that periods of military service are to be treated as employment subject to compulsory contributions.

The main proceedings and the questions referred

7. According to the order for reference, the facts are as follows.
8. The applicant, who has Spanish nationality, was born in Germany in 1974 and since then has had his principal place of residence registered in Germany. Between September 1991 and July 1994 he undertook training in Madrid, qualifying as an electronics engineer in the energy industry. From 3 to 31 August 1994 and from 3 November 1994 to 20 April 1995 the applicant was employed in Germany as an electrician. On 21 April 1995 he left for Spain, where he undertook his compulsory military service from 18 May 1995 to 15 February 1996; he has been working in Germany again since 30 May 1996.
9. Pursuant to Article 80 of Regulation No 574/72 the Spanish social security institution in January 1997 certified that the applicant had completed a period of insurance and employment from 1 December 1991 to 4 December 1992.
10. The applicant registered with the defendant as unemployed on 25 April 1996. The defendant refused to grant unemployment benefit on the ground that the qualifying-period requirement had not been met since *inter alia* the applicant's period of compulsory military service in Spain did not constitute employment subject to compulsory contributions within the meaning of the AFG.
11. The applicant appealed successfully to the Sozialgericht (Social Court) Hanover; the judgment of that court was confirmed by the Landessozialgericht (Higher Social Court). The defendant appealed to the Bundessozialgericht.
12. That court notes that the three-year reference period encompasses the period from 25 April 1993 to 24 April 1996. During that time the applicant worked in Germany in employment subject to the obligation to contribute from 3 August 1994 to 31 August 1994 and from 3 November 1994 to 20 April 1995. That amounts to 198 days of such employment, that is to say less than 360 days. The applicant would however be entitled to

unemployment benefit if the period of compulsory military service from 18 May 1995 to 15 February 1996 were taken into account. That period cannot be relied upon as a matter of German law in order to establish completion of the qualifying period but may have to be taken into account in accordance with Community law. That presupposes that, under Community law, it was for the defendant to grant unemployment benefit and that the benefit conditions were fulfilled. Whether that is so depends on the interpretation of a number of provisions of Regulation No 1408/71. The Bundessozialgericht has accordingly stayed the proceedings and referred a series of questions to the Court for a preliminary ruling.

13. The full text of the questions referred is set out in the Annex to this Opinion. Essentially they raise the following issues: first, whether Spanish or German legislation is applicable in the circumstances; second, whether the applicant's period of military service is 'employment' within the meaning of Article 71(1); third, whether, if so, Article 67 is in principle applicable jointly with Article 71(1)(b)(ii); and fourth, whether, if so, Article 67 requires account to be taken of a period of compulsory military service completed after the applicant's last period of insurance under German legislation. Finally, the referring court asks whether Article 3 of the Regulation requires the period of military service to be taken into account if the abovementioned provisions do not have that effect.

14. Written observations have been submitted by the applicant, the German and Portuguese Governments and the Commission. No hearing was held, none having been requested.

Determination of the applicable legislation

15. By its first question the referring court asks essentially whether a person in the applicant's position is subject to Spanish legislation in accordance with Article 13(2)(e) or to German legislation in accordance with Article 13(2)(f) of the Regulation.

Article 13 of the Regulation

16. Article 13, headed 'General rules', is the first provision in Title II of Regulation No 1408/71, headed 'Determination of the legislation applicable'.

17. Article 13(1) provides in the version applicable at the material time:

'Subject to Article 14c [not relevant to the present case], persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. That legislation shall be determined in accordance with the provisions of this Title.'

18. Article 13(2) lays down a series of rules for determining which legislation applies in particular circumstances. The rules are expressed to be subject to Articles 14 to 17, constituting the remainder of Title II, which contain various special rules none of which is applicable in this case.

19. Article 13(2)(a) provides:

'[A] person employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State or if the registered office or place of business of the undertaking or individual employing him is situated in the territory of another Member State.'

20. Article 13(2)(e) provides:

'[A] person called up or recalled for service in the armed forces, or for civilian service, of a Member State shall be subject to the legislation of that State. If entitlement under that legislation is subject to the completion of periods of insurance before entry into or after release from such military or civilian service, periods of insurance completed under the legislation of any other Member State shall be taken into account, to the extent necessary, as if they were periods of insurance completed under the legislation of the first State. The employed or self-employed person called up or recalled for service in the armed forces or for civilian service shall retain the status of employed or self-employed person.'

21. Article 13(2)(f), inserted into Regulation No 1408/71 with effect from 29 July 1991 by Regulation No 2195/91, (4) provides that:

'[A] person to whom the legislation of a Member State ceases to be applicable, without the legislation of another Member State becoming applicable to him in accordance with one of the rules laid down in the aforegoing subparagraphs or in accordance with one of the exceptions or special provisions laid down in Articles 14 to 17 shall be subject to the legislation of the Member State in whose territory he resides in accordance with the provisions of that legislation alone.'

Assessment

22. In my view the legislation applicable must be determined solely by reference to Title II of the Regulation, headed 'Determination of the legislation applicable' and repeatedly described by the Court as constituting 'a complete and uniform system of conflict rules'. (5) Indeed Article 13(1) states explicitly: 'Subject to Article 14c, persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. That legislation shall be determined in accordance with the provisions of this Title.' I cannot therefore accept the Commission's submission that the legislation applicable is not governed by Title II and should be determined by reference to provisions elsewhere in the Regulation.

23. Admittedly there are provisions in other titles of the Regulation which provide for the application in specific circumstances of the legislation of a Member State other than that which is applicable by virtue of Title II. The scheme of the Regulation as interpreted by the Court, however, clearly assumes that the legislation which principally applies to a given applicant for social security benefits may always be determined by reference to Title II, even if in a particular situation a specific provision of the Regulation provides for the application of the legislation of another Member State for a specific purpose.

