OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 18 SEPTEMBER 1975 [1]

Mr President,
Members of the Court,

1. The widow of an Italian immigrant worker in France, where he died as the result of an industrial accident, leaving her with four dependent children, who are minors, continued to reside in that country and applied to the Société nationale des chemins de fer for the reduction which, pursuant to the Law of 29 October 1921, it grants to families with three or more dependent children under age. The application was rejected for the sole reason that the applicant did not possess French nationality.

The Cour d'appel, Paris, before which the proceedings between the worker's widow and the SNCF are pending, has referred to the Court under Article 177 of the EEC Treaty for a ruling whether the reduction card for large families issued by the SNCF constitutes, for a worker of a Member State, a social advantage within the meaning of Article 7 of Regulation No 1612/68 of the Council of 15 October 1968.

In its judgment of 8 November 1973, which is now the subject of appeal before the Cour d'appel, the Tribunal de grande instance, Paris, held that Community law did not require the railway reduction card for large families to be available to citizens of other countries on the ground that it was not an advantage specifically connected with the status of worker. The Tribunal refused to give a wide interpretation to Article 7 of Regulation No 1612/68 on the ground that the EEC Treaty represented no more than an agreement in principle, every aspect of which necessitated the adoption of implementing legislation and that, in any case, given its particular purpose, it was concerned exclusively with advantages granted to citizens of the Member States within the ambit or by virtue of work as employed persons on the territory of one of those States. A treaty of this kind could not, therefore, purport to prevent one of the contracting parties from reserving advantages for its own nationals, whether or not they were workers, on the basis of qualifications peculiar to them.

The Cour d'appel appears to have doubts about the correctness of a ruling based on these considerations and has referred the abovementioned question to this Court.

2. The Court is now called upon to give a ruling of principle clarifying the meaning and application of the actual safeguards recognized as applying to the freedom of movement for workers. The present case obliges us, in effect, to define the social advantages which should be made available to migrant workers in the Community. It provides us with the opportunity to give a sharper definition to the tenor of a series of precedents evolved between the judgment of 15 October 1969 in Case 15/69 *(Ugliola,* Rec. 1969, p. 368), and the latest decision in Case 20/75 *(D'Amico).* In view of decisions which might, *prima facie,* appear to be based on conflicting points of view, it is desirable to clarify the essential meaning of the principle laid down in the third ground of judgment in *Ugliola,* itself an interpretation of Article 7 of Regulation No 1612/68 of the Council, in which the Court, returning to Article 48 of the EEC Treaty, declared that 'the law of each Member State must ensure that nationals of every other Member State employed within its territory receive all the benefits which it grants to its own nationals'.

1 — Translated from the Italian.

Community law concerning social security, whether, as in Regulation No 1612/68, it directly relates to the freedom of movement for workers or whether, as in the provisions concerning coordination of social security legislation, it does so indirectly, works as a dynamic whole, inspired by the same general aims and based, therefore, on unifying principles. In line with the opinions of the Advocates-General, case-law in recent years has developed in a way which reflects the need to achieve full equality of treatment between the Community worker and the nationals of the State in which he is an immigrant. In this connexion it is worth recalling that in Case 76/72 *(Michel S.* [1973] ECR 468) Mr Advocate-General Mayras had already stated that the general purport and underlying spirit of Regulation No 1612/68 require that the widest possible scope should be given to the expression 'social benefits'. In my opinion, in Case 7/75 *(Mr and Mrs F. v Belgian State)* on the interpretation of Regulation No 1408/71, I stated that the case-law of this Court has risen substantially above the criterion of a specific connexion between the social benefit and employment. Your judgment of 17 June 1975 appears to confirm that view.

The trend of these decisions, which reflects the reasonable requirements which the structure of the Community system endeavours to meet, suggests that, in the present case, two alternative courses are open. The wider one, and one which, without doubt, makes greater demands, is that suggested by the Commission in relying directly on Article 7 of the Treaty in order to override any differentiation on grounds of nationality between Community workers. The other, whose scope is more limited, is based more specifically on Article 7 of Regulation No 1612/68 of the Council. Both may lead to the same result. For my part, in order to stick more closely to the specific question referred by the Paris Cour d'appel, which is a consideration, I prefer to look at the question on the basis of the regulation but without losing sight of the fundamental principle enunciated in Article 7 of the Treaty.

Article 7 (2) of Regulation 1612/68 of the Council provides that a worker who is a national of a Member State shall, in the territory of another Member State, enjoy the same social and tax advantages as national workers.

