In Case 7/75

Reference to the Court under Article 177 of the EEC Treaty by the Tribunal du Travail (Labour Court) of Nivelles (Belgium) for a preliminary ruling in the action pending before that court between

MR AND MRS F., residing in Belgium,

and

BELGIAN STATE, through its Minister for Social Security, Brussels,

on the interpretation of certain provisions of Article 12 of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257 of 19. 10. 1968) and on the interpretation of the provisions of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ L 149 of 5. 7. 1971) on the subject of benefits for handicapped persons

THE COURT

composed of: R. Lecourt, President, J. Mertens de Wilmars and A. J. Mackenzie Stuart, Presidents of Chambers, A. M. Donner, R. Monaco, P. Pescatore, H. Kutscher, M. Sørensen (Rapporteur) and A. O'Keeffe, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The order making the reference and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. Mr and Mrs F., who are of Italian nationality, have since 1947 resided in Belgium where Mr F. has been in

employment. Their son Renzo, born in Belgium on 29 July 1959, has been handicapped from birth, and is apparently subject to a 100 % invalidity.

In August 1973 Mr and Mrs F. made on behalf of their son an application to the Ministry of Social Security for ordinary benefit for the handicapped under the provisions of the Belgian Law of 27 June 1969 on the grant of benefits to the handicapped (*Moniteur Belge* of 15 July 1969).

This Law grants a right to the benefit to Belgian citizens residing in Belgium on condition that they have reached 14 years of age, have a permanent incapacity to work of at least 30 % and do not possess resources exceeding certain limits.

The application was rejected on 19 March 1974 on the grounds that the minor, to whom the decision rejecting the application was addressed, not being of Belgian nationality, 'had not since the age of 20 resided for at least 15 years in all on Belgian territory'. It was subsequently explained that the application had been rejected on the basis of the European Interim Agreement of 11 December 1953 on social security schemes in respect of old age, invalidity and survivors, which under certain conditions allows the Belgian Law to be applied to foreigners.

On 19 April 1974 Mr and Mrs F. appealed against this refusal to the Tribunal du Travail of Nivelles.

In the course of his opinion as representative of the public interest, on 23 December 1974, the *Auditeur du Travail,* considering that there was no question but that from the point of view of Belgian law and of the European Interim Agreement the claim was not well founded, raised the question whether the fact that the applicant's father is an employed person might change this situation. On this subject he referred to the Judgments of the Court of Justice of 11 April 1973 (*Michel S,* Case 76/72, [1973] ECR 457) and of 28 May 1974 (*Callemeyn,* Case 187/73, [1974] ECR 553) and suggested to the Tribunal du Travail that two questions on the interpretation of Regulations Nos 1612/68 and 1408/71 be referred to the Court of Justice of the European Communities.

The Court considered that the interpretation which, as regards the person who must fulfil the conditions of residence, the Belgian Administration placed upon the European Interim Agreement 'appears, at least at first sight, to be illogical' and concluded that the conditions referred to must be met by the parents and not by the children. The Tribunal added: 'However, this solution may do no more than transfer the problem elsewhere, in that it does not resolve the situation at various stages, that is to say, at the age limit of 18 years (384 C.C.), 21 years (389 C.C.) and 25 years, these being the stages at which the right is progressively vested in the handicapped person himself and no longer in the person responsible for him. It therefore seems that the wisest course is to follow the opinion of the Auditeur's Department and to make a reference to the Court of Justice of the European Communities, on the basis of Article 177 of the EEC Treaty, requesting an answer to the two questions proposed, adding a third question reflecting the concern expressed in the previous paragraph.'

In the light of these consideratons, the Tribunal by order of 13 January 1975 decided to suspend proceedings and to refer the following questions to the Court of Justice for a preliminary ruling, in accordance with Article 177 of the EEC Treaty:

1. Do the provisions of Article 12 of Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community include the benefits laid down by the Belgian Law of 27 June

1969 to the extent to which they concern handicapped children of employed persons?