24. In the present case, the applicant (i) was employed in Germany from 3 to 31 August 1994 and from 3 November 1994 to 20 April 1995, during which period he was subject to the legislation of Germany by virtue of Article 13(2)(a), and (ii) undertook compulsory military service in Spain from 18 May 1995 to 15 February 1996,

during which period he was subject to the legislation of Spain by virtue of Article 13(2)(e). The question is which legislation was applicable thereafter, when he returned to Germany and sought unemployment benefit.

25. The judgment of the Court in *Kuusijärvi*, (6) which concerned Article 13(2)(f), appears to supply an answer to that question. In that case, the Court stated that 'in the case of a person who is no longer subject to any legislation applicable by virtue of the other provisions of Article 13(2) … or of the provisions of Articles 14 to 17 of Regulation No 1408/71, [Article 13(2)(f)] declares applicable to that person the legislation of the Member State in whose territory he resides'. That situation manifestly describes the position of the applicant in the present case. The German Government also takes that view.

26. Although the Portuguese Government submits that Spanish legislation is applicable by virtue of Article 13(2)(e), that submission appears to concern solely the legislation applicable during the period of military service, whereas the first question referred concerns the legislation applicable thereafter.

27. The Commission argues that Article 13(2)(f) is not applicable after the end of military service any more than after the loss of employment: if it were, an unemployed person could always go and live in another MemberState and claim unemployment benefit there. That view however is clearly contrary to the Court's ruling in *Kuusijärvi*, which states that 'a person who has ceased all employment in the territory of a Member State … is subject, by virtue of Article 13(2)(f) … either to the legislation of the State in which he was previously employed, if he continues to reside there, or to that of the State to which, if such be the case, he has transferred his residence'. (7)

28. It is clear moreover that by 'a person who has ceased all employment' the Court did not mean to limit the scope of its statement to persons who have definitively ceased all occupational activity. In*Kuusivärvi* the Swedish and Norwegian Governments had contended that Article 13(2)(f) applied only to such persons whereas a person who had only temporarily ceased to work remained subject, by virtue of Article 13(2)(a), to the legislation of the Member State where he had last been employed, even if he had established his residence in another Member State. The Court stated that there was nothing in the wording of Article 13(2)(f) to suggest that it was so limited in scope; on the contrary, it was couched in general terms so as to cover any situation in which the legislation of a Member State ceased to be applicable to a person, for whatever reason, and not only because the person concerned had ceased his occupational activity, be it definitively or temporarily, in a given Member State. (8)

29. I am not in any event convinced that the Commission's concern is well founded. Even if the effect of Article 13(2)(f) is that the legislation applicable to a person who has ceased employment in one Member State and moved his residence to another Member State is the legislation of the latter State, that in itself will not give such a person an automatic entitlement to draw unemployment benefit at the expense of that State. The Court emphasised in *Kuusijärvi* that the sole purpose of Article 13(2) is to determine the national legislation applicable to persons who are in one of the situations referred to in subparagraphs (a) to (f) of that provision. As such, the provision is not intended to lay down the conditions creating the right or the obligation to become affiliated to a social security scheme or to a particular branch of such a scheme: as the Court has pointed out on several occasions, it is for the legislature of each Member State to lay down those conditions.(9) Where a Member State subjects entitlement to unemployment benefit to the condition that the applicant has completed periods of insurance or employment, Article 67 of the Regulation requires that State to take into account in its calculations such periods completed in another Member State. However, in general that requirement applies only where the applicant has 'completed lastly' such periods in the Member State where the application is made. (10) Accordingly I do not consider that the interpretation of Article 13(2)(f) which I suggest could have the effect described by the Commission.

30. Of more concern to me however is the possibility that the interpretation of Article 13(2)(f) which appears to be dictated by *Kuusijärvi* may disrupt the scheme of the Regulation, and in particular the provisions of Chapter 6 of Title III, headed 'Unemployment benefits'. That chapter comprises Articles 67 to 71. As will be seen below, Article 71(1)(b)(i) provides for certain unemployed persons to receive unemployment benefit 'in accordance with the provisions of [the competent] State as though he were residing on its territory'; Article 71(1)(b)(ii) provides for other unemployed persons to receive benefits in accordance with the legislation of the State in which they reside. It is clear from the scheme of the Regulation and the case-law of the Court that the term 'competent State' must be defined as the State whose legislation applies in conformity with the general rules set out in Article 13 of the Regulation. (11) In view of the fact that until the addition of Article 13(2)(f) by Regulation No 2195/91 (12) it was settled case-law that the legislation applicable to an unemployed person seeking benefit was (by virtue of Article 13(2)(a)) that of the State of last employment, (13) it is hardly surprising that the Court in interpreting those provisions has assumed that State normally to be the competent State with regard to unemployment benefits. (14) If the effect of Article 13(2)(f) is that the legislation applicable to an unemployed person who resides in a Member State other than that of his last employment is the legislation of the State of residence, Article 71(1)(b)(i) would be meaningless and Article 71(1)(b)(ii) redundant. It may therefore be appropriate for the Court in the present case to make it clear that its interpretation of Article 13(2)(f) in *Kuusijärvi* does not apply to cases relating to unemployment benefit, which would remain governed by Article 13(2)(a) or, by analogy, Article 13(2)(b) to (e), as appropriate. If that were so, the result in the present case would be that the legislation applicable to the applicant would, pursuant to Article 13(2)(e), be that of Spain.

31. For the purposes of the remaining questions referred, I will proceed on the basis that, following *Kuusijärvi*, the applicable legislation is, pursuant to Article 13(2)(f), that of Germany. In case, however, the Court were minded to qualify that judgment in the manner which I have suggested above, I shall also where relevant briefly consider what the position would be if Spanish legislation were applicable.

Article 71 of the Regulation

Relevant provisions

32. Article 1 of Regulation No 1408/71 contains a series of definitions including:

‘(r) *periods of insurance* means periods of contribution or periods of employment or self-employment as defined or recognised as periods of insurance by the legislation under which they were completed or considered as completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of insurance;

(s) *periods of employment* and *periods of self-employment* means periods so defined or recognised by the legislation under which they were completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of employment or of self-employment’.

