OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 1 December 1988 *

Mr President,
Members of the Court,

A — Facts

1. The case in which I am giving my Opinion today has been referred to the Court by the French Cour de cassation for a preliminary ruling. To be more specific, it is a second reference for a preliminary ruling in a dispute between an Italian migrant worker, Mr Pinna, the plaintiff, and the Caisse d'allocations familiales de la Savoie, the defendant.

2. The plaintiff is claiming family allowances in respect of his two children Sandro and Rosetta. He was refused these allowances in respect of certain periods during which his children were staying with their mother in Italy. The refusal to pay the benefits appeared to be based on Article 73(2) of Regulation No 1408/71,[1] which reads as follows:

'An employed person subject to French legislation shall be entitled, in respect of members of his family residing in the territory of a Member State other than France, to the family allowances provided for by the legislation of the Member State in whose territory those members of the family reside; the employed person must satisfy the conditions regarding the employment in which French legislation bases entitlement to such benefits.'

3. In the first reference for a preliminary ruling the Court of Justice was asked whether this provision was valid. In its judgment of 15 January 1986[2] the Court ruled as follows:

'(1) Article 73(2) of Regulation No 1408/71 is invalid in so far as it precludes the award to employed persons subject to French legislation of French family benefits for members of their families residing in the territory of another Member State.

(2) Except as regards employed persons who have already brought legal proceedings or made an equivalent claim prior to the date of this judgment, the aforesaid invalidity of Article 73(2) of Regulation No 1408/71 cannot be relied on in order to support claims to benefits for periods prior to that date.'

4. In these proceedings the question concerns the content and scope of the

* Original language: German.

1 — 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, Official Journal, English Special Edition 1971 (2), p. 416 as amended by Council Regulation (EEC) No 2201/83 of 2 June 1983, Official Journal L 230, 23.8.1983, p. 6.

2 — Judgment of 15 January 1986 in Case 41/84 *Pinna* v *Caisse d'allocations familiales de la Savoie* [1986] ECR 1 *et seq.*

judgment and the rules which are now applicable.

5. The court making the reference has referred the following questions to the Court for a preliminary ruling:

'(1) Does the fact that Article 73(2) of Regulation No 1408/71 has been declared invalid mean that the system for the payment of family benefits which is defined in Article 73(1) of that regulation has become of general application or, to the contrary, that new rules must be adopted under the procedure laid down in Article 51 of the Treaty of Rome?

(2) In the latter case, what is the system applicable during the transitional period to migrant workers subject to French legislation?'

6. The national court takes the view, on the one hand, that it is the duty of the Council, acting unanimously on a proposal from the Commission, to adopt in the field of social security the measures necessary to create freedom of movement for workers and to this end introduce in particular a system which guarantees immigrant workers and members of their family entitlement to the same benefits as persons resident in the territories of the Member States. On the other hand, the Court has held that the criterion of the place of residence is not of such a nature as to secure the equal treatment laid down by Article 48 of the EEC Treaty and should therefore not be employed in this context. [3]

3 — Judgment in Case 41/84, paragraph 24.

7. In view of the fact that such rules can only be adopted unanimously by the Council acting on a proposal from the Commission, [4] uncertainty persists, according to the national court, in relation to the provisions which now must be applied to the granting of family benefits to migrant workers subject to French legislation and it is for this Court to clarify the point.

8. The observations of the parties submitted to the Court during the proceedings before it cover a broad spectrum. The view was put forward that the judgment in Case 41/84 gave rise to a gap in the law which can only be filled by legislative action on the part of the Council acting under Article 51 of the EEC Treaty. [5] Four alternatives have been proposed to fill the gap provisionally: first, the French Government considers in practice that the legal situation which pertained prior to the judgment in Case 41/84 is applicable. The responsible authorities have been requested to adhere provisionally to the original procedure. The French Government considers it possible to maintain the French legislation during the transitional period without any intervention in the form of Community rules. Another solution put forward involves applying Regulation No 3, so as to revive, as it were, the legal position which applied before Regulation No 1408/71 entered into force. Finally, the Commission takes the view that, at least transitionally, Article 73(1) of Regulation No 1408/71 must be applied. Furthermore, several parties put forward the view that Article 73(1) is now of general application without any specific need for the adoption of a legal rule which would fill the gap.

