JUDGMENT OF THE COURT

31 May 2001 *

In Case C-43/99,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Conseil supérieur des assurances sociales (Luxembourg) for a preliminary ruling in the proceedings pending before that court between

Ghislain Leclere,

Alina Deaconescu

and

Caisse nationale des prestations familiales,

on, first, the interpretation of Articles 48 and 51 of the EC Treaty (now, after amendment, Articles 39 EC and 42 EC), Articles 1(u), 10a, 73 and 77 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 (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1)

* Language of the case: French.

and of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475) and, second, the validity of Articles 1(u)(i) and 10a of and Annexes II and IIa to Regulation No 1408/71, as amended and updated by Regulation No 118/97,

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, C. Gulmann and A. La Pergola (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet (Rapporteur), P. Jann, R. Schintgen, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges,

Advocate General: F.G. Jacobs,
Registrar: D. Louterman-Hubeau, Head of Division,

after considering the written observations submitted on behalf of:

— Mr Leclere and Ms Deaconescu, acting in person,

— the Caisse nationale des prestations familiales, by A. Rodesch, avocat,

— the Luxembourg Government, by P. Steinmetz, acting as Agent,

— the Spanish Government, by M. López-Monís Gallego, acting as Agent,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Portuguese Government, by L. Fernandes and R. Brasil de Brito, acting as Agents,

— the United Kingdom Government, by R. Magrill, acting as Agent, and D. Rose, Barrister,

— the Council of the European Union, by A. Lo Monaco and F. Anton, acting as Agents,

— the Commission of the European Communities, by P. Hillenkamp, and H. Michard, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Leclere and Ms Deaconescu; of the Caisse nationale des prestations familiales, represented by A. Rodesch; of the Spanish Government, represented by M. López-Monís Gallego; of the Austrian Government, represented by G. Hesse, acting as Agent; of the United Kingdom

Government, represented by N. Paine QC; of the Council, represented by A. Lo Monaco; and of the Commission, represented by H. Michard, at the hearing on 22 November 2000,

after hearing the Opinion of the Advocate General at the sitting on 15 February 2001,

gives the following

Judgment

1 By judgment of 10 February 1999, received at the Court on 16 February 1999, the Conseil supérieur des assurances sociales (Social Insurance Appeals Board) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) five questions on, first, the interpretation of Articles 48 and 51 of the EC Treaty (now, after amendment, Articles 39 EC and 42 EC), Articles 1(u)(i), 10a, 73 and 77 of Council Regulation (EEC) No 1408/71 of the Council 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 (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1) ('Regulation No 1408/71') and of Article 7 of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ Special English Edition 1968 (II), p. 475) ('Regulation No 1612/68') and, second, the validity of Articles 1(u)(i) and 10a of and Annexes II and IIa to Regulation No 1408/71.

2 Those questions were raised in proceedings between Ghislain Leclere and his wife, Alina Deaconescu, who are both of Belgian nationality, and the Caisse

nationale des prestations familiales (National Family Benefits Fund, 'the Fund'), a Luxembourg institution, concerning the latter's refusal to award the applicants in the main proceedings the Luxembourg maternity, childbirth and child-raising allowances for their child, born in 1995, on the ground that the applicants did not reside in Luxembourg.

Legal framework

Community legislation

3 Article 1(u)(i) of Regulation No 1408/71 provides:

'For the purpose of this Regulation:

...

(u) (i) the term *family benefits* means all benefits in kind or in cash intended to meet family expenses under the legislation provided for in Article 4(1)(h), excluding the special childbirth or adoption allowances referred to in Annex II.'

4 Section II of Annex II to Regulation No 1408/71, entitled 'Special childbirth or adoption allowances excluded from the scope of the Regulation under the terms of Article 1(u)(i)', refers, in Point I. Luxembourg, to the 'antenatal allowance' and 'childbirth allowance'.

5 Article 10a(1) of Regulation No 1408/71 provides that 'persons to whom this Regulation applies shall be granted the special non-contributory cash benefits referred to in Article 4(2a) exclusively in the territory of the Member State in which they reside, in accordance with the legislation of that State, provided that such benefits are listed in Annex IIa'.

