On those grounds,

THE COURT (Third Chamber),

in answer to the question referred to it by the Tribunal Civil de Première Instance, Liège, by order of 21 December 1979, hereby rules:

The competent institution of a Member State may not rely on the provisions of Regulation No 3 of the Council of 25 September 1958 concerning social security for migrant workers or in particular on Article 28 (4) of that regulation in order to refuse the grant to a worker of benefits calculated pursuant to Articles 27 and 28 of that regulation or to reduce them on the ground that that worker is receiving a pension provided by the institution of another Member State pursuant to the legislation of that State alone.

Kutscher Mertens de Wilmars Mackenzie Stuart

Delivered in open court in Luxembourg on 12 June 1980.

H. A. Rühl
Principal Administrator

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 22 MAY 1980

My Lords,

I am so entirely in agreement with what the Commission has said that no purpose would be served in my asking the Court for time to reflect.

I propose that the Court reply to the question referred to it by simply saying that Article 28 (4) of Regulation No 3 is incompatible with Article 51 of the Treaty and is consequently invalid.