cannot be applied to situations all the elements of which are purely internal to a single Member State. For that reason a member of the family of a worker who is a national of a Member State cannot rely on Community law in order to claim one of the social security advantages granted to migrant workers and members of their families, when the worker of whose family he is a member has never exercised the right to freedom of movement within the Community.

REPORT FOR THE HEARING
in Case C-206/91 *

I — Facts and procedure

1. *National legislation*

Pursuant to Article L. 821-1(1) of the Code Français de la Sécurité Sociale (French Social Security Code):

'any French national or national of a country which is a party to a reciprocal convention on allowances for disabled adults residing on the metropolitan territory or in the departments stated in Article L. 751-1, who has resided there or who has resided in an overseas territory, in Saint-Pierre-et-Miquelon or in Mayotte, for a period and according to conditions established by decree, who is over the age of entitlement to the special education allowance provided for by Article L. 541-1, whose permanent disability is at least equal to a percentage established by decree, is entitled to an adult disablement allowance if that person is not entitled under a social security scheme, a pension scheme or a specific provision to an old-age or disability benefit or benefit resulting from an accident at work of an amount at least equal to the said allowance'.

The percentage of permanent disability referred to in that provision is 80%. [1] Article L. 821-2 provides, however, that persons with a permanent disability of less than 80% may be entitled to the adult disablement allowance if as a result of their disability they are unable to obtain employment.

1 — Article 1 of Decree No 75-1197 of 16 December 1975 laying down rules for the implementation of Law No 75-534 of 30 June 1975 for the benefit of disabled persons, in so far as it relates to the adult disablement allowance for those with a permanent disability of at least 80% (JORF 23 December 1975, p. 13213).

* Language of the case: French.

The allowance is awarded by decision of a technical committee for careers advice and rehabilitation, which takes into account the rate of disability or the difficulties experienced as a result of the disability in finding employment (Article L. 821-4 of the Social Security Code). Article L. 821-5 of that code specifies that 'the adult disablement allowance is granted as a family benefit'.

As for the condition of nationality laid down in Article L. 821-1, the *Guide de l'Allocataire* (hereinafter 'the Guide for Beneficiaries') edited by the Caisse d'Allocations Familiales de la Région Parisienne states that the adult disablement allowance may be granted to nationals of Member States of the Community, as well as to their dependent spouses and relatives in the ascending or descending line.

2. *The main proceedings and the question referred for a preliminary ruling*

Ettien Koua Poirrez, born on 17 December 1966 in the Ivory Coast and a national of the Ivory Coast, was adopted in 1987 by Bernard Poirrez, a French national. Bernard Poirrez works and resides in France.

On 16 December 1987, Mr Koua Poirrez signed a declaration of French nationality. The declaration was held to be inadmissible by the Tribunal de Grande Instance (Regional Court), Bobigny, on the ground that the conditions laid down in Articles 55 and 101 of the Order of 19 October 1945 on the nationality code, as amended, were not fulfilled. The judgment was challenged before the Cour d'Appel (Appeal Court), Paris.

Mr Koua Poirrez also applied for the adult disablement allowance provided for by Article L. 821 of the Social Security Code. His application was refused by the Caisse d'Allocations Familiales de la Région Parisienne on the ground that he was not a national of a country which had signed a reciprocal convention on allowances for disabled adults. The Commission de Recours Amiable (arbitration committee) of the Caisse dismissed his appeal against that decision. He then contested the refusal before the Tribunal des Affaires de Sécurité Sociale (Social Security Court) Bobigny.

Before that court, Mr Koua Poirrez argued that, as Mr Poirrez's adopted son, he should be considered as the descendant of a national of a Member State of the Community. He claimed entitlement, in that capacity, to the adult disablement allowance and based his claim in that respect on the Guide for Beneficiaries.

The Caisse argued that the Guide for Beneficiaries related to Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475) and to Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State

after having been employed in that State (OJ, English Special Edition 1970 (II), p. 402). Pursuant to those regulations, only members of the families of migrant workers (who are nationals of a Member State) may claim the allowance in question. Mr Poirrez, however, who is a French national working in France, cannot be considered as a migrant worker.

The national court states that if the interpretation adopted by the Caisse is correct, Mr Koua Poirrez could be entitled to the adult disablement allowance if Mr Poirrez worked in a Member State of the Community other than France or if Mr Poirrez were a national of such a State but worked in France. It therefore decided, on 12 June 1991, to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is it consistent with Articles 7 and 48(2) of the EEC Treaty to exclude from entitlement to an adult disablement allowance a member of the family of an EEC national (in this case an adopted descendant) residing in the country of which the head of household is a national, on the ground that Directives (read Regulations) Nos 1612/68 and 1251/70 apply only to migrant workers and that the head of household does not have that status?'