4 — The documents before the Court reveal that the Commission did not submit such a proposal until 2 February 1988

5 — See the observations of the defendant in the main proceedings and of the French Government

9. Reference is made to the Report for the Hearing for particulars of the facts and arguments of the parties.

B — Law

10. The fact that a reference for a preliminary ruling has already been made to the Court in the same action does not represent a bar to the admissibility of these proceedings. At an early stage the Court of Justice decided that although an interpetation given by the Court of Justice binds the national court in question it is for the latter to decide whether it is sufficiently enlightened by the preliminary ruling given or whether it is necessary to make a further reference to the Court. [6]

11. The questions referred to this Court for a preliminary ruling ask expressly whether, following the declaration that Article 73(2) of Regulation No 1408/71 is invalid, the system of payment laid down in Article 73(1) must be applied or whether the Council is obliged to adopt new provisions. Only in the latter case is the question concerning the transitional period raised. However, in the discussion about the result of the Court's judgment doubts were raised as to whether the Court has jurisdiction to determine the rules applicable since this would entail the assumption of law-making powers which are not available to the Court as a judicial institution. It is instead for the legislative institutions to adopt the measures called for as a result of the judgment.

12. In the final analysis this dispute is thus located at the junction of the application of law, interpretation, judicial development of the law and law-making. In the specific case before us there can be no question of delimiting in the abstract the boundaries of the Court's jurisdiction. It is, none the less, essential that the Court's power to give a binding answer to the preliminary questions be stated in positive terms. Consequently, the problem boils down to the question whether, and to what extent, the determination of the content of the applicable legal rules, which the Court is asked to provide, is still interpretation, and therefore application, of the law or whether a law-making act is required, the adoption of which lies outside the Court's jurisdiction.

13. At the outset of my examination certain general remarks on the obligations flowing from a judgment on a reference for a preliminary ruling are called for. In such a case the EEC Treaty provides no express rule, unlike Article 176 of the Treaty which, according to its wording and system, applies to actions for annulment and actions for failure to act. The first paragraph of the provision provides that the institution whose act has been declared void or whose failure to act has been declared contrary to the Treaty is to be required to take the necessary measures to comply with the judgment of the Court of Justice.

14. This provision is one which may be applied by analogy, in so far as a similar legal position is brought about by a declaration that a Community act is invalid and there is a need to take measures. The Court has moreover already drawn this conclusion as regards preliminary ruling proceedings. It has held on numerous occasions, and in the same terms, that, although the Treaty does not expressly

6 — Judgment of 24 June 1969 in Case 29/68 *Milch-, Fett- und Eierkontor GmbH* v *Hauptzollamt Saarbrücken* [1969] ECR 165, paragraph 3 of the judgment; also judgment of 13 May 1981 in Case 66/80 *SpA International Chemical Corporation* v *Amministrazione delle finanze dello Stato* [1981] ECR 1191, paragraph 14 of the judgment.

specify the consequences which flow from a declaration of invalidity following a reference for a preliminary ruling, Articles 174 and 176 do however contain clear rules as to the effects of the annulment of a regulation in the context of a direct action. In numerous cases concerning a reference for a preliminary ruling the Court has accordingly based itself on the Community institutions' obligations to act which result from a judgment.[7]

15. The parallel is all the more legitimate since in a judgment following a reference for a preliminary ruling the Court may prescribe the effects of a judgment annulling an act. Although a preliminary ruling is addressed to the court which made the reference, other courts must also take cognizance of the invalidity of an act once this has been declared. Such a declaration, according to the case-law of the Court, is 'sufficient reason to regard the disputed act of a Community institution as invalid.'[8]

16. Such a harmonizing approach is required because of the principle of the unity of the legal order. That becomes even clearer in the light of the Court's most recent decisions on its exclusive jurisdiction to declare invalid acts of Community institutions.[9] If it is true that, so far as the review of the legality of acts of the institutions is concerned, the remedies in a direct action and in a reference for a preliminary ruling fulfil complementary functions, then nothing fundamentally different can apply to the consequences of that review.

17. The fact that Article 176 of the EEC Treaty is potentially applicable as the consequence of a preliminary ruling does not however give any indication as to whether this provision needs to be invoked in the case in point. Still less is there an obligation to apply the provision irrespective of the circumstances of the case. The institutions' obligation to act can only become of relevance where the Court's power to determine the applicable law ends, thereby giving rise to a lacuna which must be filled.

