JUDGMENT OF THE COURT (Grand Chamber)

11 September 2007 *

In Case C-287/05,

REFERENCE for a preliminary ruling under Article 234 EC by the Centrale Raad van Beroep (Netherlands), made by decision of 15 July 2005, received at the Court on 18 July 2005, in the proceedings

D.P.W. Hendrix

v

Raad van Bestuur van het Uitvoeringsinstituut Werknemersverzekeringen,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts, P. Kūris and E. Juhász, Presidents of Chambers, G. Arestis, A. Borg Barthet, M. Ilešič, J. Malenovský, U. Lõhmus and J.-C. Bonichot (Rapporteur), Judges,

* Language of the case: Dutch.

Advocate General: J. Kokott,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 November 2006,

after considering the observations submitted on behalf of:

— Mr Hendrix, by M.J. Klinkert, advocaat,

— the Raad van Bestuur van het Uitvoeringsinstituut Werknemersverzekeringen, by F.W.M. Keunen, Senior jurist,

— the Netherlands Government, by H.G. Sevenster and M. de Grave, acting as Agents,

— the United Kingdom Government, by C. White and Z. Bryanston-Cross, acting as Agents, and by D. Anderson QC,

— the Commission of the European Communities, by D. Martin and P. van Nuffel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 March 2007,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 4(2a) of Council Regulation (EEC) 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, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Council Regulation (EC) No 1223/98 of 4 June 1998 (OJ 1998 L 168, p. 1), ('Regulation No 1408/71') and the scope of Articles 12 EC, 18 EC and 39 EC and of Article 7(1) of 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).

2 The reference was made in the course of proceedings brought by Mr Hendrix against the Raad van Bestuur van het Uitvoeringsinstituut Werknemersverzekeringen (Management Board of the body entrusted with implementation of employee insurance contributions, 'the UWV'). Mr Hendrix challenges the refusal by the UWV to allocate to him the benefit payable under the Law on provision of incapacity benefit to disabled young people (Wet arbeidsongeschiktheidsvoorziening jonggehandicapten) (Stb. 1997, No 177) of 24 April 1997 ('the Wajong'), on the ground that he is not resident in the Netherlands.

Legal context

Community legislation

3 Article 2 of Regulation No 1408/71 defines the persons covered by the regulation; Article 2(1) provides:

'This Regulation shall apply to employed or self-employed persons and to students 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 well as to the members of their families and their survivors.'

4 Article 4 of Regulation No 1408/71, headed 'Matters covered', provides :

'1. This Regulation shall apply to all legislation concerning the following branches of social security:

(a) sickness and maternity benefits;

(b) invalidity benefits, including those intended for the maintenance or improvement of earning capacity;

...

2a. This Regulation shall also apply to special non-contributory benefits which are provided under legislation or schemes other than those referred to in paragraph 1 or excluded by virtue of paragraph 4, where such benefits are intended:

(a) either to provide supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in paragraph 1(a) to (h);

or

(b) solely as specific protection for the disabled.

...

4. This Regulation shall not apply to social ... assistance ...'

5 In relation to the special non-contributory benefits referred to in Article 4(2a) of Regulation No 1408/71, Article 10a(1) of that regulation provides:

'Nothwithstanding the provisions of Article 10 and Title III, persons to whom this Regulation applies shall be granted the special non-contributory cash benefits referred to in Article 4(2a) exclusively in the territory of the Member State in which they reside, in accordance with the legislation of that State, provided that such benefits are listed in Annex IIa. Such benefits shall be granted by and at the expense of the institution of the place of residence.'

6 In section J of Annex IIa to Regulation No 1408/71, the benefits granted in the Netherlands under the Wajong are classified as special non-contributory benefits.

7 Article 7 of Regulation No 1612/68, which was enacted in order to apply the provisions of the EC Treaty on freedom of movement for workers, provides:

'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, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment.

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

...'

National legislation

8 The Law on insurance against incapacity for work (Wet op de arbeidsongeschiktheidsverzerkering) (Stb. 1966, No 84) of 18 February 1966 ('the WAO') insures employees against the risk of loss of salary as a consequence of incapacity for work. That insurance is funded by contributions payable by employers in respect of the salary paid by them to their employees. To qualify for a benefit under the WAO, an employee must be insured at the time when incapacity for work arises.