2. Does the scheme for the regulation of benefits for handicapped persons set up by the Belgian Law of 27 June 1969, to the extent to which it concerns the childeren of employed persons, fall within the ambit of Regulation (EEC) No 1408/71 of the Council of 14. 6. 1971 on the application of social security schemes to employed persons and their families moving within the Comunity?

3. In the event of a reply in the affirmative, do minors who are entitled to benefit by reason of the fact that their parents fulfil the conditions at the time when that scheme becomes applicable, remain entitled to benefit at the various stages of attainment of their majority, without at that time having personally to fulfil the conditions as to residence required up to that time of their parents?

2. The order referring the matter was registered at the Court of Justice on 27 January 1975.

The applicants in the national proceedings, represented by D. Rossini, Director of the Social Service 'Patronato A.C.L.I.', the Belgian State, represented by the Minister of Social Security, the Italian Government, represented by Ambassador A. Maresca, acting as Agent, assisted by I. M. Braguglia, Vice-avvocato dello Stato and the Commission, represented by Marie-José Jonczy, Legal Adviser with the Commission, acting as Agent, submitted written observations.
After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

1. Observations submitted by the applicants in the national proceedings

In the applicants' view one must — bearing in mind the fact that in the light of the Court's judgment in the aforementioned case of *Michel S.*, Regulation No 1612/68 cannot apply in the matter — seek a solution to the problem by considering the persons and matters covered by Regulation No 1408/71.

They refer to the Court's judgment in the aforementioned *Callemeyn* case, in which the Court resolved the question of the matters covered by Regulation No 1408/71 by finding that: 'The benefits mentioned in Article 4 (1) (b) of Regulation No 1408/71 include those provided by national provisions granting benefits to the handicapped to the extent that these provisions concern workers within the meaning of Article 1 (a) of this Regulation and confer upon the latter a legally protected right to the grant of these benefits.'

In the present case it is therefore in their opinion a matter of determining whether such a right can be extended to members of the worker's family. Referring in particular to Article 2 (1) of the Regulation which lays down its scope as regards the persons covered and there expressly includes members of the worker's family, as well as Article 3 (1) which requires equality of treatment between nationals and the citizens of another Member State, the applicants consider that their child, notwithstanding his nationality, is entitled to the benefits for handicapped persons provided under Belgian law.

They consider that the strict application of the Belgian Law leads to the absurd result of depriving the children of migrant workers affected by a physical or mental handicap of the minimum subsistence level up to the age of 35,

preventing them from themselves acquiring the status of a worker.

Such a result runs counter to Articles 48 and 117 of the EEC Treaty which have as fundamental objectives to abolish any discrimination based on nationality and, as one is reminded in the fifth recital of Regulation No 1408/71, to promote the improvement of living and working conditions of migrant workers. Whilst it is correct that the system of benefits to handicapped persons is financed from public funds it must not be forgotten that State revenues are also financed from taxes paid by migrant workers.

Accordingly the applicants suggest that the following answers be given to the questions referred:

'The invalidity benefits mentioned in Article 4 (1) (b) of Regulation No 1408/71 include those provided by national legislation granting benefits to handicapped persons to the extent that the beneficiaries are workers within the meaning of the Regulation or members of their family dependent upon them or living under the same roof as the worker. The rights are acquired by the children of workers who are citizens of another Member State, irrespective of their age, under the same conditions as those imposed on the country's own nationals.'

2. Observations of the Belgian State

On the *first question,* the Belgian State emphasizes that an analysis of the present legislation, starting with its historical evolution, shows that the benefits granted under the provisions of the Law of 27 June 1969 cannot be aimed at by Article 12 of Regulation No 1612/68. Since the Law of 1963 on the social rehabilitation of handicapped persons there no longer appear in legislation concerning benefits to handicapped persons the earlier provisions relating to handicapped pupils and apprentices which had the purpose of bringing about or improving their suitability for employment. The benefits granted under this legislation are above all concerned with compensation for invalidity or the consequences of invalidity.