18. As regards next the Court's powers to define or determine the regularity of a legal position, these, as appears moveover from its case-law, are very broad. In Case 300/86,[10] for example, the Court expressly determined the applicable transitional regime, which consisted in the continuation of the application of the legal situation which had been declared to be invalid and its extension to groups which were the subject of different treatment.

19. I must now examine the question whether the judgment in Case 41/84 caused a legal vacuum which must be filled by

7 — Judgment of 19 October 1988 in Joined Cases 117/76 and 16/77 *Albert Ruckdeschel & Co. and Hansa-Lagerhaus Ströh & Co.* v *Hauptzollamt Hamburg-St. Annen*; *Diamalt AG* v *Hauptzollamt Itzehoe* [1977] ECR 1753; judgment of 19 October 1977 in Joined Cases 124/76 and 20/77 *SA Moulins et huileries de Pont-à-Mousson* v *Office national interprofessionnel des céréales*; *Société coopérative 'providence agricole de la Champagne'* v *Office national interprofessionnel des céréales* [1977] ECR 1795; judgment of 15 October 1980 in Case 4/79 *Société coopérative 'providence agricole de la Champagne'* v *Office national interprofessionnel des céréales (ONIC)* [1980] ECR 2823, paragraphs 44 and 46; judgment of 15 October 1980 in Case 109/79 *SARL Maiseries de Beauce* v *Office national interprofessionnel des céréales (ONIC)* [1980] ECR 2883, paragraphs 44 and 46; judgment of 15 October 1980 in Case 145/79 *SA Roquette Frères* v *French Republic* [1980] ECR 2917, paragraphs 51 and 53; judgment of 13 May 1981 in Case 66/80 *SpA International Chemical Corporation* v *Amministrazione delle finanze dello Stato* [1981] ECR 1191, paragraph 16.

8 — Judgment in Case 66/80, *supra*, paragraph 13; judgment in Case 112/83 *Société des produits de maïs SA* v *Administration des douanes et droits indirects* [1985] ECR 719, paragraph 16.

9 — Judgment of 22 October 1987 in Case 314/85 *Foto-Frost, Ammersbek* v *Hauptzollamt Lübeck-Ost* [1987] ECR 4199.

10 — Judgment of 29 June 1988 in Case 300/86 *Luc Van Landschoot* v *M. V. Mera* [1988] ECR 3443, paragraph 3 of the operative part of the judgment.

judicial creativity or whether the applicable rules may be deduced from an intelligent appraisal of that judgment.

20. In the first paragraph of the operative part of the judgment in Case 41/84 the Court ruled as follows: 'Article 73(2) of Regulation No 1408/71 is invalid in so far as it precludes the award to employed persons subject to French legislation of French family benefits for members of their family residing in the territory of another Member State'. This formulation involves a substantive delimitation of the invalid part of the provision. Similarly, the grounds of the judgment admit of no other conclusion.[11] In this respect it should be noted that the Court specifically did not choose a simple and shorter formula such as 'Article 73(2) of Regulation No 1408/71 is invalid'. Nevertheless, paragraph 2 of the operative part of the judgment, which limits the effects of the judgment with respect to the past, indicates that the Court was basing itself on the premise that Article 73(2) was invalid in its entirety. Paragraph 2 reads as follows: 'Except as regards employed persons who have already brought legal proceedings or made an equivalent claim prior to the date of this judgment, the aforesaid invalidity of Article 73(2) of Regulation No 1408/71 cannot be relied on in order to support claims . . . '

21. If it is assumed that Article 73(2) of Regulation No 1408/71 constitutes an exception to the general rule set out in Article 73(1) of Regulation No 1408/71, then the theory of norms suggests that the basic rule should now be generally applicable. However, two objections may be raised against this. In the first place, paragraphs 1 and 2 of Article 73 of the regulation appear to cover different situations *ratione materiae* since Article 73(1) refers to 'family benefits' whereas Article 73(2) refers to 'family allowances'. Secondly, the exception to the rule in Article 73(1), formulated as 'a Member State other than France', still appears to demand recognition of its validity.