9 Until 1998, the Law providing for general insurance against incapacity for work (Algemene Arbeidsongeschiktheidswet) (Stb. 1975, No 674) of 11 December 1975 ('the AAW') established compulsory general insurance for the whole of the population against the financial consequences of long-term incapacity for work.

10 The AWW was replaced, first, with regard to the self-employed, by the Law on insurance against incapacity for work for the self-employed (Wet arbeidsongeschikt-heids-verzekering zelfstandigen) (Stb. 1997, No 176) of 24 April 1997 and, secondly, by the Wajong, aimed at protecting disabled young people against the financial consequences of long-term incapacity for work.

11 The Wajong provides for the payment of a minimum benefit to young persons who are already suffering from total or partial long-term incapacity for work before joining the labour market. Disabled young people are defined as residents who on their 17th birthday were already incapable of work or who, if they become incapacitated subsequently, have studied for at least six months during the year immediately preceding the day when their incapacity for work arose. The benefit cannot be received before the 18th birthday.

12 The amount of benefit payable under the Wajong depends on the degree of incapacity — there is a threshold of 25% — and amounts to 70% of the statutory minimum wage in the case of total incapacity for work. Entitlement to that benefit is not made dependent on payment of a premium or a contribution, nor is it means-tested. The benefit may however be reduced if the recipient has an income from work or where the benefit is paid in addition to other work-incapacity benefits.

13 The Wajong benefit is paid out of the Arbeidsongeschiktheidsfonds jonggehandicapten (Fund for disabled young people incapacitated for work) and, under Article 64(a) of the Wajong, is financed from public funds.

14 By contrast with the position under the AAW, which did not impose any such restriction, the Wajong benefit cannot be paid if the recipient is not resident in the Netherlands. Article 17(1) of the Wajong provides that 'entitlement to work-incapacity benefit shall end ... on the first day of the month following that in which the disabled young person took up residence outside the Netherlands'.

15 An exception may however be made to that rule when ending entitlement to the benefit would lead to an 'unacceptable degree of unfairness' (Article 17(7) of the Wajong).

16 By a decision of 29 April 2003, the UWV stated that there is an 'unacceptable degree of unfairness' where a disabled young person has compelling reasons for taking up residence outside the Netherlands and he is likely to suffer an appreciable disadvantage if the benefit is no longer paid. Compelling reasons are considered to include medical treatment of a certain duration, acceptance of work with some prospect of reintegration, and the need for a disabled young person to follow persons on whom he is dependent where they are required to leave the Netherlands.

The main proceedings and the reference for a preliminary ruling

17 Mr Hendrix was born on 26 September 1975 and has Netherlands nationality. He has a slight mental disability. On 26 September 1993 a benefit under the AAW was

awarded to him, and on 1 January 1998 it was converted to a benefit under the Wajong. Mr Hendrix has always been considered to be between 80% and 100% incapacitated for work because there are insufficient posts on the free labour market which, assessed objectively, are suitable to his skills and capabilities.

18 Mr Hendrix was employed, from 1 February 1994, in specially adapted work, in the wages and salaries division of Formido Bouwmarkt in Maastricht (Netherlands). He was paid for this work but continued to receive the Wajong benefit, reduced to take account of his wages. He has not been employed outside the Netherlands.

19 On 1 June 1999, Mr Hendrix moved to Belgium while continuing to work in the Netherlands. By a decision of 28 June 1999, the UWV decided at that juncture to end the benefit paid under the Wajong to Mr Hendrix as from 1 July 1999, thereby applying Article 17(1)(c) of the Wajong which provides that the benefit ends on the first day of the month following that in which the disabled young person has taken up residence outside the Netherlands.

20 By its decision of 17 September 1999, the UWV dismissed the complaint made by Mr Hendrix against the decision of 28 June 1999.

21 The Rechtbank (District Court) Amsterdam, by a judgment of 16 March 2001, dismissed the action brought by Mr Hendrix against the decision of 17 September 1999. Mr Hendrix appealed against that judgment to the Centrale Raad van Beroep (Higher Social Security Court).

22 Having taken the view that resolution of the dispute called for an interpretation of Community law, the Centrale Raad van Beroep decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must a benefit under the Wajong, listed in Annex IIa to Regulation No 1408/71, be regarded as a special non-contributory benefit within the meaning of Article 4(2a) of that regulation with the result that only the coordinating provision introduced by Article 10a of the regulation must be applied to a person such as the applicant in the main proceedings? In answering this question, is it of any relevance that the person concerned initially received an AAW benefit for disabled young persons, converted by operation of law from 1 January 1998 into a Wajong benefit?

