OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 6 June 1990 *

Mr President,
Members of the Court,

A — Facts

1. In the main proceedings underlying the reference to the Court of Justice made on 13 March 1989 by the Sozialgericht (Social Court), Frankfurt am Main, the parties are in dispute over the grant of family allowances (Kindergeld) by the defendant, the Bundesanstalt für Arbeit (Federal Institute for Employment). The plaintiff in the main proceedings, Mr Yáñez-Campoy, is a Spanish national, who resides in the Federal Republic of Germany and is in employment there. His children, Francisco José and Enrique, live in Spain.

2. The plaintiff claims payment of family allowances in the amount provided for under the German provisions in respect of the period from January 1986. He takes the view that under these provisions he is entitled to family allowances for both his children as if the children were resident in the Federal Republic, the State of employment. The Bundesanstalt für Arbeit considers, on the other hand, that in respect of the period up to 31 December 1988 the plaintiff is entitled merely to the — less favourable — entitlement under the German-Spanish Convention on Social Security of 4 December 1973. [1]

3. In the proceedings before the national court discussion essentially centred on the question whether Article 73(1) of Regulation (EEC) No 1408/71, [2] as it existed before its amendment by Council Regulation (EEC) No 3427/89, [3] was applicable to the plaintiff from 15 January 1986 onwards although the first subparagraph of Article 60(1) of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties [4] (hereinafter referred to as the 'Act of Accession') precluded such applicability prior to 31 December 1988 'until the entry into force of the uniform solution for all the Member States referred to in Article 99 of Regulation (EEC) No 1408/71'. Under the second subparagraph of Article 60(1) of the Act of Accession, Article 73(2) of Regulation No 1408/71 applied by analogy in the abovementioned period. In accordance with Article 60(2) of the Act of Accession, a series of bilateral agreements on social security remained applicable, including the German-Spanish Agreement of 4 December 1973 which has already been mentioned.

4. The plaintiff took the view that the judgment of the Court in *Pinna I* [5] had introduced the uniform solution mentioned

* Original language: German.

1 — *Federal German Gazette* (BGBl.) 1977 II, p. 687.

2 — Regulation (EEC) 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 Community, OJ, English Special Edition, (1971) II, p. 416, as subsequently amended (see Annex I to Council Regulation No 2001/83 of 2 June 1983, OJ 1983 L 230, p. 6).

3 — Council Regulation of 30 October 1989 amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community, and amending Regulation (EEC) No 574/72 on the implementation of Regulation (EEC) No 1408/71 (OJ 1989 L 331, p. 1).

4 — OJ 1985 L 302, p. 23.

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

in Article 60(1) of the Act of Accession as at 15 January 1986.

5. This is contested by the defendant who maintains that that judgment does not relate to employees from the newly acceded Member States, Spain and Portugal.

6. In its judgment in *Pinna I* the Court, in answer to a question referred to it for a preliminary ruling by the French Cour de cassation (Court of Cassation), held 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 family 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 for benefits prior to that date.'

7. Following that judgment, and in connection with the same appeal, the Court of Cassation once again stayed the proceedings and referred to the Court questions on the consequences of that ruling. Ruling on that reference, the Court, in its judgment in *Pinna II*,[6] held as follows:

'Until such time as the Council adopts new rules which are in conformity with Article 51 of the Treaty, the fact that Article 73(2) of Regulation No 1408/71 has been declared invalid means that the system for the payment of family benefits laid down in Article 73(1) of that regulation is of general application.'

8. By order of 13 March 1989, the Sozialgericht Frankfurt am Main decided to stay the proceedings until the Court of Justice had given a preliminary ruling under Article 177 of the EEC Treaty on the following question:

'Did the uniform solution for all the Member States referred to in Article 99 of Regulation (EEC) No 1408/71 enter into force in January 1986 and is Article 73(1) of Regulation (EEC) No 1408/71 consequently applicable from January 1986 to the children resident in Spain of Spanish workers employed in the Federal Republic of Germany?'