3. *Procedure before the Court*

The order of the Tribunal des Affaires de Sécurité Sociale, Bobigny, was lodged at the Court Registry on 1 August 1991.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by Ettien Koua Poirrez, by the French Government represented by Philippe Pouzoulet, of the Ministry of Foreign Affairs, acting as Agent, and Claude Chavance, of the Ministry of Foreign Affairs, acting as Deputy Agent, by the German Government, represented by Ernst Röder and Claus-Dieter Quassowski, of the Bundesministerium für Wirtschaft, acting as Agents, by the United Kingdom, represented by Lucinda Hudson, of the Treasury Solicitor's Department, acting as Agent, assisted by Christopher Vajda, Barrister, and by the Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. In accordance with Article 95(1) and (2) of the Rules of Procedure, the Court decided on 17 June 1992 to assign the case to the Second Chamber.

II — Written observations submitted to the Court

Mr Koua Poirrez argues that two grounds are given for the decision to refuse him the adult disablement allowance: first, that he is not a member of the family of a migrant

worker, and second, that he is not a national of a Member State of the Community.

The refusal to grant him the allowance in question on the ground that his father did not exercise his right to freedom of movement within the Community is contrary to Articles 3(c) and 48 of the Treaty. The right to freedom of movement established in those provisions implies a 'right not to move'. Consequently, the benefits that Community nationals obtain in exercising their right to freedom of movement should be equally available to Community nationals who decide not to exercise that right or who are unable to exercise it.

Furthermore, Mr Koua Poirrez argues that the allowance in question is his only income. In the light of that, the decision to refuse to grant him that allowance, in so far as it is based on the fact that he is a national of the Ivory Coast, is contrary to the combined provisions of Articles 7 and 22 of the Universal Declaration of Human Rights, pursuant to which each person, whatever his nationality, has the right to social security and 'is entitled to the realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality'.

He also argues that the refusal to grant him the adult disablement allowance is contrary to Article 5(2) of the Fourth ACP-EEC Convention (OJ 1991 L 229, p. 3), according to which the Contracting Parties reaffirm their commitment to strive to eliminate all forms of discrimination based on nationality and to ensure 'that migrant workers, students and foreign nationals legally within their territory are not subjected to discrimination on the basis of racial, religious, cultural or social differences, notably in respect of housing, education, health care, other social services and employment'.

He also states that, in accordance with paragraph 2 of Annex X to the Third ACP-EEC Convention (OJ 1986 L 86, p. 3) — which is still in force by virtue of the second paragraph of Article 1 of the Fourth ACP-EEC Convention — members of the families of workers who are nationals of an ACP State, who reside with those workers, are entitled, in the Community Member State on whose territory the workers are legally employed, to treatment identical to that accorded to nationals of that Member State as regards social security benefits linked to employment. According to Mr Koua Poirrez, the adult disablement allowance is such a benefit because it is linked to the inability to work. Furthermore, by virtue of paragraph 3 of Annex X, the provisions of paragraph 2 take precedence over those of the bilateral convention between France and the Ivory Coast which provide for a less favourable scheme than the Third ACP-EEC Convention.

Finally, Mr Koua Poirrez argues that, in the present case, all references to the provisions of Community law are irrelevant. The Guide for Beneficiaries provides that the adult disablement allowance is to be granted to dependent descendants of Community

nationals. As Mr Poirrez's adopted son, he is the descendant of a French national and is therefore entitled to the adult disablement allowance.

The *French Government* observes that the purpose of the question referred by the national court is to establish whether Article 7 of Regulation No 1612/68 applies only to migrant workers and to members of their families.

In this respect, it states first of all that, pursuant to Article 7 of Regulation No 1612/68, a worker who is a national of a Member State is to enjoy, in the territory of another Member State, the same social and tax advantages as national workers. It points out that in *ONEM* v *Deak* (Case 94/84 [1985] ECR 1873, paragraph 26) the Court ruled that the principle of equal treatment laid down in that provision for workers who are nationals of a Member State and, indirectly, for members of their families applies without regard to the nationality of those family members. Consequently, the fact that the applicant in the main proceedings is a national of a non-Member State is irrelevant, because he is claiming rights in his capacity as a member of the family of a migrant worker.