33. Article 71 is headed ‘Unemployed persons who, during their last employment, were residing in a Member State other than the competent State’. The introductory words of Article 71(1) state:

‘An unemployed person who was formerly employed and who, during his last employment, was residing in the territory of a Member State other than the competent State shall receive benefits in accordance with the following provisions.’

34. Article 71(1)(a) concerns frontier workers and essentially provides that a frontier worker who is partially or intermittently unemployed in the undertaking which employs him is to receive benefits from the State of employment as if he were residing in that State (Article 71(1)(a)(i)) whereas a frontier worker who is wholly unemployed is to receive benefits from the State of residence as though he had been subject to its legislation while last employed (Article 71(1)(a)(ii)).

35. Article 71(1)(b) concerns other workers who, before becoming unemployed, lived and worked in different Member States. Article 71(1)(b)(i) provides that such a person who remains available for employment in the State in which he last worked is to receive benefits from that State as if he resided there. Article 71(1)(b)(ii) provides:

36. ‘An employed person, other than a frontier worker, who is wholly unemployed and who makes himself available for work to the employment services in the territory of the Member State in which he resides, or who returns to that territory, shall receive benefits in accordance with the legislation of that State as if he had last been employed there …’

Is compulsory military service ‘employment’ within the meaning of Article 71(1)?

37. In its questions 2(a) and 3(c)(aa) the national court has asked for guidance on the interpretation of Article 71(1) and in particular whether the applicant’s military service can constitute ‘last employment’ within the meaning of the first sentence of that provision so that Article 71(1)(b)(ii) is applicable.

38. The Court has stated on a number of occasions that Article 71 is intended to ensure that migrant workers receive unemployment benefit in the conditions most favourable to the search for new employment; that benefit is not merely pecuniary but includes the assistance in finding new employment which employment services provide. (15) The decisive element in applying the article as a whole is the residence of the person concerned in a Member State other than the State to whose legislation he was subject during his last employment. (16) Under Article 71(1)(b), unemployed workers within its scope are entitled to make a choice between the benefits offered by the competent State – which would normally, by virtue of Article 13(2)(a), have been the Member State in which they were last employed (17) – and those offered by the Member State in which they reside. The worker – who is the best placed to know the prospects of finding new employment – exercises that option by making himself available either to the employment services of the State in which he was last employed (Article 71(1)(b)(i)) or to those of the Member State in which he resides (Article 71(1)(b)(ii)). (18) In the present case the applicant seeks to exercise the latter option.

39. It may be thought that, if I am correct and German legislation is applicable by virtue of Article 13(2)(f), Article 71(1) would not make any difference to the outcome in the present case, since in any event the applicant should receive benefits in accordance with the legislation of the State in which he was residing when he applied for them.

40. That view however overlooks the relationship between Articles 67 and 71. Admittedly, whether Article 71 applies or not the institution liable for the payment of unemployment benefit will be required to aggregate periods of employment or insurance in accordance with Article 67, as will be seen below; (19) to that extent, therefore, it makes no difference (on the assumption that German legislation is applicable) to the outcome of the present case whether Article 71 applies. However, the condition imposed by Article 67(3), namely that the applicant ‘completed lastly’ a period of insurance in accordance with (in the present case) German legislation, is explicitly waived in ‘the cases referred to in Article 71(1) … (b)(ii)’. It may therefore be relevant for the applicant to show that he falls within the scope of that provision.

41. The applicant and the Portuguese Government concur in the view that the applicant’s period of military service constitutes ‘employment’ within the meaning of the first sentence of Article 71(1); the German Government and the Commission take the contrary view.

42. It seems to me that, although it is possible to determine the scope of the term ‘employment’ for the purpose of Article 71(1), it is not possible to reach a definitive conclusion on the question in the circumstances of the present case. That is because the answer to that question ultimately depends on Spanish legislation, which it is not for the Court to interpret. Although the term ‘employment’ is not defined as such in the Regulation, the scheme and objectives of Article 71(1) as described above suggest that, at least for the purpose of that provision, the term has a specific scope, covering only activity linked to a period of employment within the meaning of Article 1(s) and hence only periods regarded as periods of employment or equivalent by the legislation under which they were completed.

43. Support for that view may also be drawn from *Kuyken*, (20) in which the Court stated that Article 71 could not apply to the case of an unemployed person who had not pursued any activity as an employed person or any activity treated as such and who, in consequence, had not acquired any entitlement to unemployment benefit. Although that description does not accurately fit the applicant in the present case, who had been employed before completing his military service, it none the less provides authority for interpreting the concept of ‘last employment’ for the purpose of Article 71(1) by reference to activity linked to a period of employment

within the meaning of Article 1(s) and hence only periods regarded as periods of employment or equivalent by the legislation under which they were completed.

44. The national court refers, as possible support for the contrary view, to *Grahame and Hollanders,* (21) according to which periods of compulsory military service constitute 'periods of paid work', 'periods of paid employment', 'equivalent periods' or 'periods treated as such' for the purposes of points 4(a) and (c) in Part J of Annex VI to the Regulation. Those provisions confirmed that the Netherlands would take account of such periods completed in the Netherlands before 1 July 1967 for the purpose of applying Article 46(2) of the Regulation, which concerns the calculation of pensions.

45. In that case however the Court explicitly invoked the definition of 'periods of employment' in Article 1(s) of the Regulation, noted that it was not disputed that that term corresponded to the terms used in points 4(a) and (c), and found that, under the legislation pursuant to which they were performed, periods of compulsory military service were treated as periods of employment for social security purposes. (22)

46. The Portuguese Government submits that it follows from the third sentence in Article 13(2)(e) that Article 71 is applicable where the unemployed person's last activity was military service. That sentence reads: 'The employed or self-employed person called up or recalled for service in the armed forces or for civilian service shall retain the status of employed or self-employed person'.