(2) If the answer to Question 1 is in the affirmative, can a worker rely on Article 39 EC, as implemented by Article 7 of Regulation No 1612/68, against the Member State of which he is a national when he has worked only in that Member State but is resident in the territory of another Member State?

(3) If the answers to Questions 1 and 2 are in the affirmative, must Article 39 EC, as implemented by Article 7(2) of Regulation No 1612/68, be understood as meaning that a legislative provision which makes the grant or continuation of a benefit conditional on the person concerned being resident in the territory of the Member State whose legislation is at issue is always compatible therewith where that legislation provides for a special non-contributory benefit, within the meaning of Article 4(2a) of Regulation No 1408/71, which is listed in Annex IIa to that regulation?

(4) If the answers to Questions 1 and 2 are in the affirmative and the answer to Question 3 is in the negative, must Community law (in particular Article 7(2) of Regulation No 1612/68 and Article 39 EC, and also Articles 12 EC and 18 EC) be understood as meaning that sufficient justification can be found in the nature of the Wajong to invoke the residence condition against a citizen of the Union, who is in full-time employment in the Netherlands and in that regard is subject solely to Netherlands legislation?'

The questions referred for a preliminary ruling

The first question

23 By its first question, the referring court essentially seeks to know whether the benefit paid under the Wajong constitutes a special non-contributory benefit subject to the provisions of Article 4(2a) in conjunction with Article 10a of Regulation No 1408/71, from which it would follow that payment could validly be made to depend on a condition of residence. The court also seeks to know whether there is any need to take account of the earlier situation of the applicant in the main proceedings.

Observations submitted to the Court

24 The applicant in the main proceedings claims, first, that only those benefits which do not fall under legislation referred to in Article 4(1) of Regulation No 1408/71 may be regarded as special non-contributory benefits.

25 Second, he argues that a benefit awarded on the basis of need constitutes a special benefit. He thus argues that the benefit provided by the Wajong is designed to cover a reduction in income which results from one of the risks listed in Article 4(1) of Regulation No 1408/71.

26 He adds that that benefit replaced another benefit, paid under the AAW, which could be exported. The inference he draws is that he may rely on the transitional provisions set out in Article 2 of Council Regulation (EEC) No 1247/92 of 30 April 1992 amending Regulation No 1408/71 (OJ 1992 L 136, p. 1) and accordingly on the exportability of the benefit.

27 The defendant in the main proceedings considers that the benefit provided for by the Wajong constitutes a special benefit, in that it is not a replacement for loss of income (in which case it would be a social security benefit) but for a presumed loss of income, since disabled young people are not comparable to workers.

28 The Netherlands Government considers that the benefit is a substitute allowance intended for those persons who do not satisfy the conditions of insurance for obtaining a normal invalidity benefit.

29 The Commission of the European Communities considers that the benefit provided by the Wajong is a hybrid benefit falling under both social security and social assistance.

30 As such, the benefit is a special benefit since, although covering the same risk, it relates to persons who, since they have no history of employment, have never been insured pursuant to the WAO or the Law on insurance against incapacity for work for the self-employed of 24 April 1997, and moreover never could have been.

31 The defendant in the main proceedings, the Netherlands Government and the Commission consider that the fact that Mr Hendrix received a similar benefit on the basis of other legislation before the introduction of the Wajong benefit has no relevance.

32 The United Kingdom Government submits that, if the benefit provided for by the Wajong is to be classified as special non-contributory benefit, it must satisfy the substantive criteria that it is both a special benefit and a non-contributory benefit, and must also be listed in Annex IIa to Regulation No 1408/71.

33 As regards the non-contributory character of the benefit, the United Kingdom Government considers that since it is financed from public funds the benefit provided by the Wajong is non-contributory.

34 As regards the second part of the question, the United Kingdom Government considers that it makes no difference that Mr Hendrix originally received a different but similar benefit, since that situation does not affect the substance of the question asked by the referring court.

Findings of the Court

— The first part of the question

35 In Case C-154/05 *Kersbergen-Lap and Dams-Schipper* [2006] ECR I-6249 the Court ruled that that a benefit under the Wajong must be regarded as a special non-contributory benefit within the meaning of Article 4(2a) of Regulation No 1408/71.

