OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT
delivered on 6 June 1985 *

Mr President,
Members of the Court,

I think that I can give my opinion in this case without delay.

For that purpose I wish first to refer to the contents of the Report for the Hearing. In fact I have nothing to add to the summary of the facts, the course of the procedure and the written observations set out therein.

I — The facts and course of the procedure

Calogero Scaletta, an Italian national formerly resident in Belgium, was recognized by the Conseil Medicale de l'Invalidité [Medical Invalidity Board] as being unfit for work until 31 October 1980. On 16 June 1980, he returned to Italy to take up permanent residence there. He did not obtain the prior authorization of the medical officer of the Union Nationale des Fédérations Mutualistes Neutres de Belgique [National Union of Neutral Friendly Societies of Belgium, hereinafter referred to as the 'National Union'], the institution responsible for paying his invalidity benefit or even notify the National Union of his change of address.

On 4 September 1980 the National Union was notified by the Istituto Nazionale della Previdenza Sociale [National Social Welfare Institution], in Turin, Italy, of Mr Scaletta's change of residence.

By a letter of 23 October 1980 the Fédération Mutualiste Neutre, Mons, acting on behalf of the National Union, informed Mr Scaletta that, because he had failed to obtain the authorization of the competent Belgian institution to transfer his residence to the territory of another Member State, as he was required to do by Article 22 (1) (b) of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Communities, he would receive no invalidity benefits in respect of the period from 16 June to 4 September 1980, during which time the National Union had been unaware that he had transferred his residence to Italy.

During that period it had in fact been impossible to pay invalidity benefit to Mr Scaletta, since the post office money orders normally used for that purpose had been returned to the sender because they had not been accepted by the addressee. The National Union's refusal to pay those benefits after it was apprised of Mr Scaletta's new address was also justified by Article 70 (1) of the Belgian Law of 9 August 1963 introducing and organizing a system of compulsory insurance against sickness and invalidity (Moniteur Belge of 1-2 November 1963), which provides as follows: 'The benefits provided for in this law shall not be awarded where the recipient is not actually in Belgian territory at the date at which he claims such benefits.'

* Translated from the Dutch.

On 28 November 1980 Mr Scaletta brought an application before the Tribunal du Travail [Labour Tribunal], Mons, to have that decision set aside. In a judgment dated 1 December 1983, the Tribunal du Travail dismissed the application on the basis of the fifth paragraph of Article 13 of the Royal Decree of 31 December 1963 laying down rules on the allowances payable in respect of compulsory insurance against sickness and invalidity (Moniteur Belge, 14 and 25 January 1964). That provision reads as follows: 'Without prejudice to the obligations laid down by law on obtaining prior authorization for the transfer of residence or domicile, a person entitled to benefits who wishes to transfer his residence to a foreign country while still incapacitated must inform the medical officer of that fact at least 15 days before leaving.' The Tribunal du Travail, Mons, also based its decision upon Articles 10 and 22 (1) (c) of Regulation No 1408/71.

On 25 January 1984 Mr Scaletta appealed against that decision. He claimed that it was wrongly based on Article 22 (1) of Regulation No. 1408/71, since that provision is to be found in Chapter I of Title III of the Regulation, entitled 'Sickness and Maternity', whereas at the time when he transferred his residence he was unfit to work. In addition, he claimed that the judgment of 1 December 1983 failed to take account of Article 10 (1) of Regulation No 1408/71, which provides that 'invalidity . . . cash benefits . . . shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated.' According to Mr Scaletta, that provision took precedence over Article 70 (1) of the Belgian Law of 9 August 1963, on which the National Union based the contested decision, and over the fifth paragraph of Article 13 of the Royal Decree of 31 December 1963, on which the Tribunal du Travail, Mons, relied in declaring the decision valid.

In a judgment of 2 November 1984 the Cour du Travail [Labour Court], Mons, decided first, in relation to Mr Scaletta's first claim, that Article 22 (1) of Regulation No. 1408/71 was not applicable in this case as it related only to sickness and maternity benefits. It added that Chapter II of Title III of that Regulation, on invalidity, did not contain any special rule on the transfer of residence.