47. That view however appears to be contrary to the observation of the Court in *Grahame and Hollanders* (23) that 'it is only for the purposes of determining the applicable social security legislation that [that sentence] uses a different criterion, linked to the nature of the previous activity, by expressly providing that [such] a person … is to retain his previous status of employed or self-employed person'. Thus while the first sentence of Article 13(2)(e) determines the Member State whose legislation is applicable, the third sentence determines whether it is the legislation governing employed persons or that governing self-employed persons which applies.

48. I accordingly remain of the view that 'employment' within the meaning of the first sentence of Article 71(1) encompasses only periods regarded as periods of employment or equivalent by the legislation under which they were completed. The procedure whereby the referring court may determine whether the applicant's period of military service in Spain is so regarded by Spanish legislation is considered further below, in the context of Article 67(1). (24) It may be noted that Article 84 of Regulation No 574/72, (25) which implements Article 71 of Regulation No 1408/71, provides that the certificate referred to in Article 80, discussed in paragraphs 70 and 71 below, is also to be submitted by an applicant for unemployment benefit under the provisions of Article 71(1)(b)(ii) of Regulation No 1408/71.

49. If it appears from that certificate that the applicant's period of military service in Spain was indeed 'employment' within the meaning of the first sentence of Article 71(1), that provision will apply if during that period the applicant 'was residing in … a Member State other than the competent State'.

50. During that period, the legislation of Spain was the applicable legislation by virtue of Article 13(2)(e); Spain is accordingly the competent State for the purpose of Article 71(1). (26)

51. The national court has not asked this Court for guidance on whether the applicant may be said to have been residing in Germany while he was completing his military service in Spain, correctly indicating that the answer to that question depends on whether his interests remained focused in Germany during that time. (27)

52. I accordingly conclude that the applicant's military service is to be regarded as 'employment' within the meaning of Article 71(1) only if it is so defined or recognised by the legislation of Spain or both treated as such and regarded by that legislation as equivalent within the meaning of Article 1(s) of the Regulation.

53. Finally, I will briefly consider what the position would be if the legislation applicable to the applicant when he sought unemployment benefit were, pursuant to Article 13(2)(e), that of Spain rather than, pursuant to Article 13(2)(f), that of Germany. In that case, assuming that his period of compulsory military service constituted his 'last employment' within the meaning of Article 71(1)(b)(ii) and that during that period he was residing within the meaning of the provision in Germany, Article 71(1)(b)(ii) would still give him the option of receiving benefits in accordance with the legislation of Germany rather than Spain. If on the other hand his military service did not constitute 'last employment' for the purpose of Article 71(1), that article would not apply in any event since his last employment would then have been in Germany, where he was also residing.

Article 67 of the Regulation

Relevant provisions

54. The term 'employed person' is defined in Article 1(a) of the Regulation as, essentially, any person who is insured, compulsorily or voluntarily, for one or more of the contingencies covered by the branches of a social security scheme for employed persons or dealt with in the Regulation.

55. Article 67, which is headed 'Aggregation of periods of insurance or employment', provides in so far as relevant:

'(1) The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits subject to the completion of periods of insurance shall take into account, to the extent necessary, periods of insurance or employment completed as an employed person under the legislation of any other Member State, as though they were periods of insurance completed under the legislation which it administers, provided, however, that the periods of employment would have been counted as periods of insurance had they been completed under that legislation.

…

(3) Except in the cases referred to in Article 71(1)(a)(ii) and (b)(ii), application of the provisions of paragraphs 1 and 2 shall be subject to the condition that the person concerned should have completed lastly:

– in the case of paragraph 1, periods of insurance,

– in the case of paragraph 2, periods of employment,

in accordance with the provisions of the legislation under which the benefits are claimed.'

Interaction with Article 71(1)

56. By its questions 2(b) and 3(c)(bb) the national court asks whether, assuming that the applicant falls within the scope of Article 71(1)(b)(ii), the aggregation provisions of Article 67 are in that event applicable, or whether the first sentence of Article 71(1)(b)(ii) in effect applies instead of those provisions.

57. As the Portuguese Government correctly submits, Article 67(1) does not cease to be applicable simply because Article 71(1)(b)(ii) applies. That to my mind is clear from the scheme and wording of the provisions.

58. First, Articles 67 and 71 are in Title III of the Regulation, entitled 'Special provisions relating to the various categories of benefits'. Chapter 6 of Title III concerns unemployment benefits. Article 67 is in Section 1, 'Common provisions'. Section 2 of Chapter 6 of Title III is headed 'Unemployed persons going to a Member State other than the competent State'. It comprises Article 69, 'Conditions and limits for the retention of the right to benefits', and Article 70, 'Provision of benefits and reimbursements'. Section 3, which is the last section of Chapter 6, consists of Article 71 alone. It is apparent from that structure that Article 67 is a provision which is common to all the sections of Chapter 6, and hence *prima facie* applicable together with Article 71.

59. Second, the wording of Article 67 supports that interpretation. Article 67(3) provides that application of Article 67(1) and (2) is to be subject to the condition that the person concerned should have completed lastly periods of insurance or employment in accordance with the provisions of the legislation under which the benefits are claimed. (28) That condition however is stated not to apply to 'the cases referred to in Article 71(1)(a)(ii) and (b)(ii)'. That derogation would be redundant if Article 71(1) were not applicable jointly with Article 67.

60. Third, Article 67(1) applies to Member States whose legislation makes the acquisition, retention or recovery of the right to benefits subject to the completion of periods of insurance. (29) It requires the competent institution of such a Member State to take into account, to the extent necessary, periods of insurance or employment completed as an employed person under the legislation of any other Member State, as though they were periods of insurance completed under the legislation which it administers. That exercise, known as aggregation, is one of the two principal pillars (the other being the payment of benefits to persons resident anywhere in the European Union) of Regulation No 1408/71 and indeed of Article 42 EC on which it is based. Article 71(1), as has been discussed above, (30) simply provides certain migrant workers who, during their last employment, were residing in a Member State other than the competent State with the option of registering as unemployed and thus seeking unemployment benefit from their State of residence rather than their State of last employment. It makes no provision for the calculation of that benefit. If Article 67 were inapplicable where unemployment benefit was sought pursuant to Article 71(1), there would be no requirement to aggregate, which would be contrary to the scheme of the Regulation and indeed to the Treaty.