9. The national court would like to answer this question in the affirmative.

10. After the termination of the written procedure in the present case, the Council adopted Regulation No 3427/89. The wording of Article 73 of Regulation No 1408/71, as amended by that regulation, departs from the original text essentially by extending the provision to self-employed persons and, in particular, by no longer providing for a rule corresponding to that

6 — Judgment of 2 March 1989 in Case 359/87 *Pinna* v *Caisse d'allocations familiales de la Savoie* [1989] ECR 585.

laid down in Article 73(2) of the former version.

11. By virtue of Article 3 thereof, Regulation No 3427/89 applies with effect from 15 January 1986.

12. Reference is made to the Report for the Hearing for further factual details, the submissions of the parties to the proceedings, and the relevant legal provisions. In so far as it is necessary, I shall return to these matters in the context of my analysis.

B — Analysis

The consequences of the judgment in Pinna I

13. In my Opinion in Case 359/87 (*Pinna II*) I have already considered the question whether, on the basis of the judgment in *Pinna I*, the uniform solution within the meaning of Article 60(1) (and the parallel provision contained in Article 220(1)) of the Act of Accession has entered into force. It may be seen from paragraphs 44 and 45 of that Opinion, to which I here refer, that that question is in my view to be answered in the negative. Moreover, I share the Commission's view that the *Pinna I* judgment concerns only the relationship of France to the other nine existing Member States, whilst Article 60 of the Act of Accession governs the relationship between Spain and the 10 existing Member States, whereby the reference to Article 73(2) of Regulation No 1408/71 should merely be regarded as a reference to the legal consequences ensuing.

14. For all these reasons the view that the judgment in *Pinna I* introduced the uniform solution within the meaning of Article 60 of the Act of Accession may be dismissed straight away.

The consequences of Regulation No 3427/89

15. *I* — As regards Regulation No 3427/89, the parties agree that it contains the uniform solution mentioned in Article 60 of the Act of Accession and Article 99 of Regulation No 1408/71.[7] Nor do I consider it necessary to dwell on this question. The rule contained in Article 73 in its new version[8] and, in particular, the first recital in the preamble to the regulation, which makes express reference to Article 99 of Regulation No 1408/71, speak for themselves.

16. What is open to dispute, however, is the legal consequence which flows from Article 3, pursuant to which the regulation is to apply 'with effect from 15 January 1986'. The question is whether the regulation which was adopted (30 October 1989), published and brought into force (16 November 1989) after expiry of the period of time provided for in Article 60 of the Act of Accession (31 December 1988), has any effects on the legal situation of children of Spanish (and Portuguese) employees as regards the period from 15 January 1986 to 31 December 1988.

7 — In the version which existed before entry into force of Regulation No 3427/89; Article 99 of Regulation No 1408/71 was repealed by Article 1(4) of this regulation.

8 — Compare also the amended version in Regulation No 3427/89 of the other provisions referred to in the first subparagraph of Article 60(1) of the Act of Accession; see in this connection the pending case of *Commission* v *France* (Case C-371/88).

17. Whilst the plaintiff, the Spanish and the Portuguese Governments, and the Commission, answer this question in the affirmative, the Government of the Federal Republic of Germany and the French Government take the opposite view.

18. The arguments put forward relate to two different points. First, it has to be examined whether the reference contained in Article 60 of the Act of Accession covers a regulation which, adopted after expiry of the stipulated date, retroactively makes provision for the period between the entry into force of the Act of Accession and the end of the abovementioned period (from 15 January 1986 to 31 December 1988); secondly, in the context of the interpretation of Regulation No 3427/89, the question whether it governs the circumstances of children of Spanish workers in the period referred to has to be answered. If both questions may be answered in the affirmative then the question submitted to the Court should, as far as the result is concerned,[9] receive an affirmative reply.

19. *II*— Within this framework I will first turn my attention to the interpretation of Article 60, upon which the arguments of the parties are mainly centred.

20. *1.* In this connection, I would first like to take up an argument which was put forward by the German Government in the context of the interpretation of Article 3 of Regulation No 3427/89 but which in my view also concerns Article 60 of the Act of Accession. It is the question whether the retroactive introduction of a uniform solution for Spanish workers was precluded by the wording of the first phrase ('until the entry into force of the uniform solution'). If that were held to be the case, Regulation No 3427/89 could not have any application to the period ending on 31 December 1988 for Spanish workers falling within Article 60 of the Act of Accession.