The first question to be determined, therefore, is whether an advantage of the kind provided for under the national legislation concerned is included in 'social ... advantages' within the meaning of the provision and, if the answer is in the affirmative, the second question is to establish whether members of the worker's family are entitled to enjoy them.

The advantage in question was introduced in France by the Law of 29 October 1921, which implemented a general policy designed to stimulate growth of the country's population. The provisions concerning the grant of the railway reduction card to large families are, under a decree of 24 January 1956, now embodied in Section I ('Formes générales de compensation des charges familiales') of Chapter II ('Protection matérielle de la famille') of Part I ('Protection sociale de la famille') of the French Family and Social Security Code ('Code de la famille et de l'aide sociale'). Article 20 of the Code makes provision for the said reductions 'for the purpose of helping families to bring up their children'.

These words show that, today, the immediate purpose of the benefit in question is to offset family expenditure, its original purpose being specifically reflected in the endeavour to prevent fare increases from falling too heavily on families having more than the average number of children. What is involved is undoubtedly a *social advantage* whose potential or actual connexion with a

policy of population growth could not change its chief characteristic, which is that it is 'related to family responsibilities', as it is defined in the heading of the section of the Family and Social Security Code under which Article 20 appears.

Therefore, in accordance with Article 7 (2), the migrant worker must be recognized as being entitled to this social advantage in the same terms as national workers without any possibility of difficulty arising from the fact that the advantage is granted to nationals without reference to their status as workers.

It is true that in Case 76/72 *(Michels S.* v *Fonds national de reclassement social des handicapés* [1973] ECR 463) the Court, in the ninth Ground of Judgment, declared that the benefits referred to by Article 7 are those which, being connected with employment, are for the benefit of the workers themselves and not those provided for members of their families. That part of the ruling which refers to the connexion between the benefits referred to by Article 7 and employment may appear to reply in the negative to the question, involved here, whether or not the benefit is available to the migrant worker in cases where the national law, the application of which is under consideration, does not link the benefit, directly or indirectly, with employment.

It is also, perhaps, for this reason that the Commission has sought to establish the general prohibition, in Article 7 of the Treaty, of dicrimination on grounds of nationality as the sole foundation of the right of the migrant worker and the members of his family to avail themselves of the railway reduction card granted to large families by the SNCF.

In my view, however, the finding in the judgment in Case 76/72, which is perhaps expressed in rather general terms, must essentially refer to that part of Article 7 of Regulation No 1612/68 which could have a direct bearing on the classification of the national legislation which, in that case, was the subject of reference for an interpretation of the relevant Community rule. I refer to Paragraph 3 of Article 7. That case was concerned with the application of a Belgian law covering benefits providing for the rehabilitation of the handicapped. What was involved, therefore, was a benefit whose nature and purpose linked it with employment, though not necessarily with actual employment, as in the case of a worker who, as the result of an accident or illness, has become incapable of doing his job and must be retrained for other work.

Accordingly, the connexion between the benefits referred to in paragraph 3 and employment must not be interpreted narrowly: a potential connexion is enough. The connexion with employment becomes, of necessity, looser in the case of the advantages provided for under Article 7 (2).

For example, it would be difficult to confine the principle of tax equality laid down under the latter provision to taxation of earned income and, on the other hand, not to apply it to taxation related to the family, to the capital which the worker has accumulated, or to assets purchased out of his earnings.

The connexion with employment, which was referred to in general terms by the Court in relation to Article 7 is, in principle, no more than a reference to the present or past *status as an employed person* of a national of a Member State who resides in another Member State as a condition of entitlement to the same social and tax advantages as national workers.

It is this interpretation which justifies the distinction between the advantages provided for a worker under that provision and under Articles 8 and 9 and those provided for members of his family

under Articles 10 and 12. But, I repeat, this is a sub-division of the subject-matter which must not be taken too narrowly. For example, in the case of the housing benefits provided for under Article 9, it is reasonable to conclude that entitlement to them ought to extend to the members of the worker's family, who have the right to establish themselves with the worker in the host state, and that they, especially the widow and children, should continue to enjoy the right even after the worker's death.