61. Finally, the interpretation which I propose has been explicitly endorsed by the Court, which stated in *Warmedam-Steggerda* (31) that 'Article 71(1)(b)(ii) … does not, where the conditions for its application are fulfilled, have any effect on the … rules of aggregation [in Article 67(1)], which determine the conditions in which account must be taken of periods completed by a migrant worker in Member States other than that in which the competent institution responsible for deciding whether benefits are to be granted is situated'.

62. I accordingly conclude that the aggregation provisions of Article 67 will be applicable if the applicant falls within the scope of Article 71(1)(b)(ii), provided of course that his situation satisfies the requirements of Article 67(1), to which I now turn.

Article 67(1)

63. The national court's questions 2(c) and 3(b) ask essentially whether the applicant's military service is to be regarded as a 'period … of employment completed as an employed person' within the meaning of Article 67(1).

64. Article 67(1) requires Member States to which it applies to 'aggregate' 'periods of insurance or employment completed as an employed person' under the legislation of any other Member State as though they were periods of insurance completed under its legislation.

65. The effect of Article 1(r) and (s) of the Regulation (32) is that the question whether a given period of activity constitutes a 'period of insurance' or a 'period of employment' for the purposes of the Regulation is to be answered by reference to how that period is regarded by the legislation under which it was completed.

66. In addition, in order to be aggregated pursuant to Article 67(1) the period of insurance or employment must have been 'completed as an employed person', and hence as a person covered by social security insurance within the meaning of Article 1(a) of the Regulation.

67. It appears to be common ground that the applicant's military service is not regarded by the legislation under which it was completed – namely that of Spain – as a period of insurance or equivalent. The national court's question is accordingly limited to whether that military service is a 'period of employment completed as an employed person' within the meaning of Article 67(1). If so, then provided that the applicant also satisfies the condition imposed by Article 67(3) (considered further below (33)) in so far as it is applicable, and provided that (as appears to follow from Paragraph 107 of the AFG) the military service would have been counted as a period of insurance had it been completed under German legislation, the defendant as competent institution will be required to take account of the period of military service in determining whether the applicant has completed the qualifying period required as a matter of German law for entitlement to unemployment benefit.

68. The Portuguese Government submits that the applicant's military service must be taken into account by the defendant. That Government cites *Warmedam-Steggerda* (34) as authority for the proposition that the competent institution to which Article 67 applies must verify not whether the military service was regarded as a period of insurance or of employment according to the law of the State in which it was completed but whether it would have been considered to be a period of insurance had it been completed in the State of the competent institution, namely Germany. The answer to that question is affirmative.

69. I do not accept that interpretation. It appears to me that the Portuguese Government is focusing solely on the final proviso in Article 67(1). The effect of that proviso is that periods of employment (35) may not be aggregated pursuant to Article 67(1) unless they would have been counted as periods of insurance had they been completed under the legislation of the competent institution. It is however merely an additional

requirement; the requirement flowing in effect from the definition in Article 1(s), namely that the period of employment was regarded as such by the legislation of the Member State where it was completed, must also be met.

70. The German Government and the Commission submit that under Spanish legislation military service is not regarded as a period of employment: it involves no compulsory social security cover and gives rise to no social security entitlement. Although the Court cannot of course rule on the effect of the domestic social security legislation of a Member State, in the present case it appears from the order for reference that the Spanish social security institution has issued a certificate pursuant to Article 80 of Regulation No 574/72 (36) stating that the applicant had completed a period of insurance and employment from 1 December 1991 to 4 December 1992 only. The certificate was issued in January 1997. That suggests that the assertion that under Spanish legislation military service is not regarded a period of employment is correct.

71. The Spanish institution's certificate is not however conclusive, both because the status of the applicant's period of military service cannot necessarily be inferred from the fact that it is not mentioned and because the Court has held in any event that such certificates issued by the competent institution of a Member State in accordance with Regulation No 574/72 do not constitute irrefutable proof vis-à-vis either the institution of another Member State which is competent for matters relating to unemployment or the courts of that State. (37) Both the latter institution and, in legal proceedings, the national court remain entirely free to verify the content of the statement; (38) in addition, as the Commission submits, if in the present case the defendant expresses doubts as to the correctness of the facts on which the certificate is based and, consequently, of the information contained therein, it is incumbent on its Spanish counterpart to reconsider whether the certificate was properly issued and, if appropriate, to withdraw it. (39)

72. Article 80 of Regulation No 574/72 moreover requires the certified statement to specify the 'periods of insurance or employment completed previously as an employed person' for the purpose of Article 67(1). If the Spanish institution were to certify in accordance with Article 80 that the applicant's period of military service constituted a 'period of employment', it would also need to specify whether the applicant had completed that period 'as an employed person'.

73. In view of the above, I conclude that the applicant's military service is to be regarded as a 'period … of employment completed as an employed person' within the meaning of Article 67(1) only if (i) it is defined or recognised as a period of employment by the legislation of Spain or both treated as such and regarded by that legislation as equivalent within the meaning of Article 1(s) of the Regulation and (ii) the applicant was insured within the meaning of Article 1(a) of the Regulation when he carried out the military service.

Article 67(3)

74. The national court's question 3(a) asks essentially how recently a period of insurance must have been completed in order to be 'completed lastly' within the meaning of Article 67(3).

75. Article 67(3) provides that, except in the cases referred to in Article 71(1)(a)(ii) and (b)(ii), application of the requirement to aggregate in Article 67(1) is to be subject to the condition that the person concerned 'should have completed lastly' periods of insurance in accordance with the legislation under which the benefits are claimed.

76. It will be appreciated that Article 67(3) could not apply in the cases referred to in Article 71(1)(a)(ii) and (b)(ii) since in those cases by definition the applicant will be applying for unemployment in a Member State other than that of his last employment (40) and will accordingly not 'have completed lastly' periods of insurance in accordance with the legislation under which the benefits are claimed.

