OPINION OF MR ADVOCATE GENERAL MAYRAS DELIVERED ON 28 JUNE 1979 [1]

Mr President,
Members of the Court,

I — Mrs Wörsdorfer, *née* Koschniske, of German nationality, exercised a professional or trade activity as an employed person in the Netherlands in 1970, but was forced to stop working on 17 March that year as a result of illness. Since 14 April 1971 she has been receiving benefits under Netherlands law on insurance against incapacity for work, the degree of her invalidity being fixed at between 80% and 100%.

Article 77 (2) (a) of Regulation No 1408/71 on social security for migrant workers provides that benefits for dependent children of pensioners are to be granted "irrespective of the Member State in whose territory the pensioner or the children are residing, ... to a pensioner who draws a pension under the legislation of one Member State only, in accordance with the legislation of the Member State responsible for the pension". By virtue of this provision Mrs Wörsdörfer was entitled to family allowances for her three children, living with her and her husband in the Federal Republic of Germany, under the legislation of the Member State responsible for the pension, that is to say in this case the Netherlands legislation.

However, the Raad van Arbeid [Labour Court], Hengelo, suspended payment of the family allowances as from the fourth quarter of 1977 under Article 10 (1) (b) of Regulation No 574/72, as amended by Regulation No 878/73 of 26 March 1973, and later by Regulation No 1209/76 of 30 April 1976, on the ground that the beneficiary's spouse was engaged in a professional or trade activity in Germany and was drawing dependent child allowances ("Kindergeld") there.

Article 10 (1) reads at present as follows:

"Entitlement to family benefits or family allowances due under the legislation of one Member State only, according to which acquisition of the right to those benefits or allowances is not subject to conditions of insurance or employment, shall be suspended when, during the same period and for the same member of the family:

(a) ...

(b) benefits are due in pursuance of Article 77 or 78 of the regulation. If, however, a pensioner who is entitled to benefits under Article 77 of the regulation, his spouse or the person looking after the orphans to whom benefits are due under Article 78 of the regulation, exercises a professional or trade activity in the territory of the said Member State, entitlement to family allowances due in pursuance of Article 77 or 78 of the regulation under the legislation of another Member State shall be suspended; where this is the case, the person concerned shall be entitled to the family benefits or family allowances of the Member State in whose territory the children reside,

1 — Translated from the French.

the cost to be borne by that Member State . . ."

This rule against overlapping was made in order to allow for the special situation existing in the new Member States. In the United Kingdom, the Kingdom of Denmark and the Republic of Ireland, as in some of the original Member States, entitlement to benefits or family allowances is based on the residence of members of the family in the national territory; but, contrary to the position in the original Member States, there is no clause against overlapping in their legislation.

That is the provision which was applied to Mrs Wörsdorfer, who is in fact employed in Germany, a State in which payment of family allowances is not subject to conditions relating to insurance or employment (Article 1 (1) of the Bundeskindergeldgesetz [Federal Law on family allowances] of 31 January 1975.

As far as one can gather from the case-file, the Netherlands family allowances have been paid until now not in full but, in accordance with Article 10 (1) (b) of Regulation No 574/72, solely to the extent to which they exceed the German family allowances.

Mrs Wörsdörfer brought an action in the Raad van Beroep, Zwolle, appealing against the decision to suspend payment. The court considered that a question concerning the interpretation of Community law was involved, and decided to stay the proceedings and refer to the Court for a preliminary ruling under Article 177 of the EEC Treaty the question whether the expression "his spouse" ("diens echtgenote" in Dutch) used in Article 10 (1) (b) of Regulation No 574/72 applies equally to the children's father. The source of the court's uncertainty lies in the fact that the term used in the Dutch version of the Council regulation *("echtgenote")* as the equivalent of the French term "conjoint" applies semantically only to a person of the female sex.

II — The answer to the question is obviously in the affirmative

The Dutch version of the text is the only one not to use a term which includes both sexes. The English text uses the word "spouse" and the German text the term "Ehegatte". As the Court has already ruled on several occasions (in particular in the *Van der Vecht* judgment of 5 December 1967, [1967] ECR 345) "the need for a uniform interpretation of Community regulations necessitates that this passage should not be considered in isolation, but that, in cases of doubt, it should be interpreted and applied in the light of the versions existing in the other three languages".

A look at a different provision in Regulation No 1408/71 might have enlightened the national court. Paragraph 3a of Annex V to this regulation (Point E (Ireland)), added by Regulation No 1392/74 of the Council of 4 June 1974, provides:

"However, where the *spouse* of the worker or the person looking after the children pursues a professional or trade activity in Ireland, benefits for members of the family shall remain payable by the Irish institution to the extent that entitlement to such benefits is granted solely under the provisions of Irish legislation".

The term "spouse" has been translated here by *"echtgenoot"*, that is to say "husband" or "father". When the provisions of Regulations Nos 1408/71 and 574/72 are compared it is obvious that the French term "coinjoint" [spouse] may have two meanings, even in the Dutch version.

A negative reply, moreover, would amount to suspending the entitlement to family allowances under Article 77 of Regulation No 1408/71 where the pensioner is a man but maintaining it where the pensioner is a woman. Such discrimination seems clearly to be contrary to the principle of equal treatment for men and women set out in Article 119 of the EEC Treaty as regards equal pay for equal work, which was extended to the sphere of social security by Council Directive No 79/7 of 19 December 1978.

Furthermore, it would be contrary to the purpose of Article 10, which is to avoid overlapping of family allowances for the same children, if that result were only allowed where the father was the pensioner.

In reply to the question which has been raised, I propose that the Court rule that the expression "son conjoint" in Article 10 (1) (b) of Regulation No 574/72 includes the wife as well as the husband of a worker who is entitled to receive dependent child benefits under Article 77 (2) (a) of Regulation No 1408/71, bearing in mind the fact that the competent institution may withold payment of such benefits only to the extent of the amount actually paid under the laws of another Member State.

It would also seem to be advisable to amend the Dutch version of the Council regulation to that effect.