As regards the *second question,* the Belgian State considers that it deals mainly with the persons covered by Regulation No 1408/71 and it points out that this problem has already, as regards the old Regulation No 3, been examined by the Court in Case 39/74 (*Costa v Belgian State,* judgment of 13 November 1974, [1974] ECR 1251). It recalls that in its judgment the Court, *à propos* the Belgian Law of 27 June 1969, said: 'In view of the widely-drawn definition of people entitled to benefit, such a legislation fulfils in fact a double function, which is on the one hand to guarantee a minimum income to handicapped persons who are entirely outside the social security system and, on the other hand, to provide supplementary means to persons entitled to social security benefits who are permanently incapacitated from work' (8th paragraph) and the Court concludes by finding that 'a national legislation giving a legally protected right to a benefit for the handicapped falls, as regards the persons covered by Regulation No 3, within the ambit of social security, within the meaning of Article 51 of the Treaty and of the Community Regulations thereunder'.

After having referred to the provisions of Regulation No 3 which defines the persons covered by the Regulation and the term 'members of the family', the Belgian State argues that only the benefits which fall within the matters covered by the Regulation — taking due account of the limits allowed by the Court in its previous cases and in particular the *Costa* judgment (8th paragraph) — ought to be taken into account for the purpose of considering the persons covered and that accordingly, taking into account the legislation of the

country of their residence, members of the worker's family can only be covered by the legislation in question to the extent that it grants them a right under this heading, devolving from the worker's own right.

As regards the persons covered by Regulation No 1408/71, which is relevant in this case, the Belgian State argues that only workers within the meaning of Article 1 (a) and members of their family within the meaning of Article 1 (f) of the Regulation can claim an entitlement to equality of treatment. This opinion is reinforced by the fact that in the operative part of the aforementioned *Costa* judgment the Court limits itself to applying Article 51 of the EEC Treaty and the Community Regulations thereunder, without taking into account Article 7 which ensures equality of treatment in the whole field of application of the Treaty.

Article 1 (f) lays down that the term '"member of the family" means any person defined or recognized as a member of the family or designated as a member of the household by the legislation under which benefits are provided ...' In the present case the Belgian legislation, which within the limits laid down by the Court is accepted as being within the range of matters covered by the Regulation, does not grant a right to invalidity benefits which derives from the worker's right. Moreover, the right granted to persons themselves who may lay a claim to benefits for the handicapped does not arise from their status of worker, or member of a worker's family. The legislation in question neither defines nor allows for members of the family.

Accordingly, the Belgian State suggests that the Court reply as follows to the second question:

'The child of a worker cannot be included among the persons covered by Regulation No 1408/71, where the national legislation relied upon falls within the range of matters covered by the Regulation only in so far as that legislation seeks to provide supplementary means to persons entitled to invalidity benefits who are permanently incapacitated from work, or grants to members of the family a right derived from that of the worker. Since the Belgian legislation grants a personal right without reference to the status of worker or of member of a worker's family, neither of the two aforementioned assumptions applies.'

The Belgian State is of the opinion that the *third question* cannot fall within the Court's competence, since only national legislation, and not the Community Regulations, which have the purpose of ensuring a coordination of systems of social security of Member States without modifying their basis, can define the conditions required for the grant of benefits.

3. Observations of the Italian Government

As regards the *first question,* the Italian Government refers to the fact that the Court has interpreted Article 12 of Regulation No 1612/68 in a wide sense (judgments of 3 July 1974 in Case 9/74, *Casagrande,* [1974] ECR 773, and of 29 January 1975 in Case 68/74, *Alaimo,* not yet published). If one pursues the reasoning on this favourable basis it does not seem that the letter and spirit of Article 12 prevent the Court from also including in this provision a system of benefits for the handicapped children of employed persons, since the said system may contribute to ensuring to the parties involved an occupational qualification. The answer to the first question ought therefore to be in the affirmative.