22. (a) I turn now to the first argument. Article 1 of Regulation No 1408/71 contains a legal definition of both the concept of 'family benefits' and the expression 'family allowances'. Article 1(u)(i) and (ii) read as follows: '(i) "family benefits" means all benefits in kind or in cash intended to meet family expenses under the legislation provided for in Article 4(1)(h), excluding the special childbirth allowances mentioned in Annex II'; '(ii) "family allowances" means periodical cash benefits granted exclusively by reference to the number and, where appropriate, the age of members of the family;'.

23. The abovementioned Article 4(1)(h) consists of a single term, namely the words 'family benefits', and contains no limitation since it simply defines family benefits as a type of benefit covered by the regulation. Similarly, Annex I, in relation to 'family allowances' as *periodical* cash benefits, entails no limitation of the matters concerned. Consequently, Article 1(u)(i) may be read as follows: 'Family benefits [are] all benefits in kind or in cash intended to meet family expenses'.

11 — Judgment in Case 41/84, *supra*, p. 25, paragraphs 21 to 25.

24. It thus becomes clear that family allowances constitute only *one* category of family benefits. Thus, 'family benefits' and 'family allowances' are not mutually exclusive but have the relationship of principal concept and particular application of that concept. It follows from this, however, that the relationship *ratione materiae* between Article 73(1) and Article 73(2) of the regulation is that of general rule and specific rule.

25. The originally valid wording of Article 73(2) of Regulation No 1408/71 contained two types of exception of a different nature to the basic rule contained in Article 73(1) of Regulation No 1408/71; these are, first, the restriction, as regards the matters covered, to family allowances and, secondly, the territorial restriction to a worker who is subject to French legislation but the members of whose family reside in the territory of a Member State other than France. Accordingly, Article 73(2) represents an exception to the rule contained in Article 73(1). If those two exceptions cease to exist, as the Court has ruled, then no objection can be made to the general validity of the rule contained in Article 73(1).

26. (b) Now, as I have already indicated, I will examine the argument based on the wording of Article 73(1) of the regulation.

27. It is correct that the Court did not expressly declare the phrase 'a Member State other than France' to be invalid. Prima facie, this implies that it continues to apply. As will be shown, however, this interpretation is not consistent with the operative part of the judgment or the scheme of the part of Article 73 which is still valid.

28. A formal argument against the hypothesis that the full wording of Article 73(1) of Regulation No 1408/71 continues to apply is supplied by the fact that the Court was not asked about the validity of that paragraph. However, the following considerations would seem to bear rather on the substantive content of the judgment. As has been shown above, in its judgment in Case 41/84 the Court declared the scope of application *ratione materiae* of Article 73(2) of Regulation No 1408/71 to be invalid. As may be gathered from the grounds of the decision, it was precisely the dualism of the system which constituted a criterion for the invalidity of the provision, along with the breach of the principle of equal treatment. The offending dualism can be seen in the fact that in Article 73(1) the principle of the State of employment was chosen as the applicable test whereas the criterion of the State of residence became operative solely as regards the exceptions in Article 73(2). If the exception formulated in Article 73(1) were allowed to subsist, the result would be the presence, as in the past, of a dualist system, the specific form of which, however, could no longer be deduced from the wording of the regulation. Inasmuch as the phrase at issue contained in paragraph 1 of Article 73 constitutes no more than a reference to the exceptions in the invalid paragraph 2, it is also covered by the operative part of the judgment in Case 41/84.

29. Such a teleological interpetation of judgments of the Court is entirely appropriate and even habitual. For example, in Case 130/79,[12] which also concerns the

12 — Judgment of 12 June 1980 in Case 130/79 *Express Dairy Foods Limited* v *Intervention Board for Agricultural Produce* [1980] ECR 1887

consequences of a declaration that a Community act was invalid, the Court first considered the grounds leading to invalidity and then declared that other regulations whose content was identical to the invalid provision were also invalid. In its judgment in Case 33/84 [13] the Court even accepted that a regulation had been implicitly declared invalid. In that case too regulations connected in substance with the provision declared to be invalid were, having regard to the sense and purpose of a previous judgment, also regarded as invalid.

30. There could be grounds for holding a view other than that the operative part of the judgment in Case 41/84 contains an implied declaration of invalidity only if, from the outset, Article 73(1) could not be regarded as the basic rule for the exception contained in paragraph 2. In that case, the only possible construction would be as follows: Article 73(1) lays down a coordinating rule for family benefits which applies to all the Member States *except France.* Solely as regards the limited field of family allowances was a constitutive rule laid down for France in paragraph 2.