The direct connexion drawn by the national legislature between certain social benefits granted to its nationals and the status of employed person has, moreover, been clearly disregarded by the Court for the purposes of applying Regulation No 1408/71 concerning social security for migrant workers. The above-cited judgment, in Case 7/75 *(Mr and Mrs F.)* of 17 June 1975, recognizes the right of a migrant worker's children to receive the advantages which national legislation provides for its nationals regardless of their status as workers and, consequently, of whether they are under any contract of employment. If this is a reasonable conclusion to reach in the field covered by the rules of social security which, pursuant to Article 51 of the Treaty, were adopted as necessary to provide freedom of movement for workers, there is no reason why a different principle should be applied in the field covered by Regulation No 1612/68, which is even more directly concerned with their freedom of movement. Even though the two regulations operate at slightly different levels and in respect of national legislation on different topics, they have, as already stated, the same aims. In particular, it must be borne in mind that one of the objectives of Regulation No 1612/68, which again is concerned with giving positive effect to the right to freedom of movement, is *de jure* and *de facto* equality of treatment for a worker including its application to the right to be joined by his family and the conditions under which his family is integrated within the community in the host country.

3. Now that the advantage in question has been established as coming within the category of social advantages referred to under Article 7 (2) of Regulation No 1612/68 and that, accordingly, the worker is recognized as being entitled to it, attention must be directed to the question whether, under that article, the members of the worker's family are also entitled to it.

On this point, too, the statement in Ground of Judgment No 9 in *Michel S.* would appear to suggest a reply in the negative. But in determining the actual effect of the exclusion of members of the worker's family from the ambit of Article 7, it is impossible to overlook the fact that, in its judgment, the Court had mainly in mind the provision made in Article 7 (3) entitling the worker to advantages of the same kind as those which Article 12 of the Regulation expressly provides for the benefit of members of his family.

Because Article 12 specifically covered the facts of the case which the national court making the reference was called upon to decide, the Court could not do otherwise than rule against the simultaneous application of Article 7 (3) to a case such as that before it.

Nevertheless, the Court's ruling in these circumstances against the applicability of Article 7 to the members of the worker's family must be taken as referring to the provision made in paragraph 3 of the Article only to the extent that, in respect of members of his family, the subject-matter is already specifically covered by another Article.

In the example given above, the right to the same advantages as regards housing must also cover the members of the worker's family, although Article 9, which deals with the subject, appears among the provisions directly concerning the worker and not specifically the

members of this family. Similarly, even the provision in Article 7 (2), concerning the workers' equal rights in respect of social advantages, ought not to be interpreted as being narrowly restricted in its application to the worker himself. Once it is recognized that, because a social advantage based on family responsibilities is involved, a migrant worker who is a national of another Member State is entitled to the benefit of the railway reduction card, it follows of necessity that, owing to the nature of the advantage, the conditions for it and the way in which it is granted, the members of the worker's family are also entitled to it. This is because, so far as the worker is concerned, the advantage in fact consists of an alleviation of his family responsibilities through the opportunity provided, in the spirit of the law, for anyone at the head of a large family to make use of the railway reduction for his wife and dependent children who are under age.

This advantage in respect of railway fares is, in the words of the provision contained in Article 20 of the French Family and Social Security Code, granted 'for the purpose of assisting families in bringing up their children'. What is involved, therefore, is a social advantage granted to anyone who has direct financial responsibility for supporting a family. Thus the advantage for the worker is inseparable from the advantage for his family. Last, but not least, it should be said that, in the situation with which we are concerned, family and benefit are almost indistinguishable terms: a large family is a condition precedent for grant of the benefit and, moreover, the members of the family seem to be direct beneficiaries because each of them is issued with a document conferring entitlement to the reductions in question.

In the present case, however, at the time when application was made for the benefit, the worker had already died. Can the effect of this be to deprive members of the family of their entitlement to benefit? If the worker had died after he had begun to make use of the advantage, the wife and children would have been entitled to go on availing themselves of it because, as we have seen, the advantage is not strictly dependent on the actual existence of a contract of employment but is essentially a social advantage for the assistance of large families. The financial demands made by the upbringing of children certainly do not cease as a consequence of the death of a head of household who was in employment.

If this is true, it is difficult to see how entitlement to the advantage could be denied to a widow and children who had not started to benefit from it before the worker died. The right which the members of the worker's family possess to remain on the territory of the host State after the head of the family ceases to be employed suggests that, even after employment ceases, they can enjoy those rights which, without being strictly connected with employment, were previously available to them under the said Article 7 because the head of the household was a worker.

To conclude, I submit, that, in its reply to the question referred by the Paris Cour d'appel, the Court should rule that the grant of a railway reduction card provided for under a national law for the benefit of large families constitutes a social advantage within the meaning of Article 7 (2) of Regulation (EEC) No 1612/68 of the Council.