6 Annex IIa to Regulation No 1408/71, entitled 'Special non-contributory benefits', refers, in Point I. Luxembourg, under (b) to 'Maternity allowances (Law of 30 April 1980)'.

7 Article 4(1)(a) of Regulation No 1408/71 provides that '[t]his Regulation shall apply to all legislation concerning the following branches of social security... sickness and maternity benefits'. Article 4(2a)(a) of that regulation provides that '[t]his Regulation shall also apply to special non-contributory benefits which are provided under legislation or schemes other than those referred to in paragraph 1..., where such benefits are intended... to provide supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in paragraph 1(a) to (h);...'.

8 Article 73, which appears in Chapter 7, entitled 'Family benefits', of Title III of Regulation No 1408/71, provides that '[a]n employed or self-employed person subject to the legislation of a Member State shall be entitled, in respect of the members of his family who are residing in another Member State, to the family

benefits provided for by the legislation of the former State, as if they were residing in that State, subject to the provisions of Annex VI'.

9 Article 77, which appears in Chapter 8, entitled 'Benefits for dependent children of pensioners and for orphans', of Title III of Regulation No 1408/71, provides in paragraph 1 that '[t]he term "benefits", for the purposes of this Article, shall mean family allowances for persons receiving pensions for old age, invalidity or an accident at work or occupational disease, and increases or supplements to such pensions in respect of the children of such pensioners, with the exception of supplements granted under insurance schemes for accidents at work and occupational diseases....'.

10 Article 77(2)(a) provides that '[b]enefits shall 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'.

11 Article 7 of Regulation No 1612/68 provides:

'1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment[.]

2. He shall enjoy the same social and tax advantages as national workers.

3. He shall also, by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres.

4. Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorises discriminatory conditions in respect of workers who are nationals of the other Member States.'

National legislation

12 The Luxembourg Law of 20 June 1977 establishing a system of medical supervision for pregnant women and young children and amending existing legislation on childbirth allowances, as amended, provides in Article 9 that '[t]he birth of any viable child shall give rise to a childbirth allowance, payable in three instalments; the first instalment shall be payable as an antenatal allowance, the second instalment as a childbirth allowance proper and the third instalment as a postnatal allowance'. Articles 11, 12 and 13 of that Law provide: 'The first instalment of the childbirth allowance shall be paid only on condition that the mother-to-be is officially resident in Luxembourg when the final medical examination provided for in Article 1 is carried out and that she produces evidence of the various medical examinations provided for therein in the form of the medical certificates issued for that purpose by the examining doctor at each examination'; '[t]he second instalment of the childbirth allowance shall be paid

only on condition that the mother is officially resident in Luxembourg when the child is born, that she produces evidence of the postnatal examination provided for in Article 5 in the form of the certificate issued for that purpose by the examining doctor at that examination and that the child is born either in Luxembourg or abroad while the mother is temporarily absent [from Luxembourg] for good reason'; and '[t]he third instalment of the childbirth allowance shall be paid only on condition that the child is brought up continuously in Luxembourg from birth and that the recipient produces evidence of the medical examinations provided for in Article 6 in the form of the medical certificates issued for that purpose by the examining doctor at each examination.'

13 The Luxembourg Law of 30 April 1980 establishing a maternity allowance, as amended, provides in Article 1 that every pregnant woman and every woman who has given birth is to be entitled to a maternity allowance provided that she is officially resident in Luxembourg when entitlement to that allowance arises.

14 Lastly, persons who, pursuant to Article 2(1) of the Luxembourg Law of 1 August 1988 establishing a child-raising allowance, as amended, satisfy various conditions, including that they are resident in Luxembourg and actually live there and are bringing up one or more children in the family home, may claim the child-raising allowance provided for in that Law.

The main proceedings

15 Mr Leclere, who lives in Fauvillers (Belgium), was employed in Luxembourg as a frontier worker until 1981 and in that capacity contributed to the Luxembourg social security scheme. He was the victim of an accident at work in 1981 and since then has received an invalidity pension paid by the Luxembourg social security services. Because of that pension he is liable to pay compulsory sickness insurance contributions and income tax in Luxembourg. He has not returned to work since his accident.