Referring to the judgments in *Regina* v *Saunders* (Case 175/78 [1979] ECR 1129, paragraph 11), in *Morson and Jhanjan* v *State of the Netherlands* (Joined Cases 35/82 and 36/82 [1982] ECR 3723, paragraphs 16 and 17) and in *Moser* v *Land Baden-Württemberg* (Case 180/83 [1984] ECR 2539, paragraphs 15 and 20), the French Government then argues that a national of a Member State who has never resided or worked in another Member State cannot rely on the provisions of secondary Community law implementing the principle of freedom of movement for workers. Consequently, the members of the family of such a worker cannot claim rights conferred by provisions of secondary law on members of the family of migrant workers.

The French Government states that this conclusion is in accordance with the judgment in *Zaoui* v *Cramif* (Case 147/87 [1987] ECR 5511, paragraph 16) in which the Court stated that 'a member of the family of a worker who is a national of a Member State cannot rely on Regulation No 1612/68 in order to claim the same social advantages as workers who are nationals of that State when the worker of whose family he is a member has never exercised the right to freedom of movement within the Community'.

Consequently, the French Government proposes that the national court be informed that the provisions of Article 7 of Regulation No 1612/68 apply only to migrant workers.

The *German Government* states that the Treaty provisions relating to freedom of movement for workers and the rules adopted for implementing those provisions cannot apply to situations purely internal to a Member State (see the judgments in *Saunders*, cited above, paragraph 11 and in *Moser*, cited above, paragraph 15). Consequently, a member of the family of a Community national, who is himself a national of a non-member country, may only rely on the provisions in question if the Community national has exercised his right to freedom of movement (see the judgment in *Morson and Jhanjan*, cited above).

Referring to the judgment in *Iorio* v *Azienda Autonoma delle Ferrovie dello Stato* (Case 298/84 [1986] ECR 247, paragraph 13), the German Government emphasizes that the aim of Article 48 of the Treaty and of the provisions for its implementation is to achieve free access for workers established in the different countries of the Community to employment offered in the Community countries other than the one in which they are established without distinction on grounds of nationality by eliminating restrictions relating to access to employment, remuneration and other working conditions. Consequently, it is possible for a national of a Member State to rely on Article 48 of the Treaty and on the provisions for its implementation with regard to the Member State on whose territory he resides. However, he may only do that if he has exercised his right to freedom of movement or if he intends to do so but is prevented by the Member State in question.

The German Government also considers that, inasmuch as that limitation of the scope of application of rules of Community law leads to a difference in treatment between migrant workers and workers who have not exercised the right of freedom of movement, the former being treated more favourably than the latter by a Member State on whose territory they reside, the question of whether that difference in treatment is lawful must be examined in the light of the domestic law of the Member State in question. It adds that, in that context, Article 7 of the Treaty is irrelevant, as that provision can only be relied upon in situations covered by the scope of the Treaty (see the judgment in *Morson and Jhanjan*, cited above, paragraph 15).

Consequently, the German Government proposes the following reply to the question:

'Article 48 of the EEC Treaty and the provisions for its implementation do not apply to a case which relates only to the domestic law of a Member State and accordingly do not prevent a national provision from excluding the members of the family of a national of the Member State in question from entitlement to certain State benefits when that national has neither lived nor worked in another Member State.'

The *United Kingdom* considers various provisions of Community law in order to determine whether they may be relied upon by a member of the family of a worker who has never exercised the right to freedom of movement, with a view to obtaining a benefit provided for by the legislation of the Member State of which that worker is a national.

Considering first of all Regulation No 1612/68, the United Kingdom argues that the regulation's aim is to facilitate the free movement within the Community of workers who are nationals of a Member State, not to regulate the granting of benefits to workers who do not exercise their right to freedom of movement or to members of their family. That appears from the legal context in which the regulation was adopted (implementation of Article 49 of the Treaty), from the first, third and fifth recitals in the preamble to the regulation, and from its contents (in particular Articles 1, 7 and 10 to 12 of the regulation). In any event, it appears from Articles 10 to 12 of Regulation No 1612/68 that that regulation does not concern the granting of benefits such as the adult disablement allowance to members of the families of workers. Consequently, it cannot be relied upon in the present case.

As for Regulation No 1251/70, it is apparent from the aim of that regulation (to regulate the situation of a worker residing in a Member State other than the one of which he is a national when he ceases to be employed in that State) and from the wording of Article 1 that the regulation applies to members of the family of a worker who is a national of a Member State and who has moved to another Member State. Furthermore, any other interpretation of Regulation No 1251/70 would be inconsistent with the Community legislation on freedom of movement of workers, since Regulations No 1251/70 and No 1612/68 complement one another.