21. Can it be presumed that the expression 'entry into force' may also refer to a moment in time which precedes the publication of the regulation in question? This point is not quite free from doubt.

22. Entry into force is the moment in time when the legislative effects, that is the rights and duties established by the legal instrument, materialize and become applicable to the factual situations coming within their purview.[10] In that connection Article 191 of the EEC Treaty provides that regulations are to enter into force 'on the date specified in them' (or on the 20th day following their publication). It is compatible with that rule to imagine that a regulation may 'enter into force' before its publication.[11]

23. On the other hand, in the context of the regulations amending Regulation No 1408/71, including Regulation No 3427/89, it seems to accord with current terminology to use the expression 'entry into force' in relation to the commencement of legislative effect only where this moment coincides

9 — Since the question was asked prior to adoption of the abovementioned regulation the wording thereof relates to the effects of the judgment in the *Pinna I* case, as is also apparent from the grounds of the order for reference.

10 — Grabitz: *Kommentar zum EWG-Vertrag* (Commentary on the EEC Treaty), Article 191, footnote 5.

11 — The definition of the concept of retroactivity in Grabitz also supports this view, loc. cit., Article 191, footnote 7.

with the date of publication or occurs a certain number of days after it. Where, however, legislative effect is to commence prior to the moment of publication, the regulation is, as a rule, formulated differently. The regulation, or some of its provisions, 'shall apply with effect from . . .'. [12]

24. This terminology may be justified by the following considerations. If a legal instrument provides, in respect of the past, for effects in the form of rights and duties, that can mean only that, whilst such rights and duties are established in respect of the period prior to publication, they are, and must be, exercised or fulfilled subsequently. Otherwise retroactivity has no purpose. The time expired cannot be retrieved. The decisive moment for the subsequent exercise or fulfilment of such rights and duties is the time of entry into force.

25. I would like to illustrate this with an example. Supposing the two *Pinna* judgments did not exist, the competent French authorities would, assuming an appropriate application had been made, only have been obliged as from the date of entry into force of Regulation No 3427/79 to pay benefits under Article 73, as amended by the aforementioned regulation, for the children of migrant workers living abroad in respect of the period from 15 January 1986. In particular, this would mean that there could be no question of any delay with regard to the period prior to the entry into force of the regulation.

26. In brief, in the context of this terminology, entry into force signals the moment when *all* legal consequences are deployed. Provisions relating to the time before entry into force may have effect in the past only in so far as the *reference period* for the rights and duties predates the entry into force of the legal instrument. In the light of this interpretation of the distinction between the time of entry into force of a regulatory provision and the commencement, at a moment in the past, of its validity, can it be said in the context of Article 60 of the Act of Accession that prior to the 'entry into force of the uniform solution' the transitional regime pursuant to this article applied?

27. In my view this question must be answered in the negative.

28. First of all, as Article 191 of the EEC Treaty demonstrates, the above terminology is mandatory neither from a legal nor a logical point of view. [13]

29. Above all it should not be automatically assumed that the formulation chosen gives clear expression to the objective meaning and purpose of the relevant reservation. On this point it may be clearly presumed from Article 60(1) of the Act of Accession that the introduction (entry into force) of the uniform solution was in any event to bring the transitional period to an end prior to 31 December 1988. In the structure of the provisions, the uniform solution, as the

12 — See, for example, Council Regulation (EEC) No 1660/85 of 13 June 1985, OJ 1985 L 160, p. 1 (Article 3(1) to (3)) and Council Regulation (EEC) No 2793/81 of 17 September 1981, OJ 1981 L 275, p. 1 (Article 3(2)).

13 — It is also not consistently adhered to, see Article 3 of Council Regulation (EEC) No 196/81 of 20 January 1981, OJ 1981 L 24, p. 3. Here there were, however, only a few days between entry into force and publication.

Commission correctly observed, has priority over the transitional period.

30. The reasons for this structural arrangement may in fact be manifold, as became apparent at the hearing. It may in particular be supposed that the authors of the Act of Accession did not wish to place any obstacles in the way of the contemporaneous application of the uniform solution in all Member States and to all employees in the Community, including Spanish and Portuguese workers. I refer to the opening formula, based on Article 99 of Regulation No 1408/71, of Article 60(1) of the Act of Accession ('until the entry into force of the uniform solution *for all the Member States...*' [14]).