31. For several reasons, however, this proposition is not convincing. First, there is no discernible objective ground for wholly excluding France from the coordination of family benefits at the Community level. Apart from that, even if paragraph 2 were valid, there would still have been a gap in the law. Family benefits other than family allowances would have been left entirely out of account. It cannot seriously be imagined that the Community legislature wished to create such a lacuna. Even a gap in the rules which had arisen inadvertently would have had to be filled in a manner consistent with the system by means of judicial development of the law.

32. Precisely because Regulation No 1408/71 is a coordinating regulation which does not independently create individual entitlements but rather determines the connecting factor for the purposes of the applicable legal system, it makes no sense to exclude French family benefits from the scope of the legislation. Such an exception would *per se* be incompatible with the Community-law principle of equal treatment.

33. The theory which the plaintiff's representative expounded at the hearing regarding the interpretation of the judgment in Case 41/84 does appear to be based on the hypothesis which has just been rejected. Although in his examination he singled out individual passages of the judgment and the text of the regulation and related them to one another, he disregarded the terms in which the Court in its judgment chose to express itself. For in its judgment in Case 41/84 the Court plainly proceeded on the basis that the rule for determining the connecting factor in the case of family benefits was of general application and applied also to France. In paragraph 25 it is stated that Article 73(2) of Regulation No 1408/71 is invalid in so far as it precludes the award to workers subject to French legislation of *French family benefits* for members of their family residing in the territory of another Member State. The same formulation is repeated in the first paragraph of the operative part. It only makes sense on the assumption that, in principle, workers subject to French legis-

13 — Judgment of 22 May 1985 in Case 33/84 *SpA Fragd* v *Amministrazione delle finanze dello Stato* [1985] ECR 1605, paragraph 13.

lation receive French family benefits and only the provision relating to family allowances which makes an exception to that rule is invalid.

34. The basic rule in Article 73(1), which is thus applicable, also corresponds to the need, stressed by the Court, for an effective coordinating rule. It is consistent with the Community-law principle of equal treatment which underlies Articles 7 and 48 of the EEC Treaty. As regards the persons and matters covered by Regulation No 1408/71, the Community-law prohibition of discrimination is specifically repeated in Article 3 of the regulation which rules as follows: 'Persons resident in the territory of one of the Member States in which this regulation applies should be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as nationals of that State'.

35. To maintain in force the full wording of Article 73(1), with the legal consequences which I have already outlined, would also be contrary to Article 51(b) of the EEC Treaty which guarantees to migrant workers and their dependants the payment of benefits (of one Member State) to persons resident in the territories of (the other) Member States.

36. In contrast, as amended, Article 73(1) would be consistent not only with the principles already set out in the EEC Treaty but also with the general provisions of Regulation No 1408/71. In addition to the principle of equal treatment set out in Article 3, Article 13 would also be complied with. According to that article, a worker to whom the regulation applies is to be subject to the legislation of a *single* Member State only [14] and that as a rule that State will be the State in which the person is employed. [15]

37. The few departures from the principle of the State of employment which are laid down in the regulation itself such as, for example, those relating to pension insurance or frontier workers, do not provide any ground for calling in question the rule which is here regarded as applicable. On the contrary, apart from the clear wording of Article 13, the *ratio* of the regulation militates in favour of the solution which has been proposed. The person entitled to family benefits is the worker who submits his claims to the competent institution, and does so in the State in which, moreover, he pays taxes and social security contributions. Exceptions, where the principle of the State of employment is replaced by that of the State of residence, are, on the other hand, often inspired by the fact that it is the institution to which contributions were paid to which as a rule claims must be addressed. In this case there is no reason for such a derogation.

38. Now that the general application of Article 73(1) has been identified as the solution which results from the judgment in Case 41/84, it remains to discuss the objection raised by the French Government and the defendant that to generalize the system laid down in Article 73(1) violates the requirement of unanimity set out in Article 51 of the EEC Treaty.