The objective aspect of the *second question* does not, as the Italian Government sees it, give rise to problems. The question relates to Regulation No 1408/71 and the Court

has already decided in the aforementioned *Callemeyn* and *Costa* judgments that a system such as that in question here falls within the scope of the Regulation.

On the other hand the subjective aspect of the question has a particular importance by reason of the fact that the Belgian Tribunal refers expressly to benefits for handicapped children of workers. The Government considers that under this heading also the question ought to be answered in the affirmative, whether the national measure providing the benefit is considered as a measure in favour of the parents in charge of the handicapped minor, or as a measure taken directly for the benefit of the latter.

In the first case, no problem arises since the father of the handicapped child is an employed person. But the result is no different in the second case. According to Article 2 thereof, Regulation No 1408/71 applies directly to 'members of the family' of workers, as this term is defined by Article 1 (f). Consequently, according to Article 3 of the Regulation members of the worker's family who are recognized as such by national legislation 'shall enjoy the same benefits under the legislation of any Member State as the nationals of that State'. In these circumstances it is not possible, due to the prohibition in Article 7 of the EEC Treaty and particularly in Article 3 (1) of Regulation No 1408/71, to read into the application of Article 2 of the Regulation discriminations to the detriment of the children of foreign workers as compared with the children of national workers. This conclusion is in confirmity with the judgment in the *Costa* case where the Court in the 11th paragraph referred to 'the persons covered by Regulation No 3', thus allowing it to be understood that this Regulation also applies directly to workers' families. If this were not so, the discrimination between the members of the families of national workers and the families of workers who are nationals of the other Member States would be clear. Besides, the worker who is a citizen of a Member State in which the benefit is granted to his handicapped child would never establish himself in another Member State where for reasons of nationality or of residence such a benefit is not granted to him. This would mean that the fundamental principle of free movement of workers within the Community would not be applied.

It therefore seems necessary for the Court in its reply to lay down that Regulation No 1408/71 applies equally to members of workers' families as such as entitled in their own right and not only as beneficiaries in respect of rights deriving from insurance effected by the worker.

In the event of the Court replying to this question in the negative, one ought in the Italian Government's view also to examine the question in the light of the provisions of Regulation No 1612/68 and in particular Article 7 (2), given the fact that the Belgian system undoubtedly comes within the framework of 'social advantages' within that Article. The Government argues that one cannot peremptorily exclude the applicability of Article 7 where one is dealing with benefits granted to members of the worker's family. Whilst it is true that the Court found in a contrary sense in its judgment in the case of *Michel S.*, aforementioned, this might be justified by reason of the fact that the Court had in that case considered Article 12 of Regulation No 1612/68 to apply.

The provisions in favour of the worker's family which are mentioned in Articles 10, 11 and 12 of the Regulations seem to involve the application of a general principle to specific cases, since it is really difficult to distinguish between benefits granted to workers and those in favour of members of their family. They both benefit the worker's family taken as a whole, and the present case demonstrates the extent to which a distinction in this field is artificial.

In the Italian Government's view the *third question* refers to the point previously raised by the Belgian Tribunal in the grounds of its order referring the matter under which the condition of residence is defined by reference to the child's parents.

From the point of view of Community law the Italian Government sees no objection to the handicapped child continuing to receive the benefit even when he has reached his majority, if he remains dependent on the employed person and if the national legislation considers a child who has attained his majority, but is dependent by reason of his invalidity, to be a 'member of the family'.

4. Observations of the Commisssion

The *Commission* first of all recalls that the Court must seek to extract from the wording of the questions referred to it the questions which relate by way of preliminary ruling to the interpretation of Community law, since it is not the Court's function either to decide a specific case or to express an opinion on the interpretation of internal law of a Member State.