16 Since the birth of their child, Mr and Mrs Leclere-Deaconescu have received family allowances from the Fund. However, the Fund refused to award them the other allowances payable under Luxembourg legislation on the birth of a child and referred to in paragraphs 12, 13 and 14 above.

17 Their appeal against that refusal was dismissed by a judgment of 3 August 1998 of the Conseil arbitral des assurances sociales (Social Insurance Arbitration Board), Luxembourg.

18 The plaintiffs appealed against that judgment and the Conseil supérieur des assurances sociales took the view that examination of the relevant Community regulations and the case-law of the Court of Justice left open a number of questions concerning, in particular, the determination of the entitlement to family benefits of a frontier worker in receipt of an invalidity pension awarded by the Member State in which he worked.

19 The Conseil supérieur des assurances sociales considered that the outcome of the proceedings pending before it depended on an interpretation of the relevant provisions of Community law and an assessment of the validity of certain of those provisions; it therefore decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Are Articles 1(u)(i) and 10a of and Annexes II and IIa to Regulation (EEC) No 1408/71, which lay down the principle of the non-exportability of childbirth and maternity allowances, consistent with Articles 48 and 51 of the EC Treaty?

2. Is Regulation No 1408/71 to be interpreted as meaning that, in respect of dependent children, it grants workers in receipt of an invalidity pension who reside in a different country from that which pays the invalidity pension, family allowances only, to the exclusion of the child-raising allowance which is not granted by reference to the number of children?

3. Is Article 73 of Regulation No 1408/71 to be interpreted as meaning that the recipient of an invalidity pension who continues to make compulsory sickness insurance contributions in the country which provides the pension, may, notwithstanding his pension, be considered in that country as an employee who is entitled to receive family benefits, including the child-raising allowance, and — in the event that the non-exportability clause is held to be incompatible with the Treaty — childbirth allowances?

4. Does the concept of "worker" within the meaning of Regulation No 1612/68 include the recipient of an invalidity pension who resides in a different country from that which provides the pension?

5. Is Article 7 of Regulation No 1612/68 to be interpreted as meaning that the recipient of an invalidity pension or his spouse may, on the basis of that article, enjoy social advantages which are denied him by Regulation No 1408/71, notwithstanding the principle of non-exportability laid down therein in the event that that principle is found by the Court to be compatible with the EC Treaty?'

Question 1

20 By the first question, the national court is essentially asking the Court to rule on the validity, in the light of Articles 48 and 51 of the Treaty, first, of Article 1(u)(i)

of Regulation No 1408/71 and Annex II thereto and, second, of Article 10a of that regulation and Annex IIa thereto, in that they permit a residence condition to be imposed for the award of Luxembourg childbirth and maternity allowances.

21 The applicants in the main proceedings and the Portuguese Government claim that the exceptions introduced by the provisions of Regulation No 1408/71 to the principle that residence clauses do not apply are not compatible with Articles 48 and 51 of the Treaty, since they do not take the special situation of frontier workers into consideration and thus give rise to discrimination against workers who have exercised their right to freedom of movement. They observe that the Court has already declared invalid or inapplicable, as giving rise to breaches of the principle of equal treatment, a number of articles of or annexes to Regulation No 1408/71 (see, for example, Case 41/84 *Pinna* [1986] ECR 1).

22 The defendant in the main proceedings, the Luxembourg, Spanish, Austrian and United Kingdom Governments and the Council, on the other hand, take the view that there is no incompatibility. The Court has already held that Articles 48 and 51 of the Treaty do not prevent the legislature from imposing restrictions on the right to export family benefits, provided that those restrictions, concerning benefits linked to a specific economic and social context, do not give rise to discrimination on the ground of nationality and do not add to the already existing disparities between the legislative provisions of the Member States. It has accepted, in particular, that a residence condition imposed for payment of allowances comparable, from the point of view of the abovementioned conditions, to the Luxembourg allowances under examination was compatible with the Treaty (see Case 313/86 *Lenoir* [1988] ECR 5391, Case C-20/96 *Snares* [1997] ECR I-6057 and Case C-297/96 *Partridge* [1998] ECR I-3467).

23 The Commission, for its part, draws a distinction between the case of the Luxembourg maternity allowance and that of the Luxembourg antenatal allowance and childbirth allowance proper.