Furthermore, the United Kingdom points out that, in his Opinion in *Kermaschek* v *Bundesanstalt für Arbeit* (Case 40/76 [1976] ECR 1669), Advocate General Reischl considered that Council Regulation (EEC) No 1408/71 of 14 June 1971 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) also did not apply to an employed worker who had not left his country of origin (p. 1681).

The United Kingdom argues, citing the judgments in *Morson and Jhanjan* and in *Dzodzi* v *Belgian State* (Joined Cases C-297/88 and C-197/89 [1990] ECR I-3763), that Article 48 of the Treaty can only apply where the Community national has availed himself of the right to freedom of movement. That provision does not give nationals of a Member State any rights as against their own Member State if they work and reside within its territory. Furthermore, it is clear from the Court's judgment in *Morson and Jhanjan* (cited above, paragraphs 14 and 15) that, with regard to freedom of movement for workers, Article 7 of the Treaty can have no wider application than Article 48 of the Treaty.

The United Kingdom also points out that in *Morson and Jhanjan* (paragraphs 14 to 17) the Court expressly rejected the argument that dependants of a Community national who had never exercised the right of freedom of movement could rely on Regulation No 1612/68 by reference to Articles 7 and 48 of the Treaty. The Court reached the same conclusion in *Dzodzi*.

Accordingly, the United Kingdom proposes the following reply to the question:

'Community law does not prohibit a Member State from refusing to grant an adult disability allowance to a member of the family of a worker who is not a migrant worker within the scope of Council Regulation (EEC) No 1612/68 or Council Regulation (EEC) No 1251/70.'

According to the *Commission*, Articles 7 and 48 of the Treaty do not preclude so-called 'reverse discrimination'. With regard to Article 7, the Commission states that the provision applies only to situations governed by Community law. As for Article 48, the Commission points out that, as the Court decided in *Saunders*, the Treaty provisions

on freedom of movement do not apply to situations purely internal to Member States.

Turning to Regulation No 1612/68, the Commission argues that the adult disablement allowance which the applicant in the main proceedings is claiming is not a 'social advantage' within the meaning of Article 7 of the Regulation. It follows from the judgment in *Inzirillo* v *Caisse d'Allocations Familiales de Lyon* (Case 63/76 [1976] ECR 2057) that the allowance falls within the scope of Regulation No 1408/71.

On that point, the Commission notes that, even if Regulation No 1408/71 applies to workers who have not exercised the right to freedom of movement (see the judgment in Case 2/89 *Bestuur van de Sociale Verzekeringsbank* v *Kits van Heijningen* [1990] ECR I-1755), it applies only to workers with a 'European element' in their situation, for example workers who are nationals of a Member State other than the one in whose territory they reside and work. The Commission considers that confirmation for that interpretation is to be found in the judgment in *Inzirillo* (cited above, paragraphs 13, 14 and 17 to 20).

Consequently, the Commission suggests the following reply to the question:

'Articles 7 and 48(2) of the EEC Treaty do not prohibit a Member State from refusing to grant a member of the family of a worker the adult disablement allowance when that worker has worked only in the Member State in question.'

III — Replies to questions asked by the Court

The Court put to the French Government two questions, worded as follows:

'1. May a member of the family of a migrant worker claim the adult disablement allowance if he is a national of a non-member country but the migrant worker to whose family he belongs is a national of a Member State?

2. May a member of the family of a worker who is a French national claim the adult disablement allowance if he is a national of a non-member country and the worker to whose family he belongs is not a migrant worker?'

The French Government's reply to the *first question* is essentially affirmative. It points out that by Circular No 1370 of 5 November 1987, instructions were given to agencies administering schemes to grant the adult disablement allowance to both French nationals and to nationals of other Member States of the Community according to the same conditions.

Consequently, that benefit is granted to workers (and former workers) who are nationals of Member States and whose situation is covered by Community law. Furthermore, pursuant to Article 10 of Regulation

No 1612/68, and in accordance with the judgment in *Deak*, the adult disablement allowance is also granted to members of the families of those workers, even if they are nationals of a non-member country provided that they have the right of residence under Community law.

In reply to the *second question*, the French Government states that members of the family of a French worker who is not a migrant worker for the purposes of Community law may claim entitlement to the allowance in question when they are nationals of a non-member country only if the latter has signed a reciprocal convention with France on the granting of that benefit.

J. L. Murray
Judge-Rapporteur