31. As far as the relationship of that aim to the purpose of the three-year transitional period under Article 60 of the Act of Accession is concerned, it should be said that the economic concession to the old Member States, which is the rationale of this transitional period, constituted a provisional arrangement in just the same way as Article 99 of Regulation No 1408/71 which characterized as provisional the legal situation under Article 73(2) of the regulation prior to the introduction of the uniform solution.[15] From the point of view of the Act of Accession the termination of the provisional situation applicable during the transitional period could be linked to the termination of the provisional arrangement mentioned in Article 99, that is to say responsibility therefor could be assigned to the Council without there being any fear of an unchecked whittling away of the abovementioned concession. Measures under Article 51 of the EEC Treaty must be adopted unanimously. That precluded the transitional provisions of Article 60 and 220 of the Act of Accession from being rendered inoperative in favour of a uniform solution without the participation of Member States enjoying the benefit of these provisions. On the other hand, the possibility was afforded of establishing definitive provisions applicable to all Member States and employees which accorded with the will of all Member States.

32. In view of this clear priority in favour of a uniform solution to be supported by all Member States, on whose adoption the interests of the 10 original Member States also appeared to be secured, any restriction whereby the uniform solution might not be introduced with retroactive effect in favour of Spanish (and Portuguese) workers was, from the point of view of the Act of Accession, neither desirable nor necessary.

33. The use of the words 'entry into force' by the drafters of the Act of Accession may be due to the fact that they did not foresee the situation which has now occurred. The Treaty of Accession of 12 June 1985, to which the Act of Accession is annexed in accordance with Article 1(2) thereof, entered into force on 1 January 1986 (see Article 2(2) of the Act of Accession), following ratification by the high contracting parties. At this time proceedings in the *Pinna I* case had indeed been brought but the judgment was still awaited so that it was not clear that there would be any ground for adopting retroactive provisions to cover the period of time from the delivery of the judgment until the entry into force of the relevant regulation. Finally, the drafters of the Act were able to proceed on the assumption that the objective pursued by the reservation that there should

14 — Emphasis added.

15 — See the Opinion of Mr Advocate General Mancini in Case 41/84 *Pinna I*, cited above, at p. 3, and p. 14.

be a uniform solution as I have described it would be achieved by means of the formula adopted.

34. I draw the conclusion that this formula was not intended to exclude retroactive provisions for a uniform solution from the referring provision under discussion. As a result I am of the opinion that retroactive provisions of that kind are also covered thereby.

35. *2.* Accordingly, it is appropriate to examine the question raised by the French Government whether, conversely, the possibility of retroactive effect should have been expressly provided for in Article 60 of the Act of Accession. In the French Government's view, this was necessary in the light of the requirement laid down in the Court's case-law according to which any retroactivity of the provisions of a regulation must be expressly or at least clearly provided for.[16] In itself this case-law concerns only regulations themselves whose retroactivity is at issue, and not provisions which make reference to such regulations. The aforementioned principles are, however, said to be applicable by analogy.

36. In my view, it is unnecessary to resolve what weight is to be attached in general terms to this view. At all events, I do not see how the interpretation of Article 60 of the Act of Accession in the manner contended for by the Commission, the plaintiff, and the Spanish and Portuguese Governments, would contradict the requirement of legal certainty on which the abovementioned case-law rests. Except perhaps for the expression 'entry into force', whose minor significance I have already explained, all the features of the structure and the objective pursued by the provision militate in favour of a conclusion that Article 60 also incorporated within its provisions a retroactive introduction of the uniform solution. The case-law cited by the French Government does not require — even with regard to provisions whose own retroactivity is at issue — that such retroactivity be expressly provided for. Instead it is sufficient if the 'stated objectives (of the regulation) give a sufficiently clear indication' that retroactivity was intended,[17] or that it is clearly apparent from the objective or structure of the provision concerned that retroactive effect is to be accorded to it.[18] The French Government's argument based on the principle of legal certainty in favour of a narrow construction of the reference contained in Article 60 of the Act of Accession therefore seems to me to be without relevance.