— The second part of the question

36 In *Kersbergen-Lap and Dams-Schipper* (paragraph 43), the Court ruled that a person in the situation of the applicant in the main proceedings cannot rely on the maintenance of rights acquired under the AAW prior to adoption of the Wajong. The legal effects (whether or not the Wajong benefit may be exported) of taking up residence outside the Netherlands must consequently be examined in the light of the rules applicable at the time when the new residence was established, which is to say in the light of the new provisions.

37 Further, as regards the argument of the applicant in the main proceedings based on Article 2 of Regulation No 1247/92, while those persons who, prior to 1 June 1992, the date of entry into force of that regulation, were in receipt of the AAW benefit or satisfied the conditions to receive it may, in accordance with Article 2 of the regulation, continue to take advantage of the principle of waiver of residence clauses laid down in Article 10 of Regulation No 1408/71, the situation of those persons who, like him, satisfied those conditions only after that date is conversely governed by Article 10a of the latter regulation (see, to that effect, Case C-297/96 *Partridge* [1998] ECR I-3467, paragraph 39).

38 In light of the foregoing, the answer to be given to the referring court must be that a benefit such as that provided under the Wajong must be regarded as a special non-contributory benefit within the meaning of Article 4(2a) of Regulation No 1408/71, with the result that only the coordinating provision of Article 10a of that regulation must be applied to persons who are in the situation of the applicant in the main proceedings and that payment of that benefit may validly be reserved to persons who reside in the territory of the Member State which provides the benefit. The fact that the person concerned previously received a benefit for disabled young people which was exportable is of no relevance to the application of those provisions.

The second and third questions

39 By its second and third questions, the referring court seeks in essence to know whether the applicant in the main proceedings can rely on Article 39 EC as implemented by Article 7 of Regulation No 1612/68 and, if so, whether those provisions preclude termination of the payment to a person in his situation of the Wajong benefit on the ground that he has left the Netherlands.

Observations submitted to the Court

40 The applicant in the main proceedings submits that he ought to be regarded as a worker who has exercised his right of freedom of movement within the meaning of Community law. He relies in particular on Case C-18/95 *Terhoeve* [1999] ECR I-345, where the Court ruled that any Community national who exercises his right to freedom of movement for workers and who is employed in another Member State falls within the scope of Regulation No 1612/68, irrespective of his place of residence and his nationality. He states also that in Case C-57/96 *Meints* [1997] ECR I-6689

the Court ruled that the effect of Regulation No 1612/68 is that payment of a social advantage may not be made dependent on the condition that the recipient resides on the territory of the Member State which must provide the benefit to him.

41 The defendant in the main proceedings acknowledges that an individual can rely on Article 39 EC against the Member State of which he is a national, provided that he has exercised his rights of freedom of movement (see, in particular, *Terhoeve*, paragraphs 27 and 28). The defendant argues, however, that the exercise of those rights must involve transfer of residence into another Member State with the objective of taking up or continuing an economic activity, or must at least have some connection with employment, future or not.

42 That however is not the situation of Mr Hendrix. He did leave his State of origin, but he did so merely to reside in another Member State and not to carry on an economic activity there. Since he has never worked outside the Netherlands, he has never exercised his rights of freedom of movement. The opinion of the defendant in the main proceedings is that Article 39 EC should be interpreted in the light of the reasoning employed by the Court on the subject of freedom of establishment in Case C-112/91 *Werner* [1993] ECR I-429. The Court there ruled that the mere fact that a person resides in a Member State without establishing himself there did not embody any foreign element on the basis of which Article 43 EC could be pleaded.

43 The Netherlands Government and the Commission present, in essence, the same arguments as the defendant in the main proceedings.

44 The United Kingdom Government also contends that the ruling in *Terhoeve* is not applicable to the facts of the main proceedings. It considers that Mr Hendrix cannot be regarded as a worker who has exercised his right of freedom of movement and refers, inter alia, in addition to the judgment in *Werner*, to points 93 to 97 of the Opinion of Advocate General Jacobs in Joined Cases C-245/94 and C-312/94 *Hoever*

and Zachow [1996] ECR I-4895. His argument was that Regulation No 1612/68 only applies to workers who are nationals of one Member State but work in another Member State. Accordingly, given the situation of Mr Hendrix, he cannot be considered to be a worker who has exercised his right to freedom of movement and as such entitled to rely on the provisions of Regulation No 1612/68.

