income guaranteed to old people by the legislation of a Member State, to a dependent relative in the ascending line of a worker cannot be conditional on the existence of a reciprocal agreement between that Member State and the Member State of which such a relative is a national.

Koopmans Bosco Joliet

Delivered in open court in Luxembourg on 12 July 1984.

For the Registrar

H. A. Rühl

Principal Administrator

T. Koopmans

President of the First Chamber

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 21 JUNE 1984 [1]

Mr President,
Members of the Court,

Of the written observations submitted in this case, which were very well summarized in the Report for the Hearing, in my view only those of the Commission are entirely convincing. I must say immediately that the new arguments put forward this morning have not altered my view in that respect.

I consider that the Belgian National Pensions Office, particularly in its written observations, attaches too much importance to the text of the Belgian Law in question. The wording of a national Law clearly cannot be decisive in interpreting Community law.

The factual arguments which its representative has just put forward at the hearing cannot be decisive for the Court in proceedings for a preliminary ruling, as the Commission has correctly pointed out. I too take the view that the Court must proceed on the basis of the facts as

1 — Translated from the French.

they appear from the judgment making the reference and the questions.

If, however, the national court reaches the conclusion that those facts are not accurately stated, that is a matter for its decision. It is a question which does not fall within the purview of this Court, since its task is solely to formulate a reply which relates to a hypothetical situation. It is for the national court to rule whether the situation in the proceedings before it conforms to that hypothetical situation.

In my view, the observations submitted by the plaintiff in the main proceedings, the Italian Government and the United Kingdom do not make it sufficiently plain that, in the light of the facts of the case as stated, Regulation No 1408/71 clearly cannot provide a solution to the problem. The plaintiff in the main proceedings seeks to obtain the income guaranteed to old persons by the Belgian Law of 1 April 1969. In the circumstances of this case, that problem has nothing to do with the coordination of social security benefits of migrant workers envisaged by Article 51 of the EEC Treaty, since the plaintiff has never worked in Belgium. Moreover, the benefit which she claims (income supplement guaranteed to old persons) on the facts of this case does not come within the definition of a social security benefit for which criteria were laid down in the Court's judgment in Case 1/72, *Frilli*, ([1972] ECR 457), which was cited in all the written observations.

Of course, more sophisticated arguments have been put forward this morning which seek nevertheless to apply that regulation to this case. However, in my view, those arguments too have been convincingly refuted by the Commission in its observations, which we have just heard.

On the other hand, as the Commission also shows, an entirely satisfactory solution to the problems arising in such cases may be found on the basis of Articles 7 (2) and 10 (1) of Regulation No 1612/68. Moreover that solution cannot lead to successive overlapping benefits, a fear expressed by the United Kingdom in its observations.

I have of course listened with much interest to the interesting discussion on that solution that we have just heard between the representative of the National Pensions Office, on the one hand, and the Commission, on the other. I must say that there too the Commission's arguments seem to me to be more convincing because they are based on more recent cases than those relied on by the defendant in the main proceedings and, consequently, I share the views expressed by the Commission on that question.

On this occasion therefore I find myself in the comfortable position of being able to adopt unreservedly the arguments so well developed by the Commission in relation to all the questions submitted by the national court. I propose that the Court reply to those questions in accordance with the suggestions made by the Commission, which have already been cited in the Report for the Hearing.