OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 7 DECEMBER 1976 [1]

Mr President,
Members of the Court,

The French Law of 13 July 1971 provides for allowances for handicapped persons. The Law applies both to handicapped minors up to the age of 20 years and to handicapped adults who are under the age of 65 years. In order to benefit, however, the latter must be French nationals and must reside in France.

Mr Inzirillo, an Italian national whose place of employment and residence is in France wishes his severely mentally handicapped son, also an Italian national born in 1948 who apparently resides in France with his parents, to receive the allowance for handicapped adults. His application was dismissed, however, by the competent authority, the Caisse d'Allocations Familiales de l'Arrondissement de Lyon, on the basis of the condition of nationality laid down by the abovementioned Law. The plaintiff was also unsuccessful in his appeal to the two committees competent in matters of social security and in his subsequent appeal against their decisions to the Cour d'Appel, Lyon. As regards the paintiff's submission that the Caisse infringed Regulation No 1612/68 of the Council on freedom of movement for workers within the Community (OJ English Special Edition 1968 (II), p. 475), the Cour d'Appel stated – apparently unaware of the judgment of the Court of Justice in Case 32/75 (Judgment of 30 September 1975, *Cristini* v *Société Nationale des Chemins de Fer Français [1975]* ECR 1085) – that Article 7 of that regulation only applies to the 'social advantages' which are directly related to employment and concern conditions of work and remuneration but not, on the other hand, to benefits which fall within the area of social security. According to the Cour d'Appel, Regulation No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (OJ English Special Edition 1971 (II), p. 416) was inapplicable, however, since allowances for handicapped adults cannot be regarded as family benefits.

The plaintiff appealed against that judgment to the Cour de Cassation. In that appeal, however, he argued only that there was an infringement of Regulation No 1408/71. He continues to be persuaded that the allowance which he claimed for his son constitutes a social security benefit and, therefore, on the basis of the abovementioned regulation, must be awarded in like manner to the nationals of all the Member States.

By judgment of 26 May 1976 the Cour de Cassation stayed the proceedings and asked the Court to give a preliminary ruling on the question whether pursuant to Regulation No 1408/71 a handicapped adult Italian national who has himself never worked in France must benefit from the allowance for handicapped adults introduced by the Law of 13 July 1971 solely for the benefit of French nationals residing in France, if he resides there and if his father, an Italian migrant worker, is employed there?

In its submissions on the question the defendant in the main action emphasized, first, that Regulation No 1408/71 is not applicable to social assistance benefits. However, allowances calculated only according to need and paid to handicapped adults who have never been wage-earners or assimilated

1 – Translated from the German.

workers must be regarded as such benefits. Moreover, it is clear that the allowance in question cannot be regarded as family benefits within the meaning of Regulation No 1408/71. In fact, that regulation only took into account those categories of benefits which were in existence when it was adopted. The allowances for handicapped persons were only introduced by the French Law at a later date. Furthermore, leaving aside the fact that in the present case the right is not vested in the father but in the handicapped person himself, under the French social security system, which is decisive in the present case, persons over the age of 20 years cannot be regarded as dependent children.

On the other hand the Commission maintained that allowances for handicapped adults to which a legal right exists may unquestionably be regarded as forming part of the social security system and that they must therefore be regarded as falling within the substantive area of application of Regulation No 1408/71. The allowance is awarded, *inter alia,* to those persons who are entitled to old-age or invalidity benefits of an amount inferior to the allowance. As regards the persons covered by Regulation No 1408/71, it must of course be accepted that the age of the handicapped person in question prevents him from being regarded as a member of the family within the meaning of the French Law which, according to the regulation, is decisive. However, in the light of the principle of freedom of movement and of the general tendency discernible in the regulation and the case-law relating thereto such a conclusion is unsatisfactory since it is impossible to accept that when it adopted the definition of members of the family according to national law the Community legislature intended such a result. The Commission maintains that it is for this reason that the handicapped son of the plaintiff who lives with him and is apparently maintained by him is entitled under Article 10 of Regulation No 1612/68 — there is no age-limit in this respect — to live in the State of residence of his father and, in addition, as the result of Regulation (EEC) No 1251/70 of the Commission (OJ English-Special Edition 1970 (II), p. 402), to remain there permanently after his father's death. In the light of the foregoing and, in particular, of the judgment of the Court in Case 7/75 *(Mr & Mrs F* v *Belgian State* [1975] ECR 679), it can only be concluded that such persons must be regarded as members of the family of a migrant worker and accordingly it is clear that the principle that migrant workers shall enjoy equality of treatment with the nationals of the State in which they are employed, laid down by Article 3 of Regulation No 1408/71, takes effect. The condition of nationality fixed by the French Law of 13 July 1971 must therefore be disregarded.

I consider that preference must be given to the view put forward by the Commission.