Findings of the Court

45 The facts of the main proceedings are that Mr Hendrix was employed from 1 February 1994 in a DIY retail store in the Netherlands. On 1 June 1999 Mr Hendrix moved to Belgium but continued to work in the Netherlands, initially in the same store, where he received a wage which was lower than the statutory minimum wage. That wage was supplemented by the Wajong benefit. When the UWV, by decision of 28 June 1999, suspended payment of the benefits under the Wajong as from 1 July 1999 and his employer refused to increase his wage, that employment was terminated. However, from 5 July 1999 onwards, Mr Hendrix was employed in another DIY retail store where he was paid the statutory minimum wage. In 2001 Mr Hendrix took up residence again in the Netherlands.

46 The situation at issue in the main proceedings is therefore that of a person who, while maintaining paid employment in his State of origin, transferred his residence to another Member State, and then found other employment in his State of origin. The fact that Mr Hendrix, after taking up residence in Belgium, continued to work in the Netherlands and then changed employer in that Member State gives him the status of a migrant worker and brings him, throughout the period at issue in the main proceedings, that is from June 1999 to 2001, within the scope of Community law and, in particular, within the scope of its provisions relating to freedom of movement for workers (Case C-152/03 *Ritter-Coulais* [2006] ECR I-1711, paragraphs 31 and 32, and Case C-212/05 *Hartmann* [2007] ECR I-6303, paragraph 17).

47 Under Article 7 of Regulation No 1612/68, a migrant worker is to enjoy the same social advantages as those which are made available to national workers. In accordance with settled case-law, the concept of worker referred to by that provision covers frontier workers who have the same entitlement to rely on it as any other worker targeted by that provision (see, to that effect, *Meints*, paragraph 50, Case C-337/97 *Meeusen* [1999] ECR I-3289, paragraph 21, and *Hartmann*, paragraph 24).

48 As to the concept of social advantage, referred to in Article 7(2) of Regulation No 1612/68, this term covers all the advantages which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their status as workers or by virtue of the mere fact of their ordinary residence on the national territory, and the extension of which to migrant workers therefore seems likely to facilitate their mobility within the Community (Case 249/83 *Hoeckx* [1985] ECR 973, paragraph 20, and Case C-85/96 *Martínez Sala* [1998] ECR I-2691, paragraph 25).

49 The benefit granted under the Wajong is an advantage which is granted to workers who, because of an illness or disability, are not capable of earning through their work what a person in good health and with the same level of training and experience ordinarily earns through his work. As the referring court considers, the the benefit in question is therefore a social advantage within the meaning of Article 7(2) of Regulation No 1612/68.

50 The Court has held that a Member State may not make payment of a social advantage within the meaning of Article 7 of Regulation No 1612/68 dependent on the condition that recipients are resident in the national territory of that Member State (*Meints*, paragraph 51, and *Meeusen*, paragraph 21).

51 It is true that the benefit under the Wajong is one of the special non-contributory benefits referred to in the provisions of Article 4(2a) in conjunction with Article 10a of Regulation No 1408/71, receipt of which can lawfully be reserved to persons who are resident in the territory of the Member State whose legislation provides for such a benefit, and that Article 42(2) of Regulation No 1612/68 provides that it 'shall not affect measures taken in accordance with Article 51 of the Treaty' (now, after amendment, Article 42 EC), which applies to a coordinating regulation such as Regulation No 1408/71.

52 However, as the Court has consistently held, the provisions of Regulation No 1408/71 enacted to give effect to Article 42 EC must be interpreted in the light of the objective of that article, which is to contribute to the establishment of the greatest possible freedom of movement for migrant workers (Case C-215/99 *Jauch* [2001] ECR I-1901, paragraph 20).

53 On that point, Article 7(2) of Regulation No 1612/68 is the particular expression, in the specific area of the grant of social advantages, of the principle of equal treatment enshrined in Article 39(2) EC, and must be accorded the same interpretation as Article 39(2) EC (see the judgment of 23 February 2006 in Case C-205/04 *Commission* v *Spain*, not published in the ECR, paragraph 15).

54 It follows that the condition of residence attached to receipt of the benefit under the Wajong can be put forward against a person in the situation of Mr Hendrix only if it is objectively justified and proportionate to the objective pursued.