The Commission further recalls that in its judgment of 22 June 1972 *(Frilli,* Case 1/72, Rec. 1972, p. 457) the Court stated that for the purpose of determining whether a particular legislation is covered by Community Regulations one can only have regard to Regulation No 1612/68 in a case where it is established that one is not dealing with a social security benefit within the meaning of Regulations Nos 3 and 1408/71. This is the reason why the Commission deals first with the *second question.*

In the first place the Commission refers back to the two judgments in the *Callemeyn* and *Costa* cases aforesaid and in particular to paragraphs 8 and 11 in the *Callemeyn* case as well as to the operative part of the two judgments, which in its opinion show that whilst national provisions granting benefits to the handicapped and assuring them of a right that is legally protected are provisions relating to invalidity benefits within the meaning of Regulations Nos 3 and 1408/71 in so far as the workers themselves are concerned, these provisions confer benefits belonging to another branch of social security in so far as persons other than the workers themselves are concerned.

The Commission then refers to the Articles in Regulations Nos 3 and 1408/71 which contain provisions as to the persons covered by the Regulations and the definitions to be given to the term 'member of the family' and it wonders what better member of a family one can have than a worker's child, designated by a legislation under which family benefits are granted. It adds that one might object that benefits for the handicapped under the Belgian Law of 27 June 1969 are only granted as from the age of 14 years, i.e. the normal age limit laid down under Belgian legislation for family benefits. However, as regards gravely ill persons Belgian legislation provides no age limit for the grant of family benefits.

In this respect the Commission refers to the definition of the term 'family benefits' in Article 1 (u). Since under Belgian law benefits to the handicapped payable to minors who are not 'emancipé' (declared of full age) are normally payable to the mother one may in the Commission's view consider that to the extent that they relate to workers' children the benefits for the handicapped are cash benefits intended to compensate for the burden falling on the family. This is all the more reasonable, since the term 'benefit' within the meaning of Regulation No 1408/71, Article 1 (t), includes 'all elements thereof payable out of public funds, revalorization increases and supplementary allowances'.

Having places on record that the difficulties to which as regards Community Regulations the application of global systems of social protection give rise — difficulties the existence of which has been recognized by the Court in its *Frilli* and *Callemeyn* judgments — cannot affect the duty of ensuring the protection of a migrant worker's family where such a member by reason already of his parent's occupation falls within the system of social security of the Member State, the Commission suggests the following answer to the question referred:

'The benefits covered by Article 4 (1) (h) of Regulation No 1408/71 include those provided under national provisions granting benefits to the handicapped to the extent that these provisions relate to members of the family of a worker within the meaning of the said Regulation and confer on them a legally protected right to the grant of such benefits.'

As regards the *question concerning Article 12 of Regulation No 1612/68,* the Commission argues that the Belgian system in question cannot fall within the scope of this article since it concerns the 'grant of benefits to handicapped persons' and does not comprise measures that allow handicapped persons to achieve or improve ability to work. The Commission adds that this question in any event loses its purpose since the benefits under the Law of 27 June 1969 are social security benefits.

As regards the *third question,* the Commission considers that this is in general concerned with what the handicapped person's situation will be once, bearing in mind his age, he can no longer be treated as a worker's child. It suggests that the following answer be given, recalling in this connexion that in cases of serious illness the Belgian legislation does not lay down an age limit for the grant of family benefits:

'The child of an employed person who is entitled to benefits for the handicapped by reason of his parent's status as an employed person continues to be entitled to such benefits in conformity with the relevant national legislation whatever his age.'

At the public hearing of 14 May 1975 the Belgian State, represented by G. Perl, Administrative Secretary with the Ministry of Social Security, and the Commission of the European Communities, represented by its Legal Adviser, Marie-José Jonczy, made their observations.

The Advocate-General delivered his opinion on 10 June 1975.