24 The Commission observes that the Luxembourg maternity allowance was included among the special non-contributory benefits paid exclusively in the recipient's State of residence and that the Court has accepted that Article 51 of the Treaty does not preclude such inclusion (see, concerning an allowance for disabled persons, *Snares*, cited above).

25 As regards the Luxembourg antenatal allowance and childbirth proper allowance, which were excluded from the scope of Regulation No 1408/71 by Article 1(u)(i) thereof, the Commission contends that, while their exclusion could be regarded as lawful, this does not have the effect of dispensing the Grand Duchy of Luxembourg from its obligation to comply with the principle of equal treatment and non-discrimination on the ground of nationality. In the present case the residence condition is indirectly discriminatory and, as such, contrary to Article 48 of the Treaty and Article 7(2) of Regulation No 1612/68.

26 It should be pointed out that both Article 1(u)(i) of Regulation No 1408/71 and Annex II thereto, as regards the special childbirth and adoption allowances, and Article 10a of that regulation and Annex IIa thereto, as regards special non-contributory benefits, while they do not '[lay down] the principle of non-exportability' of those allowances as was stated in the order for reference, have the effect of permitting, in so far as those allowances and benefits are concerned, an exception to the principle set out in Article 10 of Regulation No 1408/71 and applied, for the various categories of benefits, in Title III of that regulation that residence clauses do not apply. That exception is made possible, in the case of the special childbirth and adoption allowances referred to in Annex II, such as the Luxembourg antenatal and childbirth allowances, by the fact that they are excluded, by Article 1(u)(i), from the category of family benefits within the meaning of the regulation and, in the case of the special non-contributory allowances referred to in Annex IIa, such as the Luxembourg maternity allowance, by the effect of Article 10a(1), which provides that persons can be granted such benefits only in the territory of the Member State in which they reside and in accordance with the legislation of that State.

27 It follows that, for the purpose of examining their validity, those two categories of exceptions are not similar in nature since one, relating to special childbirth and

adoption allowances, merely excludes certain categories of benefits from the scope of Regulation No 1408/71, while the other, concerning special non-contributory benefits, establishes that the State in which the recipient of the benefits concerned resides is responsible for paying such benefits.

28 It is necessary, first, to ascertain the validity of the exclusion of special childbirth and adoption allowances, which include, for Luxembourg, antenatal and childbirth allowances.

29 Having regard to the wide discretion which the Council enjoys in implementing Articles 48 and 51 of the Treaty (See Case C-360/97 *Nijhuis* [1999] ECR I-1919, paragraph 30), the fact that a category of benefits is not affected by the co-ordination provisions of Regulation No 1408/71 cannot on any view render the relevant provisions of that regulation invalid. Restriction of the scope of Regulation No 1408/71 cannot in itself have the effect of adding further disparities to those resulting from the lack of harmonisation of national legislation or of infringing the principle of equal treatment.

30 The inclusion of Luxembourg antenatal allowances and childbirth allowances in the category of special childbirth and adoption allowances to which Regulation No 1408/71 does not apply cannot therefore be regarded as invalid.

31 As the Commission correctly points out, however, the exclusion of the special childbirth and adoption allowances from the scope of Regulation No 1408/71, provided for in Article 1(u)(i) of that regulation, does not have the effect of dispensing Member States from the need to ensure that no other rule of Community law, deriving in particular from Regulation No 1612/68, precludes the imposition of a residence condition.

32 As regards, second, special non-contributory benefits, which, according to Annex IIa to Regulation No 1408/71, include the Luxembourg maternity allowance, it is open to the Community legislature when implementing Article 51 of the Treaty to adopt provisions which derogate from the principle of exportability of social security benefits. In particular, as the Court has already accepted, a condition of residence in the State of the competent institution may legitimately be required for the grant of benefits closely linked with the social environment (see *Lenoir*, paragraph 16, and *Snares*, paragraph 42).

33 The Fund and certain other interveners maintain in that regard that, since the Luxembourg maternity allowance is aimed at promoting a higher birth rate, it should be regarded as being linked to the social environment characteristic of the Member State which introduced it and so capable of being subject to a residence condition.