37. *3.* On the basis of these considerations, the further question may also be answered as to whether, in spite of the possibility conceded in principle by Article 60 of the Act of Accession that the uniform solution might be introduced with retroactive effect, that was in any event precluded after the expiry of the stipulated date of 31 December 1988. On this point the French Government claims that no provision was made in Article 60 of the Act of Accession for the event that the uniform solution would not be available at this date.

16 — The French Government refers to the judgment in Case 234/83 *Gesamthochschule Duisburg* v *Hauptzollamt München-Mitte* [1985] ECR 327; see also the earlier judgment in Joined Cases 212 to 217/80 *Amministrazione delle finanze dello Stato* v *Salumi* [1981] ECR 2735.

17 — See the judgment in Case 234/83, cited above, paragraph 20.

18 — See the judgment in Joined Cases 212 to 217/80, cited above, paragraph 9.

38. Certainly, there is no mistaking the fact that the drafters of the Act of Accession probably assumed that the provisions concerning the uniform solution would be adopted between 1 January 1986 and 31 December 1988. In this respect, too, the objective meaning and purpose of the referring provision under which the adoption of provisions is entirely reserved to the Council should prevail. That also refutes the French Government's further argument based on the supposed priority of the Act of Accession with regard to the provisions to be made for the transitional period. As I have indicated, the referring provision leaves it open to the Council to decide on provisions departing from Article 60 of the Act of Accession and therefore having priority thereto, as regards the period since 31 December 1988.

39. *III* — Furthermore, it should not be seriously doubted that Regulation No 3427/89 actually governs the legal situation of Spanish (and Portuguese) workers during the period from 15 January 1986 to 31 December 1988.

40. *1.* (a) As far as the wording of the retroactivity clause is concerned ('... shall apply with effect from 15 January 1986'), I do not construe it as meaning that it excludes from retroactive effect claims in relation to children of Spanish and Portuguese migrant workers. That construction could only be derived from the connection with the formula of Article 60 or Article 220 of the Act of Accession; this leads me to make three observations.

41. First of all, it was not possible for the drafters of the regulation to misconstrue the objective of this article of the Act of Accession, as I have already clarified it. We may assume that the manner in which the long-standing struggle for the uniform solution and the wording of Article 60 (or 220) of the Act of Accession were interconnected was well known to the drafters of the regulation. Had there been a desire under these circumstances to exclude Spanish and Portuguese workers from the scope of application of the retroactivity clause, an express provision along the lines of Article 3(3) of the regulation [19] would have been appropriate.

42. Secondly, the absence of any such express provision is to me all the more inexplicable since the purported removal of Spanish and Portuguese workers from the scope of application of this clause would have necessitated clarification in two respects. First of all, as far as these workers themselves are concerned, any such restriction of retroactivity can only affect the period until 31 December 1988. Beyond this time — in respect of the period from 1 January 1989 to 16 November 1989 — Article 60 (or 220) of the Act of Accession cannot affect the interpretation of Regulation No 3427/89. Secondly, the abovementioned provision of the Act of Accession does not govern the position of self-employed persons [20] who are now placed on the same footing as employees by Article 73 of Regulation No 1408/71, as amended by Regulation No 3427/89. In this respect, too, there can be no question of a

19 — Pursuant to which the new version of Article 76 of Regulation No 1408/71 is valid only as from 1 May 1990.

20 — In accordance with the scope of application of Article 73 in the old version of Regulation No 1408/71 which is restricted to employees — although the title of the regulation, also reproduced in Article 60 of the Act of Accession (see Regulation (EEC) No 1390/81, OJ 1981 L 143, p. 1), would lead one to believe otherwise — Article 60 of the Act of Accession also expressly governs only the legal situation of employees.

restrictive interpretation of the retroactivity clause from the point of view of Article 60 (or 220) of the Act of Accession. I cannot conceive that the drafters of the regulation wished to rely on the subtlety of those applying it to identify all these nuances.

43. Thirdly, the first recital in the preamble to the regulation expressly refers to Article 99 of Regulation No 1408/71. There again mention is made of a uniform solution for *all* Member States.[21] Had it been intended to make exceptions from this basic objective, that intention would surely have been more clearly expressed.

44. The wording of Article 3 of Regulation No 3427/89 therefore gives no ground for the restrictive interpretation in question, whilst the system and objective of the regulation clearly militate against such an interpretation.