In relation to Mr Scaletta's second claim the Cour du Travail, Mons, referred to Article 10 (1) of Regulation No 1408/71 and stated that it raised two questions concerning the interpretation of Article 59 of Regulation No. 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71 (Official Journal, English Special Edition, 1972 (I), p. 159), both of which might influence the decision to be given in the case. Article 59 provides that 'when a person entitled to benefit due under the legislation of one or more Member States transfers his residence from the territory of one state to that of another state, he shall notify this fact to the institution or institutions responsible for the payment of such benefits and to the paying body.'

Consequently the Cour du Travail, Mons, stayed the proceedings until the Court of Justice had given a preliminary ruling on the following questions:

'(1) How and within what period must the notification provided for in Article 59 of Regulation (EEC) No 574/72 of the Council be made?

(2) Can failure to make that notification or lateness in making it result in the withdrawal (if only temporarily) of the right to benefits, in particular when the paying body is entitled to verify that the conditions under which benefits are payable continue to exist?'

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community, written observations were submitted by Calogero Scaletta, the appellant in the main action, and by the Commission of the European Communities.

II — Written observations lodged pursuant to Article 20 of the Statute of the Court of Justice of the EEC

In his observations, *Mr Scaletta* refers first of all to the judgment of 25 June 1975 in Case 17/75 (*Anselmetti* v *Caisse de Compensation des Allocations Familiales*, [1975] ECR 781), and claims that cash benefits paid as invalidity benefits under the Belgian sickness and invalidity insurance schemeare covered by Article 10 (1) of Regulation No 1408/71. Consequently, in this case, Mr Scaletta's place of residence is not capable of affecting his entitlement under Belgian legislation to invalidity cash benefits.

Secondly, Mr Scaletta points out that the Court decided in its judgment of 12 November 1974 in Case 35/74 (*Mutualités Chrétiennes* v *Rzepa*, [1974] ECR 1241) that because the Community rules on social security rest 'on mere coordination of national legislation in the field of social security and [do] not affect the rules on limitation laid down by such legislation, it was not absolutely necessary that these regulations should lay down rules either on limitation or on time-limits'. Mr Scaletta considers that that principle is relevant for the interpretation of Article 59 of Regulation No 574/72, since in his view this case concerns merely the late recovery of invalidity benefits which could not for practical reasons be paid in the normal way.

In Mr Scaletta's view Article 59 of Regulation No 574/82 must apply in conjunction with the limitation rules laid down under national law. In that connection he refers to Article 106 (1) 1° of the Belgian Law of 9 August 1963, which provides that 'no action shall be brought for payment of insurance benefits after the expiration of two years from the end of the month to which such benefits relate'.

Mr Scaletta concludes from that that mere failure to make the notification provided for in Article 59 of Regulation No. 574/72 or lateness in making such notification cannot lead to the refusal of benefits where entitlement is not yet barred under the national law applicable at the time when the paying body is apprised of the transfer of residence of the person concerned. He therefore proposes that the Court should reply to the questions submitted to it for a preliminary ruling by the Cour du Travail, Mons as follows:

'Since Article 59 of Regulation No 574/72 is connected with and supplements the national law on social security, failure to notify the transfer of residence or lateness in making such notification cannot lead to the refusal of benefits if entitlement to such benefits is not barred under the provisions of national law.'

The *Commission of the European Communities* observes in its observations that Article 59 of Regulation No 574/72 is silent as to the form of notification of the transfer

of residence of a person in receipt of social security benefits. In its view it therefore appears that valid notification may be made either orally or in writing, by the recipient of benefits himself or by a person or institution acting on his behalf. In the latter case, it may be made by the social security institution in the new place of residence.

The Commission accepts that an institution notified of the transfer of residence orally or by someone other than the recipient claiming to act on his behalf will require written confirmation of that notification from the recipient himself. It is necessary to guard against abuse, since notification of the transfer of residence will have as a direct consequence a change in the way in which benefits are paid: following such notification, payments will no longer be made by the usual method (post office money order delivered to the old address or transfer to his bank account in the Member State of the paying body), but will take account of the fact that the person concerned has moved to another Member State (post office money order sent to his new address or transfer to a new bank account in that other Member State).

