OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 30 June 1987 *

Mr President,
Members of the Court,

A — Facts

1. The proceedings which have been pending since 1982 between Mrs Maria Frascogna and the Caisse des dépôts et consignations, Bordeaux, have once again led to a reference to the Court for a preliminary ruling.

2. As we already know from Case 157/84, [1] the plaintiff is a widow and since September 1976 she has lived with her son, who is in salaried employment in France and supports her.

3. She herself was in receipt of a widow's pension from the Istituto Nazionale della Previdenza Soziale (Italian National Social Welfare Institution), which amounted in 1981 to only FF 1 000 per month. She applied for the special old-age allowance ('allocation spéciale de vieillesse') which in 1982 was rejected by the Caisse des dépôts et consignations, the defendant in the main proceedings, on the ground that she failed to satisfy the requirement of 15 years' residence in France as provided for in the European Interim Agreement of 11 December 1953.

4. When the plaintiff brought an action against that decision before the Commission de première instance du contentieux de la sécurité sociale (Social Security First Instance Appeals Board), Hauts-de-Seine, the latter submitted to the Court for a preliminary ruling the question whether the provisions of the European Interim Agreement of 11 December 1953 were compatible with Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. [2]

5. In its judgment of 6 June 1985 the Court first held that a relative in the ascending line of a migrant worker could not claim the benefit of the said allowance on the basis of Regulation No 1408/71. However, in order to answer all questions of interpretation of Community law which would assist the national court in reaching its decision in the main proceedings, the Court stated, referring to its earlier case-law, that in the particular case payment of the said benefit was to be regarded as a social advantage within the meaning of Article 7 (2) of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community. [3] It therefore held:

'(a) The grant of a special old-age allowance which guarantees a minimum income to old persons under conditions such as those laid down by the national law applicable to the main proceedings constitutes a social advantage within the meaning of Regulation

* Translated from the German.

1 — Case 157/84 *Maria Frascogna* v *Caisse des dépôts et consignations* [1985] ECR 1739.

2 — Official Journal, English Special Edition 1971 (II), p. 416.

3 — Official Journal, English Special Edition 1968 (II), p. 475.

No 1612/68 of the Council of 15 October 1968.

(b) Article 7 (2) of that regulation must be interpreted to the effect that the grant of such a social advantage may not be made subject to a condition requiring actual residence in the territory of a Member State for a specified number of years if such a condition is not laid down in respect of nationals of that Member State.'

In the proceedings which have been resumed before the Tribunal des affaires de sécurité sociale (Social Security Court), Nanterre, as the national court is now called, the defendant has continued to oppose the plaintiff's claim. It contends that the special old-age allowance does not fall within the scope of Regulation No 1612/68; although according to Article 7 (2) a worker who is a national of a Member State and is employed in the territory of another Member State enjoys the same social and tax advantages as national workers, it is only the worker who is entitled to equality of treatment. Moreover, the plaintiff, who is entitled under the law to simple social assistance in the form of basic domestic social assistance, cannot be regarded as a dependent relative in the ascending line of a worker from another Member State; on that ground she does not come within Regulation No 1612/68.

7. The plaintiff on the other hand took the view that the scope of Regulation No 1612/68 covers not only the worker himself but also members of his family who were lawfully living with him in the territory of a Member State.

8. Thereupon the Tribunal des affaires de sécurité sociale, Nanterre, referred the following question to the Court for a preliminary ruling:

'Does the special old-age allowance come within the substantive and personal scope of Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community?'

B — Analysis

9. If the judgment of the Court of 6 June 1985 in Case 157/84 is properly read, that is the operative part of the judgment in conjunction with the grounds, especially paragraph 21, the question put by the national court is already answered. Accordingly I consider only the following supplementary observations to be appropriate.

10. The Court had already held in its judgment of 12 July 1984 in Case 261/83 [4] that the term 'social advantage', within the meaning of Article 7 (2) of Regulation No 1612/68, also includes for dependent relatives in the ascending line of a worker, the income guaranteed to old people by the legislation of a Member State. The equality of treatment required by Article 7 of the regulation also excludes discrimination against dependent relatives in the ascending line of a worker.

11. However, the dependent relatives of a worker within the meaning of Article 10 of Regulation No 1612/68 are guaranteed equal treatment only *indirectly*, as the Court held in its judgment of 18 June 1987 in Case 316/85. [5] They are entitled to the

4 — Case 261/83 *Carmella Castelli* v *Office nationale des pensions pour travailleurs salariés* [1984] ECR 3199.

5 — Judgment of 18 June 1987 in Case 316/85 *Centre public d'aide sociale de Courcelles* v *Marie-Christine Lebon* [1987] ECR 2811.

corresponding benefits only if such benefits may be regarded as social advantages, within the meaning of Article 7 (2) of Regulation No 1612/68, for the migrant worker himself and not, for example, for his dependent relatives in the ascending line. In the case of the right of dependents, the right in question is one which derives from the legal position of the worker and is not an independent right.

12. As the Court further stated in the said judgment of 18 June 1987, a comparable benefit granted to a member of a worker's family can amount to a social advantage within the meaning of Article 7 (2) of the regulation only in so far as he supports that member of his family.

13. However, as the Court held in the abovementioned judgment of 18 June 1987, the fact that the member of the worker's family claims or receives a minimum income from the State does not prevent him from being regarded as dependent. Even in that case he is still to be regarded as a dependent member of the migrant worker's family. Any other view would be incompatible with the principle of equal treatment for workers.[6] This I explained at the time in my Opinion in Case 316/85 in the following words: 'How untenable the [contrary] argument is becomes clear ... if it is borne in mind that it would mean that, if indigent members of the families of migrant workers were to claim social assistance benefits they would lose the right of residence (because they would no longer be supported by the worker) or that, to express it differently, in such situations they could have a right of residence only if they forwent essential benefits provided for nationals, that is if they accepted a serious disadvantage.' [7]

C — Conclusion

In the result, I propose the Court should give the following ruling on the question referred to it:

'If relatives in the ascending line who are supported by a worker who is a national of a Member State and is employed in the territory of another Member State come to live with that worker, then the payment of a special old-age allowance which guarantees old people a minimum income on the conditions laid down in the national law applicable in the main proceedings constitutes a social advantage for the worker within the meaning of Regulation No 1612/68 of the Council of 15 October 1968.'

6 — Paragraph 20.
7 — Paragraph 35.