77. By its question 3(a) the national court asks whether a person whose last period of insurance in Germany came to an end more than one year previously, after which he carried out compulsory military service in Spain for nine months, has 'completed lastly' periods of insurance under German law within the meaning of that provision. The German Government and the Commission both submit that that question should be answered in the affirmative. I agree.

78. In the present case, as is clear from the formulation of that question, the applicant's last period of insurance in Germany ended more than one year before he applied for unemployment benefit. The condition imposed by Article 67(3) would therefore have the effect that Article 67(1) would not be applicable if either the time that had elapsed or the completion of Spanish military service meant that that period of insurance was not 'completed lastly' before the application for benefit.

79. The Court has ruled that the condition in Article 67(3) is designed to encourage unemployed persons to seek work in the Member State in which they were last employed and to make that State bear the burden of providing the unemployment benefit. (41) There is at the same time a concern, in the absence of a common labour market, to avoid the exportation of unemployment by encouraging the unemployed to seek work, in the first instance, in the State where they were last employed. (42)

80. It is consistent with that aim for the Member State of last employment to remain liable for the payment of unemployment benefit to a person whose most recent period of insurance was completed in that State, notwithstanding the passage of time between completion of that period of insurance and application for unemployment benefit, provided that there was no further period of insurance in another Member State in the intervening period.

81. Admittedly the term used for 'lastly' in the German version of Article 67(3) is 'unmittelbar zuvor', which literally means 'immediately before'. However, the terms used in several other language versions are to the same effect as the English and the French 'en dernier lieu', which more naturally focus on the fact that the period in question was the last such period before a particular date rather than necessarily immediately preceding that date. (43)

82. As for the consequence of the applicant's intervening period of Spanish military service, it seems to me that such an intervention will mean that his previous period of insurance in Germany will not have been 'completed lastly' within the meaning of Article 67(3) only if the period of military service is itself a 'period of

insurance' within the meaning of the Regulation and hence as defined by Article 1(r). As mentioned above, (44) it appears to be accepted by all parties that that is not the case.

83. I accordingly consider that where a person completes a period of insurance under the legislation of a Member State and subsequently applies for unemployment benefit in that State, that period of insurance is 'completed lastly' within the meaning of Article 67(3) even where it did not immediately precede the application for benefit provided that no other period of insurance has intervened. (45)

Summary of conclusions on the first three questions

84. It may be helpful at this point to have a summary of my conclusions on Articles 13(2), 67 and 71 as they apply to the applicant's case.

85. If in accordance with *Kuusijärvi* (46) the applicable legislation is that of Germany pursuant to Article 13(2)(f):

(a) If the military service was 'employment' within the meaning of Article 71(1) (which by virtue of Article 1(s) depends on its qualification under Spanish legislation, to be attested to by certified statement in accordance with Article 80 of Regulation No 574/72) *and* during his military service he was residing in Germany within the meaning of Article 71(1) as interpreted by the Court, (47) the applicant will fall within the scope of Article 71(1)(b)(ii), which entitles him to claim unemployment benefit in Germany even though his last employment was in another Member State.

(b) If the applicant falls within the scope of Article 71(1)(b)(ii), the German institution will be required to take account of the period of military service in determining his entitlement to unemployment benefit if

(i) it was a 'period of … employment completed as an employed person' within the meaning of Article 1(a) and (s), which adds an additional requirement to that which he has already satisfied in order to fall within the scope of Article 71(1); that question is also a matter of Spanish law to be attested to in accordance with Article 80; *and*

(ii) it would have been counted as a period of insurance had it been completed under German legislation as required by Article 67(1).

(c) If the applicant does not fall within the scope of Article 71(1)(b)(ii), he can none the less claim unemployment benefit in Germany (because its legislation will be applicable by virtue of Article 13(2)(f)); the German institution will be required to take account of the period of military service in determining his entitlement to unemployment benefit provided

(i) that the conditions in (b) above are satisfied *and*

(ii) that he 'completed lastly' periods of insurance in accordance with German legislation as required by Article 67(3).

86. If the applicable legislation is that of Spain pursuant to Article 13(2)(e) by analogy with the pre-Article 13(2)(f) case-law on Article 13(2)(a): the conclusions at (a) and (b) of the preceding paragraph above remain unchanged. If the applicant does not fall within the scope of Article 71(1)(b)(ii), however, he will not be able to claim unemployment benefit in Germany, but could have done so in Spain (which pursuant to Article 67(1) would in principle have been required to aggregate his previous periods of insurance and/or employment in Germany, provided that he 'completed lastly' periods of insurance in accordance with Spanish legislation).

The principle of equal treatment

87. Article 3(1) of the Regulation provides:

'Subject to the special provisions of this Regulation, persons resident in the territory of one of the Member States to whom this Regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State.'

88. By its fourth question, the referring court asks whether, if the applicant's period of military service cannot be taken into account under the provisions of the Regulation concerning unemployment benefit (namely Articles 67 and 71), he has any such entitlement under that article or any other general provision of Community law.

89. The applicant and the Portuguese Government submit that the applicant may derive such entitlement by virtue of Article 3(1); the German Government and the Commission disagree.

90. The Portuguese Government bases its view on the decision of the Court in *Mora Romero*. (48)

91. In that case, the Court ruled that Article 3(1) meant that 'where the legislation of a Member State provides for extension of the right to orphan's benefit beyond the age of 25 for recipients of benefits whose training has been interrupted by their military service, that State is required to assimilate military service in another Member State to military service under its own legislation'. (49)

92. In my view that ruling cannot be transposed to the present case. *Mora Romero* concerned entitlement to orphan's benefit. The applicant, a Spanish national, was in receipt of such benefit under German legislation, which provided for payment until the age of 25, extended by the period equivalent to any period of military service. The applicant completed a period of military service in Spain before he was 25. The German competent institution stopped paying his orphan's benefit when he turned 25 and refused to extend it for a period equivalent to the period of his military service.