On that point, the Commission concludes that the letter dated 4 September 1980 sent to the Federation Mutualiste, Mons, by the Istituto Nazionale in Turin constitutes notification of the transfer of residence of Mr Scaletta within the meaning of Article 59 of Regulation No 574/72. That is not at issue here, because the dispute relates solely to the refusal of benefits for the period from 16 June to 4 September 1980.

Next, the Commission observes that Article 59 of Regulation No 574/72 is equally silent on the period of time within which notification of transfer of residence must be made. The Commission considers that, in the absence of a formal provision barring the right to benefit on the ground that notification of transfer of residence was made too late, it must be assumed that valid notification may be made at any time. The Commission adds that the recipient of benefits will in any event be inclined to notify the transfer of his residence to the paying body as soon as possible, so that outstanding payments and subsequent benefits may be sent to his new address.

The Commission considers that lateness in giving the notification provided for in Article 59 of Regulation No 574/72 cannot in itself result in permanent loss of entitlement to the benefits due for the period between the transfer of residence and the date on which notification was made.

The duty laid down in Article 59 of Regulation No 574/72 is not subject to any sanction, so that the principle that there should be no loss of entitlement in the absence of express statutory provision must apply. That interpretation of Article 59 of Regulation No 574/72 also accords with Article 10 (1) of Regulation No 1408/71 and with Article 51 of the EEC Treaty (judgment of 10 June 1982 in Case 92/81, *Camera* v *INALI*, [1982] ECR 2213).

On that ground the Commission considers that as soon as notification of transfer of residence — albeit very late — has been made, the benefits due for the period between transfer and notification — which had to be discontinued because the recipient's address was not known and he therefore could not be reached — must immediately be paid.

Lastly, the Commission considers whether that position applies when the paying body is entitled to verify that the conditions under which benefits are payable continue to exist. On that point the Commission

considers that, where the paying body is certain that the recipient no longer resides at his old address — because for example a post office money order or an invitation to attend a medical examination is returned on the ground that the person concerned no longer lives at that address — and that body is at the same time unaware of the recipient's new address, the payment of benefits may be suspended. If, on being notified of the recipient's new address, the paying body considers that the recipient has not since ceased to qualify for benefits, the latter is entitled to be paid the benefits due for the period when the paying body was unaware of his address. If, on the other hand, a check were to reveal that the conditions under which benefits were payable had ceased to be fulfilled on a date prior to notification of the transfer of residence, the person concerned would no longer be entitled to the benefit not paid.

In conclusion, the Commission proposes that the Court should reply to the questions submitted to it for a preliminary ruling by the Cour du Travail, Mons, as follows:

(1) (a) Article 59 of Regulation No 574/72 does not prescribe any condition as to the form which notification of transfer of residence should take. It may validly be made orally or in writing, by the recipient of benefits himself or his statutory or contractual representative, or by the social security institution in the new state of residence, acting in the name and with the agreement of the recipient.

(b) Such notification is not subject to any limitation period, at the end of which it becomes ineffective.

(2) Failure to make notification, or lateness in making it, cannot in itself entail absolute loss of entitlement to the benefit due for the period following the transfer of residence or between transfer of residence and the date on which notification was made.

(3) In the case in which benefits are paid by post office money order and payment has been suspended by the paying body on the ground that it was unaware of the recipient's new address, the benefits due for the period following the transfer of residence must be paid as soon as the notification referred to in Article 59 of Regulation No 574/72 is made, provided that the recipient has not ceased to qualify in the meantime, a matter which the competent institution may ascertain by means of an administrative check and medical examination in accordance with Article 51 of the aforesaid regulation.

(4) Where benefits are paid by banker's order, so that payment has not been suspended, and where the administrative check and medical examination subsequently effected at the new place of residence of the person concerned — notification having been made after some delay — show that he has in the meantime ceased to qualify for benefit, he may be required to repay the benefits received when he no longer qualified.

III — Conclusion

I consider that the view set out by the Commission in its written observations is persuasive and I am also in full agreement with its proposed replies to the questions put to the Court. I therefore propose that the Court should answer the questions in accordance with the Commission's proposals.