34 However, the Luxembourg maternity allowance provided for in the Law of 30 April 1980 is, as stated in paragraph 13 above, paid to every pregnant woman and to every woman who has given birth, on the sole condition that she is officially resident in Luxembourg when entitlement to the allowance arises.

35 It follows from the actual wording of Article 4(2a) of Regulation No 1408/71 that the only benefits to which that provision can be taken to refer are those not covered by general legislation relative to the schemes referred to in Article 4(1).

36 Having regard to the characteristics set out in paragraph 34 above, the Luxembourg maternity allowance cannot be regarded, in relation to the benefits referred to in Article 4(1) of Regulation No 1408/71, as being in the nature of a special allowance. Since it is not a special non-contributory benefit, it is not

covered by the scheme of derogations provided for in Article 10a of Regulation No 1408/71.

37 The provisions of Regulation No 1408/71 on the waiving of residence clauses are measures applying Article 51 of the Treaty adopted for the establishment, in the field of social security, of freedom of movement for workers guaranteed in Article 48 of the Treaty (see, in particular, concerning the interpretation of Articles 10a and 11 of Regulation No 1408/71, Case C-215/99 *Jauch* [2001] ECR I-1901, paragraph 20). Therefore the inclusion of the Luxembourg maternity allowance as a special non-contributory benefit paid exclusively in the territory of the Member State of residence in Annex IIa, point I. Luxembourg, (b), of Regulation No 1408/71 is contrary to Articles 48 and 51 of the Treaty. Accordingly, the grant of that benefit cannot be conditional upon residence in the territory of the competent State.

38 The answer must therefore be that examination of the first question has disclosed no factor of such a kind as to call into question the validity of Article 1(u)(i) of and Annex II to Regulation No 1408/71 in so far as they permit the imposition of a residence condition for the grant of Luxembourg antenatal and childbirth allowances, but that Annex IIa to that regulation is invalid in so far as the Luxembourg maternity allowance appears in point I. Luxembourg (b) thereof.

Question 2

39 By its second question, the national court seeks to ascertain whether an allowance such as the Luxembourg child-raising allowance is one of the family allowances which, pursuant to Article 77 of Regulation No 1408/71, are to be paid to persons receiving pensions for old age, invalidity or an accident at work or

occupational disease, irrespective of the Member State in whose territory they are residing.

40 With the exception of the applicants in the main proceedings and the Spanish Government, the interveners who have addressed this question consider that the Luxembourg child-raising allowance is not one of those to which Article 77 of Regulation No 1408/71 applies.

41 It must be remembered that, for the purposes of Article 77 of Regulation No 1408/71, the benefits for dependent children to which persons receiving pensions are entitled irrespective of the Member State where they reside are family allowances and family allowances alone (see, in particular, Case C-33/99 *Fahmi and Esmoris Cerdeiro-Pinedo Amado* [2001] ECR I-2415, paragraph 33).

42 Under Article 1(u)(ii) of Regulation No 1408/71, '*family allowances* means periodical cash benefits granted exclusively by reference to the number and, where appropriate, the age of members of the family'. The Court has already held that the definition of 'family allowances' in Article 1(u)(ii) of Regulation No 1408/71 is the definition to be used in interpreting Article 77 (see *Lenoir*, paragraph 10).

43 The Luxembourg child-raising allowance, which is mentioned neither in Annex II nor in Annex IIa to Regulation No 1408/71, is intended to make up for the loss in income incurred when one of the parents devotes himself or herself principally to raising children under the age of two years in the family home. The amount of that allowance is fixed irrespective of the number of children raised in the same

home. The child-raising allowance does not therefore correspond to the definition of 'family allowances' in Article 1(u)(ii) of the regulation.

44 The answer to the second question must therefore be that an allowance such as the Luxembourg child-raising allowance is not one of the family allowances which, pursuant to Article 77 of Regulation No 1408/71, are to be paid to persons receiving pensions for old age, invalidity or an accident at work or occupational disease, irrespective of the Member State in whose territory they are residing.

Question 3

45 The third question referred by the national court essentially concerns whether a person receiving an invalidity pension is able to derive from Article 73 of Regulation No 1408/71 a right to family allowances other than the family allowances referred to in Article 77 of that regulation.