93. Although both the applicant and the benefit concerned were clearly within the scope of the Regulation, the situation in that case was none the less in a material respect different from that in the present case: in *Mora Romero* there was no specific provision of the Regulation governing the issue. In particular, the only provision in the Regulation concerning aggregation in the context of orphan's benefit (Article 79) solely required account to be taken in determining entitlement to such benefit of periods of insurance, employment, self-employment or residence completed by the deceased parent in another Member State.

94. In the absence of any provision in the Regulation governing the applicant's situation, in which he was clearly disadvantaged in comparison with a German national in the same position, it was clearly appropriate for the Court to apply the principle of equal treatment articulated in Article 3(1).

95. That provision however is expressed to be 'subject to the special provisions of [the] Regulation', and in the present case, in contrast to *Mora Romero*, the Regulation contains special provisions, namely Articles 67 and

71, which are designed to govern the entitlement to unemployment benefits of an unemployed person who has completed periods of insurance or employment under the legislation of another Member State. As both the German Government and the Commission submit, those special provisions displace the general principle of equality enshrined in Article 3(1).

96. If it were otherwise the effect would be to rewrite the detailed provisions of Article 67(1) and in particular change the definition of 'period of employment' for the purpose thereof.

97. It might be argued that if the applicant has no entitlement to aggregation in accordance with Article 67(1), that demonstrates a lacuna in the scheme of the Regulation which should be filled by invoking Article 3(1).

98. I do not accept that view. If the applicant does not fall within the scope of Article 67(1), that is because his period of military service does not constitute a period of insurance or employment completed as an employed person within the meaning of that provision. If that is so, it is because Spanish legislation does not recognise military service as such. It is entirely consistent with the scheme and objectives of the Regulation that a period of military service not regarded as a period of insurance or employment or equivalent by the legislation under which it was completed should not be aggregated for the purpose of entitlement to unemployment benefit.

99. The conclusion would in my view be the same if other general principles of equal treatment were invoked, such as for example that in Article 39(2) EC, mentioned in the order for reference.

Conclusion

100. The answer to the question whether the legislation applicable to a person who, having been employed in Member State A, completes a period of compulsory military service in Member State B before returning to Member State A where he seeks unemployment benefit is that of Member State A or Member State B depends on whether the interpretation of Article 13(2)(f) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community which the Court gave in Case C-275/96*Kuusijärvi* [1998] ECR I-3419 applies to applicants for unemployment benefit. If the interpretation in *Kuusijärvi* applies, such a person is subject to the legislation of Member State A as the State of residence by virtue of Article 13(2)(f) of Regulation No 1408/71. If the interpretation in *Kuusijärvi* does not apply, such a person will be subject to the legislation of Member State B as the State to whose legislation he was subject during his period of military service by virtue of Article 13(2)(e) of Regulation No 1408/71.

101. The remaining questions referred by the Bundessozialgericht should be answered as follows:

(1) A period of compulsory military service is to be regarded as 'employment' within the meaning of the first sentence of Article 71(1) of Regulation No 1408/71 only if it is so defined or recognised by the legislation under which it was completed or both treated as such and regarded by that legislation as equivalent to a period of employment within the meaning of Article 1(s) of the Regulation.

(2) A period of compulsory military service is to be regarded as a 'period … of employment completed as an employed person' within the meaning of Article 67(1) of Regulation No 1408/71 only if (i) it is defined or recognised as a period of employment by the legislation of Spain or both treated as such and regarded by that legislation as equivalent within the meaning of Article 1(s) of the Regulation and (ii) the applicant was insured within the meaning of Article 1(a) of the Regulation when he carried out the military service.

(3) Article 67(1) of Regulation No 1408/71 is applicable to an applicant who falls within the scope of Article 71(1)(b)(ii) of the Regulation.

(4) Where a person completes a period of insurance under the legislation of a Member State and subsequently applies for unemployment benefit in that State, that period of insurance is 'completed lastly' within the meaning of Article 67(3) of Regulation No 1408/71 even where it did not immediately precede the application for benefit provided that no other period of insurance has intervened.

ANNEX

Questions referred by the Bundessozialgericht

'1. Is a person who claims benefits under German unemployment insurance more than two months after completing his compulsory national service in Spain subject to

(a) Spanish legislation under Article 13(2)(e) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ L 230, p. 6), as amended by Council Regulation (EEC) No 2195/91 of 25 June 1991 (OJ L 206, p. 2) – hereinafter, "Regulation No 1408/71" –

or

(b) German legislation under Article 13(2)(f) of Regulation No 1408/71?

2. If the answer to Question 1(a) is affirmative:

(a) does compulsory national service undertaken in Spain constitute "last employment in the territory of a MemberState other than the competent State" within the meaning of Article 71(1) of Regulation No 1408/71?

(b) If the answer to Question 2(a) is affirmative:

does the first sentence of Article 71(1)(b)(ii) of Regulation No 1408/71 also mean that the last employment completed in the territory of a Member State other than the competent State is to be taken into account for the purposes of benefits to unemployed persons as if it had been completed in the State of residence, without regard to the requirements stated in Article 67 of Regulation No 1408/71?

(c) If the answer to Question 2(b) is negative:

in what circumstances is a period of national service that, under national (Spanish) law, does not constitute a period of insurance for unemployment insurance purposes or is not treated as such, to be considered a period of

employment completed as an employed person under the legislation of another Member State in accordance with Article 67(1) of Regulation No 1408/71?

3. If the answer to Question 1(b) is affirmative:

(a) has a person whose last period of insurance in Germany came to an end more than one year previously, after which he carried out compulsory national service in Spain for nine months, "completed lastly"periods of insurance under German law within the meaning of Article 67(3) of Regulation [No 1408/71]?

(b) If the answer to Question 3(a) is affirmative:

in what circumstances is a period of national service that, under national (Spanish) law, does not constitute a period of insurance for unemployment insurance purposes or is not treated as such, to be considered a period of employment completed as an employed person under the legislation of another Member State in accordance with Article 67(1) of Regulation No 1408/71 (as per Question 2(c))?