Law

1 By judgment dated 13 January 1975, received at the Court on 27 January 1975, the Tribunal du Travail of Nivelles referred to the Court under Article 177 of the EEC Treaty for a preliminary ruling three questions on the interpretation of the Community Regulations on the free movement of workers within the Community and on the application of social security schemes to employed persons and their families moving within the Community, in relation to the Belgian Law of 27 June 1969 relating to the grant of benefits to the handicapped.

2 It appears from the order referring the matter that the national proceedings are concerned with an application made in 1973 by the parents of a handicapped minor with a view to benefiting from the said Law.

3 The parents, who are of Italian nationality, have since 1947 resided in Belgium where the father has been regularly employed and where the child was born in 1959 and has resided ever since.

4 The Belgian Ministry of Social Security rejected the application on the grounds that the child was not of Belgian nationality and did not satisfy the conditions of residence laid down by the European Interim Agreement of 11 December 1953, that is to say a minimum residence of 15 years in Belgium since attaining the age of 20.

5 The Tribunal du Travail, before which the parents attacked the Ministry's decision, considered that the action had been brought by the parents for the purpose of obtaining social advantages which they are themselves entitled to claim as parents having dependent upon them a handicapped child, i.e. advantages to which they are directly entitled.

6 The Tribunal further stated in its judgment that one must interpret the provisions of the European Interim Agreement as meaning that the conditions of residence laid down for entitlement to benefits must be satisfied by the parents and not by the child.

7 The first two questions ask in substance whether the system of benefits under the Belgian Law of 27 June 1969, to the extent that they concern handicapped children of employed persons, fall within the ambit of Article 12 of Regulation No 1612/68 of 15 October 1968 on the free movement of workers within the Community or of Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community.

8 The third question asks whether, in the event of a reply in the affirmative to one of the first two questions, minors entitled to benefit by reason of the fact that their parents fulfil the conditions at the time when the scheme instituted by the Belgian Law becomes applicable remain entitled to benefit at the

various stages of attaining their majority, without at that time having personally to fulfil the conditions as to residence required up to that time of their parents.

9 The correct approach to the questions asked is to examine the problems of interpretation relating relating to Regulation No 1408/71 within the framework of Articles 2, 7 and 51 of the Treaty which form its basis.

10 Whilst the Court, acting within the framework of Article 177, has no jurisdiction to apply the Community rule to a specific case, nor, consequently, to pronounce on a provision of national law with regard to such rule, it can however provide the national court with the factors of interpretation depending on Community law which could be useful to it in evaluating the effects of such provision.

11 In its judgment of 13 November 1974 in Case 39/74 ([1974] ECR 1251) the Court found that 'a national legislation giving a legally protected right to a benefit for the handicapped falls, as regards the persons covered by Regulation No 3, within the area of social security within the meaning of Article 51 of the Treaty and of the Community Regulations thereunder.'

12 Since Regulation No 3 was replaced by Regulation No 1408/71 of the Council, the same interpretation applies to the provisions of the latter Regulation to the extent that they determine the matters covered by that Regulation.

13 According to the fifth recital in the preamble, the provisions of Regulation No 1408/71 'fall within the framework of freedom of movement for workers who are nationals of Member States and should, to this end, contribute towards the improvement of their standard of living and conditions of employment, by guaranteeing within the Community firstly equality of treatment for all nationals of Member States under the various national legislations and secondly social security benefits for workers and their dependants regardless of their place of employment or of residence.'

14 As regards the persons covered by Regulation No 1408/71, Article 2 (1) thereof provides that the regulation 'shall apply to workers who are or have been subject to the legislation of one or more Member States and who are

nationals of one of the Member States ... as also to the members of their families and their survivors'.

15 Article 3 (1), supporting the fundamental principle of equality of treatment, provides that 'subject to the special provisions of this Regulation, persons resident in the territory of one of the Member States to whom this Regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State'.