46 The applicants in the main proceedings and the Spanish and Portuguese Governments maintain that, in so far as he contributes to a compulsory sickness insurance scheme in the Member State which provides his pension, a person receiving an invalidity pension must be regarded as a worker for the purposes of Article 73 of Regulation No 1408/71 and as such must therefore benefit, notwithstanding Article 77 of that regulation, from all the family benefits provided for under the legislation of the Member State in which he pays his contributions. The Luxembourg child-raising allowance can, in that context, be classified as a family benefit.

47 The defendant in the main proceedings, the Luxembourg and Austrian Governments and the Commission contend, for their part, that affiliation to the sickness insurance scheme does not allow a person receiving a pension to be classified as a worker for the purposes of Article 73 of Regulation No 1408/71, since only Article 77 of that regulation applies to his case.

48 In that regard, it must be acknowledged that the definition of 'worker' in Article 1(a) of Regulation No 1408/71 extends to any person who is insured compulsorily for one or more of the contingencies covered by the branches of a social security scheme.

49 However, that definition is of no consequence when it comes to determining the respective scope of Articles 73 and 77 of Regulation No 1408/71. In that regard, it should be recalled that the specific purpose of Article 77 is to define the conditions in which a person in receipt of a pension may claim a dependent child's allowance from a Member State under whose legislation he receives a pension and that that provision expressly restricts its scope to family allowances. In those circumstances, neither Article 73, which, unlike Article 77, is not a special rule, nor any other provision of that regulation can be interpreted as meaning that it enables the recipient of a pension who resides outside the territory of the paying Member State to obtain from that Member State dependent child allowances other than family allowances (see *Fahmi and Esmoris Cerdeiro-Pinedo Amado*, paragraph 34).

50 The fact that the pension is subject to deductions under a compulsory sickness insurance scheme does not take the person concerned out of the category of persons receiving pensions and into the category, excluding the former, of employed or self-employed persons within the meaning of Article 73 of Regulation No 1408/71.

51 The answer to the third question must therefore be that a person receiving an invalidity pension cannot derive from Article 73 of Regulation No 1408/71 a right to family benefits other than the family allowances referred to in Article 77 of that regulation.

Question 4

52 By its fourth question, the national court is asking the Court whether a person in receipt of an invalidity pension who resides in a Member State other than the State providing his pension enjoys rights associated with the status of worker within the meaning of Article 7 of Regulation No 1612/68.

53 The Fund and the Luxembourg and United Kingdom Governments submit that the concept of worker within the meaning of Regulation No 1612/68 assumes the actual existence of an employment relationship which entails the presence of a worker from one Member State in the territory of another Member State, where he must enjoy equal treatment with national workers. The mere payment of a pension does not entitle the recipient, pursuant to Regulation No 1612/68, to all the social advantages available to workers of the Member State which provides his pension. It is only in very special circumstances, where the employment relationship, although terminated, continues to be closely linked to the current situation of the person concerned, that the Court has accepted that certain effects connected with his former status as a worker within the meaning of Regulation No 1612/68 subsist for that person.

54 The plaintiffs in the main proceedings, the Spanish and Portuguese Governments and the Commission argue that the concept of worker should be given a broader interpretation. They maintain that although, in principle, the status of worker

within the meaning of Regulation No 1612/68 is lost when the employment relationship comes to an end, certain rights connected with that status are guaranteed to the person concerned beyond the term of that relationship, as the Court has recognised in situations similar to that in the main proceedings (see Case C-57/96 *Meints* [1997] ECR I-6689 and Case C-35/97 *Commission* v *France* [1998] ECR I-5325).

55 It should be recalled that, in the context of Article 48 of the Treaty and Regulation No 1612/68, a person who, for a certain period of time, performs services for and under the direction of another person in return for which he receives remuneration must be considered to be a worker. Once the employment relationship has ended, the person concerned as a rule loses his status of worker, although that status may produce certain effects after the relationship has ended, and a person who is genuinely seeking work must also be classified as a worker (see, to that effect, Case 66/85 *Lawrie-Blum* [1986] ECR 2121, paragraph 17, Case 39/86 *Lair* [1988] ECR 3161, paragraphs 31 to 36, and Case C-85/96 *Martínez Sala* [1998] ECR I-2691, paragraph 32).