(c) If Article 67(1) of Regulation No 1408/71 should not apply to the claimant (Questions 3(a) and (b)):

(aa) does compulsory national service undertaken in Spain constitute "last employment in the territory of a MemberState other than the competent State" within the meaning of Article 71(1) of Regulation No 1408/71 (as per Question 2(a))?

(bb) If the answer to Question 3(c)(aa) is affirmative:

does the first sentence of Article 71(1)(b)(ii) of Regulation No 1408/71 also mean that the last employment completed in the territory of a Member State other than the competent State is to be taken into account for the purposes of benefits to unemployed persons as if it had been completed in the State of residence, without regard to the requirements stated in Article 67 of Regulation No 1408/71 (as per Question 2(b))?

4. If the period of Spanish compulsory national service cannot be taken into account under Articles 71 or 67 of Regulation No 1408/71 for the purposes of the claimant's entitlement to benefit under German unemployment insurance, is there any such entitlement under the principle of equality of treatment in Article 3 of Regulation No 1408/71 or under any other general provisions of European law?'

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1 – Original language: English.

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2 – Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. The text of the Regulation incorporating amendments made to the end of 1995 may be found in Part I of Annex A to Council Regulation (EC) No 118/97 of 2 December 1996 amending and updating Regulation (EEC) No 1408/71, OJ 1997 L 28, p. 1.

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3 – Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71. The text of the Regulation as at the end of 1995 may be found in Part II of Annex A to Council Regulation (EC) No 118/97, cited in note 2.

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4 – Council Regulation (EEC) No 2195/91 of 25 June 1991 amending Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72, OJ 1991 L 206, p. 2.

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5 – See for example Case C-275/96 *Kuusijärvi* [1998] ECR I-3419, paragraph 28 of the judgment.

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6 – Cited in note 5, paragraph 33 of the judgment.

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7 – Paragraph 34 of the judgment.

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8 – See paragraphs 35 and 39 to 50, in particular paragraphs 39 and 40.

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9 – Paragraph 29 of the judgment

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10 – For further discussion of Article 67, see paragraphs 54 to 82 below.

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11 – See for example Case 145/84 *Cochet* [1985] ECR 801, paragraph 11 of the judgment, and Case C-454/93 *Van Gestel* [1995] ECR I-1707, paragraphs 13 and 14.

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12 – Cited in note 4.

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13 – Case 150/82 *Coppola* [1983] ECR 43 and Case 302/84 *Ten Holder* [1986] ECR 1821.

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14 – See for example *Cochet*, cited in note 11, paragraphs 14 and 15 of the judgment, Case C-131/95 *Huijbrechts* [1997] ECR I-1409, paragraph 26, and most recently Case C-311/01 *Commission* v *Netherlands*, judgment of 6 November 2003, paragraph 32.

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15 – See for example Case 1/85 Miethe [1986] ECR 1837, paragraph 16 of the judgment.

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16 – Case 76/76 Di Paolo [1977] ECR 315, paragraph 11 of the judgment.

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17 – See further paragraph 30 above.

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18 – See for example *Miethe*, cited in note 1511, paragraph 23.

19 – At paragraphs 55 to 61.

20 – Case 66/77 [1977] ECR 2311, paragraph 19 of the judgment.

21 – Case C-248/96 [1997] ECR I-6407, paragraph 31 of the judgment.

22 – Paragraph 26 of the judgment.

23 – Cited in note 21, paragraph 31 of the judgment.

24 – See paragraphs 69 and 70.

25 – Cited in note 3.

26 – See the case-law cited in note 11.

27 – *Di Paolo*, cited in note **Error! Bookmark not defined.**, paragraphs 17 to 22 of the judgment; see also paragraph 9 of the Opinion of Advocate General Mancini in Case 41/84 *Pinna* [1986] ECR 1.

28 – That provision is considered further below; see paragraphs 74 to 82.

29 – Member States whose legislation makes such entitlement subject to the completion of periods of employment, as opposed to periods of insurance, are covered by the parallel provisions of Article 67(2).

30 – See paragraph 37.

31 – Case 388/87 [1989] ECR 1203, paragraph 18 of the judgment.

32 – Set out in paragraph 32 above.

33 – See paragraphs 74 to 82.

34 – Cited in note 31 above, paragraph 21 of the judgment.

35 – The proviso does not apply to periods of insurance: see Case 126/77 *Frangiamore* [1978] ECR 725.

36 – Cited in note 3; the relevant provisions of Article 80 are summarised in paragraph 4 above.

37 – Case C-102/91 *Knoch* [1992] ECR I-4341, paragraph 54 of the judgment.

38 – *Knoch*, cited in note 37, paragraph 53 of the judgment.

39 – Case C-178/97 *Banks and Others* [2000] ECR I-2005, paragraph 43 of the judgment.

40 – See paragraphs 33 and 37 above.

41 – Case C-62/91 *Gray* [1992] ECR I-2737, paragraph 12 of the judgment.

42 – *Gray*, cited in note 41, paragraph 5 of the Opinion of Advocate General Tesauro.

43 – For example, 'senest' (Danish), 'laatstelijk' (Dutch), 'viimeksi' (Finnish), 'da ultimo' (Italian), 'en ultimo lugar' (Spanish) and 'senast' (Swedish).

44 – See paragraph 66.

45 – I do not consider that my conclusion and the preceding analysis are affected by the order of the Court in Case C-175/00 *Verwayen-Boelen* [2002] ECR I-2141. Although that order appears to assume that the applicant's period in the Netherlands from 1987 to 1995, where she was in receipt of benefits but did not complete periods of insurance or employment, precluded her preceding period of employment in Belgium from 1977 to 1986 from being 'completed lastly' in Belgium within the meaning of Article 67(3) on her application in 1997 for unemployment benefit in Belgium, the issue was not expressly considered by the Court.

46 – Cited in note 5.

47 – No question has been referred on the latter point.

48 – Case C-131/96 [1997] EC I-3659.

49 – Paragraph 36 of the judgment.