39. That view cannot be accepted. By virtue of Article 4 of the EEC Treaty the tasks entrusted by the Community are to be

14 — See Article 13(1) of the regulation

15 — See Article 13(2)(a) of the regulation

carried out by the four institutions named therein; in carrying out its tasks each institution acts within the limits of the powers conferred upon it by the Treaty. Under the first paragraph of Article 177 the Court is assigned the task of interpreting the Treaty by way of preliminary ruling.

40. In its decision of 15 January 1986 the Court did no more than that:

by declaring that 'the criterion [the State of residence of the members of the family contained in Article 73(2)] is not of such a nature as to secure the equal treatment laid down by Article 48 of the Treaty . . . ', it interpreted the Treaty;

by declaring that Article 73(2) of Regulation No 1408/71 'is invalid in so far as . . . ', it also gave a ruling concerning the validity of a act of an institution.

41. Finally, when the Court declares a regulation void it may prescribe the effects which are to be regarded as continuing to apply. That applies by analogy to judgments in proceedings under Article 177.[16] The Court is not doing anything else when it designates the rule in Article 73(1) of the regulation as the rule which continues to apply after paragraph 2 has been declared invalid. The suggestion that the Court is thereby exceeding its jurisdiction must be rejected as unfounded.

16 — Judgment in Case 4/79, *supra*, paragraphs 44 and 46; judgment in Case 109/79, *supra*, paragraphs 44 and 46; judgment in Case 145/79, *supra*, paragraphs 51 and 53.

42. Considerations drawn from the theory of law and jurisprudence could also be used to arrive at the same result. Of necessity these would be tinged with personal views. For that reason I do not consider it necessary to put these considerations before the Court. The wording of the Treaty, which is binding on us all, provides a sufficient basis.

43. Of course — and here I am only stating the obvious — generalizing the application of Article 73(1) in no way detracts from the power of the Council and Commission to change the law. There is therefore no obligation to retain the principle in Article 73(1). The Council may perfectly well seek another solution and, as we have heard, that is what it appears to be doing. One thing it may not do: it may not apply the principle of Article 73(2) since that principle is not of such a nature as to secure the equal treatment prescribed by the Treaty.

44. Finally, I should comment on Articles 60 and 220 of the Acts of Accession of Spain and Portugal which were introduced into the discussion although, to my mind, these provisions have no direct bearing to the questions which have to be answered here. Both articles contain, for Spain and Portugal respectively, a reference to Article 73 of Regulation No 1408/71. In particular, the reference *inter alia* to Article 73(2) and the stipulation of application by analogy establishes a transitional system which is valid until the end of 1988. Unlike Article 73 of the regulation, the provisions of the Acts of Accession are not, moreover, subject to review by the Court as regards their validity, and are not, in the context of such a review, subject to examination against the

principles of the EEC Treaty since they, like the Treaty, constitute primary Community law. [17]

45. In so far as Article 60 and Article 220 of the Acts of Accession refer to Article 99 of Regulation No 1408/71 for the purpose of bringing into application a uniform system, to be introduced under this provision also for the Iberian Member States, an act of the Community legislative institutions would appear to be necessary. The system of Article 73(1) which in the *Pinna* case has been declared to be of general application owes its applicability to a procedure of a lower order than that of the Acts of Accession and does not correspond to the method for establishing a 'uniform solution' provided for in the Acts of Accession themselves.

46. The above comments are however doubly academic, first because Articles 60 and 220 of the Acts of Accession have no relevance to the application of the law in the *Pinna* case and secondly because the provisions themselves provide that the transitional system is to expire at the end of 1988.

47. The costs incurred by the French, Italian, Portuguese and Greek Governments and by the Commission are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings before the national court, the decision on costs is a matter for that court.

C — Conclusion

48. In the light of the foregoing I propose that the Court should answer the question referred to it as follows:

'Following declaration in the judgment in Case 41/84 that Article 73(2) of Regulation No 1408/71 is invalid, the general system laid down in Article 73(1) of Regulation No 1408/71 is also applicable to France. The system applies without any limitation in so far as the Community legislative institutions do not make use of their power of amendment. Accordingly, Article 73(1) and (2) should be read as follows:

A worker subject to the legislation of a Member State is entitled to the family benefits provided for by the legislation of that Member State for members of his family residing in the territory of another Member State as though they were residing in the territory of the first State.'

17 — Judgment of 28 April 1988 in Cases 31 and 35/86 *SA Laisa and Others* v *Council* [1988] ECR 2285