56 The Court has thus held that the effects connected with the status of worker which continue after the end of the employment relationship for persons not or no longer having their residence in the territory of the Member State in which they worked include the right of the employees of steel companies in eastern and northern France affected by reorganisation to be awarded concessionary supplementary retirement points (*Commission* v *France*, paragraph 41) and also the right to a benefit awarded in the Netherlands to agricultural workers whose contract of employment came to an end as a result of the setting aside of land belonging to their former employer (*Meints*, paragraphs 40 and 41).

57 As stated in paragraph 41 of *Meints*, the situations referred to in the preceding paragraph correspond to benefits the payment of which is dependent on the prior existence of an employment relationship which has come to an end and is intrinsically linked to the recipients' objective status as workers.

58 Where a former worker has ceased to pursue his occupation, he continues to be entitled to certain advantages acquired by virtue of his employment relationship; the principle of equal treatment requires that he be able to enjoy those advantages without any condition that he reside in the territory of the competent Member State.

59 It does not follow that a former worker who, like Mr Leclere, receives an invalidity pension provided by the competent institution of a Member State other than that in whose territory he resides and thus receives a benefit linked with the prior existence of an employment relationship must be regarded as still having, by virtue of the fact that he receives a pension, the status of worker within the meaning of Regulation No 1612/68. A person in such a situation is protected by Article 48 of the Treaty and Regulation No 1612/68 against any discrimination affecting rights acquired during the former employment relationship but, since he is not currently engaged in an employment relationship, cannot thereby claim to acquire new rights having no links with his former occupation.

60 It follows, in particular, that a person receiving a pension who, like Mr Leclere, has a child after his employment relationship has come to an end cannot rely on Article 7 of Regulation No 1612/68 to claim the benefit of allowances provided for workers on the birth of a child by the legislation of the Member State responsible for paying his pension, to which he would not be entitled under Regulation No 1408/71.

61 The answer to the fourth question must therefore be that a person in receipt of an invalidity pension who resides in a Member State other than the State providing his pension is not a worker within the meaning of Article 7 of Regulation

No 1612/68 and does not enjoy rights attaching to that status unless they derive from his previous professional activity.

Question 5

62 By its fifth question, the national court asks whether the recipient of an invalidity pension or his spouse may, on the basis of Article 7 of Regulation No 1612/68, enjoy social advantages which are denied him by Regulation No 1408/71.

63 Having regard to the answer to the previous question, it does not appear necessary to answer this question.

Costs

64 The costs incurred by the Luxembourg, Spanish, Austrian, Portuguese and United Kingdom Governments and by the Council and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Conseil supérieur des assurances sociales by judgment of 10 February 1999, hereby rules:

1. Examination of the first question referred to the Court has disclosed no factor of such a kind as to call into question the validity of Article 1(u)(i) of and Annex II to 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 (EC) No 118/97 of 2 December 1996, in so far as they permit the imposition of a residence condition for the grant of Luxembourg antenatal and childbirth allowances.

2. Annex IIa to Regulation No 1408/71, as amended and updated by Regulation No 118/97, is invalid in so far as the Luxembourg maternity allowance appears in point I. Luxembourg (b) thereof.

3. An allowance such as the Luxembourg child-raising allowance is not one of the family allowances which, pursuant to Article 77 of Regulation No 1408/71, as amended and updated by Regulation No 118/97, are to be

paid to persons receiving pensions for old age, invalidity or an accident at work or occupational disease, irrespective of the Member State in whose territory they are residing.

4. A person receiving an invalidity pension cannot derive from Article 73 of Regulation No 1408/71, as amended and updated by Regulation No 118/97, a right to family benefits other than the family allowances referred to in Article 77 of that regulation.

5. A person receiving an invalidity pension who resides in a Member State other than the State providing his pension is not a worker within the meaning of Article 7 of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community and does not enjoy rights attaching to that status unless they derive from his previous professional activity.

Rodríguez Iglesias Gulmann La Pergola

Edward Puissochet Jann

Schintgen Colneric von Bahr

Cunha Rodrigues Timmermans

Delivered in open court in Luxembourg on 31 May 2001.

R. Grass G.C. Rodríguez Iglesias

Registrar President