55 As the Court held in paragraph 33 of *Kersbergen-Lap and Dams-Schipper*, the Wajong benefit is closely linked to the socio-economic situation of the Member State concerned, since it is based on the minimum wage and standard of living in the

Netherlands. Further, that benefit is one of the special non-contributory benefits referred to in Article 4(2a) in conjunction with Article 10a of Regulation No 1408/71, which the persons to whom that regulation applies receive exclusively within the territory of the Member State in which they reside and in accordance with the legislation of that State. It follows that the condition of residence as such, laid down in the national legislation, is objectively justified.

56 It is also necessary that the application of such a condition does not entail an infringement of the rights which a person in the situation of Mr Hendrix derives from freedom of movement for workers which goes beyond what is required to achieve the legitimate objective pursued by the national legislation.

57 From this point of view, it must be observed that the national legislation, as stated above in paragraph 15, expressly provides that the condition of residence may be waived when the condition leads to an 'unacceptable degree of unfairness'. In accordance with settled case-law, it is the responsibility of national courts to interpret, so far as possible, national law in conformity with the requirements of Community law (Case C-106/89 *Marleasing* [1990] ECR I-4135, paragraph 8, and Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835, paragraph 113). The referring court must therefore be satisfied, in the circumstances of this particular case, that the requirement of a condition of residence on national territory does not lead to such unfairness, taking into account the fact that Mr Hendrix has exercised his right of freedom of movement as a worker and that he has maintained economic and social links to the Netherlands.

58 In light of the foregoing, the answer to be given to the referring court must be that Article 39 EC and Article 7 of Regulation No 1612/68 must be interpreted as not precluding national legislation which applies Article 4(2a) and Article 10a of Regulation No 1408/71 and provides that a special non-contributory benefit listed in Annex IIa to that regulation may be granted only to persons who are resident in the national territory. However, implementation of that legislation must not entail an infringement of the rights of a person in a situation such as that of the applicant in

the main proceedings which goes beyond what is required to achieve the legitimate objective pursued by the national legislation. It is for the national court, which must, so far as possible, interpret the national legislation in conformity with Community law, to take account, in particular, of the fact that the worker in question has maintained all of his economic and social links to the Member State of origin.

The fourth question

59 In this question, the referring court seeks to know whether the rules which relate, inter alia, to European citizenship are such as to call into question the rule by virtue of which a special non-contributory benefit such as that provided under the Wajong is not exportable.

60 As has been stated in the course of answering the preceding questions, a national of a Member State in the situation of Mr Hendrix falls within the scope of the provisions of the Treaty on freedom of movement for workers.

61 According to settled case-law, Article 18 EC, which sets out generally the right of every citizen of the Union to move and reside freely within the territory of the Member States, finds specific expression in Article 39 EC in relation to freedom of movement for workers (see Case C-100/01 *Oteiza Olazabal* [2002] ECR I-10981, paragraph 26, and Case C-392/05 *Alevizos* [2007] ECR I-3505, paragraph 66).

62 Since the case in the main proceedings falls within the scope of Article 39 EC, it is not necessary to rule on the interpretation of Article 18 EC (see, to that effect, *Oteiza Olazabal*, paragraph 26, and *Alevizos*, paragraph 80), and there is, therefore, no need to answer the fourth question.

Costs

63 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **A benefit such as that provided under the Law on provision of incapacity benefit to disabled young people (Wet arbeidsongeschiktheidsvoorziening jonggehandicapten) of 24 April 1997 must be regarded as a special non-contributory benefit within the meaning of Article 4(2a) of Council Regulation (EEC) 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, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 1223/98 of 4 June 1998, with the result that only the coordinating provision in Article 10a of that regulation must be applied to persons who are in the situation of the applicant in the main proceedings and that payment of that benefit may validly be reserved to persons who reside on the territory of the Member State which provides**

the benefit. The fact that the person concerned previously received a benefit for disabled young people which was exportable is of no relevance to the application of those provisions.

2. **Article 39 EC and Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community must be interpreted as not precluding national legislation which applies Article 4(2a) and Article 10a of Regulation No 1408/71, as amended and updated by Regulation No 118/97, as amended by Regulation No 1223/98, and provides that a special non-contributory benefit listed in Annex IIa to Regulation No 1408/71 may be granted only to persons who are resident in the national territory. However, implementation of that legislation must not entail an infringement of the rights of a person in a situation such as that of the applicant in the main proceedings which goes beyond what is required to achieve the legitimate objective pursued by the national legislation. It is for the national court, which must, so far as possible, interpret the national legislation in conformity with Community law, to take account, in particular, of the fact that the worker in question has maintained all of his economic and social links to the Member State of origin.**

[Signatures]