In this connexion I consider that the question, which has been discussed in detail by the plaintiff, whether the allowance for handicapped adults can constitute a family benefit within the meaning of Regulation No 1408/71, is not decisive. In my view two previous preliminary rulings which concern the problem of the persons and matters covered by Regulation No 1408/71 in a case such as the present and, in particular, the concept of members of the family and the principle of equality of treatment which is applicable to it, are of greater importance. It is true that they related to a Belgian law which, too, provides for allowances for handicapped adults but I do not see how it could be possible to arrive at a different judgment in respect of an equivalent law which is in force in France.

It was held in Case 39/74 (Judgment of 13 November 1974, *Luciana Mazzier, née Costa* v *Belgian State* [1974] ECR 1251) that the Belgian law in question

came within the field of social security in so far as it awarded allowances for the handicapped to persons covered by Regulation No 3. That principle appears to have been accepted as regards the plaintiff in the main action at the time, since the Court of Justice contented itself with this ruling and did not go into the subsidiary question whether a claim could be brought by the plaintiff on the basis of Regulation No 1612/68. The case concerned a claim made by an Italian woman of full age who had married a Belgian but had never been in gainful employment herself and with the result that she, too, could not acquire a right by way of social security.

The other case which is of even greater significance (Case 7/75, Judgment of 17 June 1975, *Mr & Mrs F* v *Belgian State* [1975] ECR 679) concerned the child of a worker on whose behalf a claim was made for an allowance for the handicapped. In that case the Court expressly ruled that workers and the members of their families are among the persons covered by Regulation No 1408/71. It follows from Article 3 of that regulation, in conjunction with Article 2 thereof, that in the framework of the matters covered by the regulation 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. Furthermore — and this is particularly important as regards the present case — if a handicapped child is prevented by his handicap from himself acquiring the status of a worker within the meaning of the regulation, the equality of treatment cannot cease at the end of his minority. The Court of Justice came to this conclusion in particular because any different decision would have run counter to the aim of the principle of freedom of movement for workers. In fact — as is expressly stated in the judgment — if it were otherwise '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 a Member State where he has established himself and found his employment'.

I consider the arguments put forward by Mr Advocate-General Trabucchi, who also recommended this conclusion in his opinion on that case, to be particularly noteworthy.

After he had deduced from Regulation No 1612/68 the need to guarantee equality of treatment for migrant workers also as regards the conditions for the integration of their families into the host country and had emphasized that in order to attain real freedom of movement within the Community, such workers had to be accorded *real* equality of treatment with the nationals in regard to economic matters and social benefits in particular, he stressed that even if the rules in force do not contain express provisions capable of providing a definite solution to the problem, such a solution is clear from the principles and objectives of the social law of the Community, from the general tendency expressed in the provisions of the Council and of the Commission and from the case-law of the Court. In addition, in the absence of a definite provision which is for or against recognition of the principle of equality of treatment for the children of full age of a worker who live with their parents and are maintained by them, Regulation No 1408/71 should be interpreted in accordance with such requirements. I should imagine that such considerations, even if they do not appear in the judgment, carried weight also with the Court of Justice.

However, if that is correct — and in fact I can see no objections other than purely formal ones of a legal nature — and if, in addition, it is assumed that the allowance for the handicapped is available *inter alia* in order to compensate for family expenses, then the answer to the question referred by the Cour de

Cassation must be in the terms suggested by the Commission.

If, however, having regard to the scheme established by Regulation No 1408/71, there should be any hesitation about deciding the matter in this way, it should be made clear, even if the question has not been put, that an equivalent result would be justified under Article 7 of Regulation No 1612/68. Under that provision:

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

As I have explained my view on Regulation No 1408/71 I need not spend any further time on that point. Let me merely point out that in the judgment in Case 32/75 the Court expressly emphasized that the reference to social advantages in Article 7 (2) must not be given a restrictive interpretation but rather that the matters which are covered by that term must be defined with reference to the equality of treatment sought by that provision in such a way as to include *all* social and tax advantages regardless of whether or not they are linked to a contract of employment.

However, if the Chamber were itself to give a restrictive ruling of the kind mentioned above I would regard it as highly regrettable even in the present case. To do so would amount to nothing less than the renunciation of the decision first referred to above on allowances for the handicapped and the area of application of Regulation No 1408/71. If, therefore, the Chamber were disposed to accept the view to which I have just alluded it would be necessary to bring the case once more before the full Court in order for a ruling to be given by that body.

In conclusion, I suggest that the answer to be given to the question referred by the Cour de Cassation should be as follows:

National legal provisions which give a legally protected right to the award of allowances for the handicapped fall within the area of application of Regulation No 1408/71. The provisions of Regulation No 1408/71 are intended to ensure that workers and the members of their families who reside in a Member State by virtue of the principle of freedom of movement are treated equally with the nationals of that State as regards laws which fall within the material area of application of that regulation. Consequently, the handicapped son of full age of a migrant worker cannot be made to suffer any disadvantage as compared with the nationals of the State in which he resides on the ground that he is not a national of that State.