16 It appears from this provision read in conjunction with Article 2 (1) that in the framework of the matters covered by the Regulation and in the absence of a specific provision to the contrary, the members of an employed person's family must be allowed the benefit of the legislation of the State of their residence under the same conditions as the nationals of that State.

17 Consequently, as regards the enjoyment of rights under a national legislation providing benefits for the handicapped, neither the employed person himself nor the members of his family may, as compared with the nationals of the State of their residence, be placed in a less favourable position for the sole reason that they do not possess the nationality of that State.

18 The term member of the family of an employed person undoubtedly includes a minor child dependent on his parents, as is recognized by the Tribunal du Travail in its order referring the matter.

19 As regards more particularly the case of a handicapped child who from his minority fulfils the conditions required to benefit as a member of the employed person's family from benefits to the handicapped, the equality of treatment under Article 3 of Regulation No 1408/71 cannot terminate when he ceases to be a minor, if the child by reason of his handicap is prevented from himself acquiring the status of employed person within the meaning of the Regulation.

20 Indeed, if this were not the case, a worker anxious to ensure to his child the lasting enjoyment of the benefits necessitated by his condition as a handicapped person, would be induced not to remain in the Member State where he has established himself and has found his employment, which

would run counter to the object sought to be attained by the principle of free movement of workers within the Community, bearing in mind *inter alia* the right recognized under this principle to employed persons and to members of their families to remain within the territory of a Member State in which the employed person was employed under the conditions determined by Regulation No 1251/70 of the Commission of 29 June 1970 (OJ L 142 of 30. 6. 1970, p. 24)

21 In view of the finding that the provisions of Regulation No 1408/71 must be interpreted in the sense indicated, it does not seem necessary to examine whether an analogous result may be derived from the provisions of Regulation No 1612/68 of the Council of 15 October 1968 on the free movement within the Community.

Costs

22/23 The costs incurred by the Belgian State, the Italian Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable and as those proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before a national court, costs are a matter for that court.

On those grounds

THE COURT

in answer to the questions referred to it by the Tribunal du Travail of Nivelles by order of that court dated 13 January 1975, hereby rules:

The provisions of Regulation No 1408/71 must be interpreted as meaning

(a) that they include a national legislative system which provides a legally protected right to benefits for the handicapped;

(b) that in applying such a system the handicapped child of a worker must not, as compared with the nationals of the State of residence, be less favourably treated by reason only of the fact that he does not possess the nationality of that State;

(c) that in the case of a handicapped child who from his minority fulfils the conditions required to qualify for benefits for the

handicapped as a member of an employed person's family, the equality of treatment cannot cease at the end of his minority if the child by reason of his handicap is prevented from himself acquiring the status of an employed person within the meaning of the Regulation.

Lecourt Mertens de Wilmars Mackenzie Stuart Donner Monaco

Pescatore Kutscher Sørensen O'Keeffe

Delivered in open court in Luxembourg on 17 June 1975.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 10 JUNE 1975[1]

Mr President,
Members of the Court,

1. The requests for a preliminary ruling made by the Tribunal du Travail, Nivelles, concern Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community and Regulation No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community and are related to the application of the Belgian Law of 27 June 1969 on the grant of allowances to handicapped persons. The application of this law has already given rise to two other applications for preliminary rulings: Case 17/73, *Callemeyn* [1974] ECR 553) and Case 49/74, *(Costa v Belgium* [1974] ECR 1251). It is clear from this case-law that legislation such as that which has just been cited falls under social security governed by Article 51 of the Treaty: more particularly, the benefits referred to in Article 4 (1) (b) of Regulation (EEC) 1408/71 of the Council include those provided for by such national legislation on benefits for physically handicapped persons in so far as the letter relates to workers within the meaning of Article 1 (a) of that regulation. Although the Belgian legislation in question relates to the entire population of the State and consequently was not envisaged in relation to workers as such, in the cases just cited the Court has recognized the right of the latter to benefit from it.

1 – Translated from the Italian.