45. (b) Nor is this result altered by the declaration recorded by the Federal Republic in the Minutes of the Council. That declaration reads as follows:

'The Federal Republic of Germany declares, in accordance with the position defended by the Commission before the Court of Justice, that the fact that this regulation, according to Article 3 thereof, is applicable retroactive to 15 January 1986 does not mean that the uniform solution referred to in the Act of Accession of Spain and Portugal has been brought retroactively into effect.'

46. In this connection I share the unequivocal view taken by the Court of Justice which, in its judgment in Case 143/83 concerning Treaty infringement proceedings for failure to observe a directive, stated as follows: 'The Court has consistently held that such unilateral declarations cannot be relied upon for the interpretation of Community measures, since the objective scope of rules laid down by the common institutions cannot be modified by reservations or objections which Member States may have made at the time the rules were being formulated.'[22] These principles are all the more valid in the interpretation of a regulation since under Article 191 of the EEC Treaty only the published text thereof may produce effects. Unpublished declarations which are not reflected in that text cannot have effect.

47. 2. Finally, I would like to take up the argument put forward at the hearing by the French Government to the effect that the abovementioned restrictive interpretation of the retroactivity clause was required on grounds of legal certainty. On that view, any other different interpretation would make it necessary to reconstruct the previously existing situation, which would entail difficulties. Numerous disputes might be expected.

48. Let me first point out that the French Government, rightly, is not complaining of an infringement of the prohibition on retroactivity. This principle, elaborated by the

21 — Emphasis added.

22 — Judgment in Case 143/83 *Commission* v *Denmark* [1985] ECR 427, paragraph 13.

Court in its judgments of 25 January 1979 in the *Racke*[23] and *Decker*[24] cases, whereby retroactive provisions are only exceptionally compatible with the requirement of legal certainty enures solely for the benefit of the interests of Community citizens against measures of the Community authorities. This is clear from the constitutional origins of the prohibition on retroactivity which Mr Advocate General Warner had an early opportunity of examining in detail in his Opinion in Case 7/76,[25] and to which the Court of Justice referred in the abovementioned *Racke* and *Decker* cases by recalling the idea of the protection of legitimate expectations.

49. In the present case the retroactive provisions are *in favour* of the Community citizens who were affected by them. Therefore, the presumption established by the Court of Justice in the abovementioned cases in favour of the invalidity of retroactive provisions does not apply. In the *Delbar* case,[26] the Court, without giving any further reasoning, considered that Article 73 (as amended) of Regulation No 1408/71 also applies to self-employed persons[27] with retroactive effect as from 15 January 1986.[28]

50. Therefore, in order to justify the restrictive interpretation advocated by the French Government, it would be necessary to find positive indications to show that the retroactive effect provided for in Article 3 of Regulation No 3427/89 in respect of the matters concerned by the present case is incompatible with the requirement of legal certainty.

51. In this connection I am, in the first place, persuaded that the alleged difficulties, assuming that they exist, arising out of legal certainty, scarcely justify an interpretation whose compatibility with the wording and the systematic context of the provision could not be established and which would, consequently, expose that interpretation to considerable uncertainties. Secondly, since the delivery of the judgment in the *Pinna I* case, all parties must have been prepared for a retroactive introduction of a uniform solution. It was obvious that the drafters of the regulation would fix the commencement of the validity thereof as at 15 January 1986, if only to preclude questions from arising as to the relationship between the legal situation on the basis of that judgment and on the basis of the regulation (having validity *ex nunc*). Although that judgment, as I mentioned at the beginning, had no effect under Articles 60 and 220 of the Act of Accession, on Spanish and Portuguese workers, it was certainly to be expected, in view of the uniform solution to be arrived at for all Member States, that Spanish and Portuguese workers would be assimilated to other migrant workers as quickly as possible.

52. In the result a narrow interpretation of Article 3 of Regulation No 3427/89 cannot be justified on grounds of legal certainty either.

23 — Case 98/78 *Racke* v *Hauptzollamt Mainz* [1979] ECR 69.

24 — Case 99/78 *Decker* v *Hauptzollamt Landau* [1979] ECR 101.

25 — *IRCA* v *Staatliche Finanzverwaltung* [1976] ECR 1229, at pp. 1236 and 1237

26 — Judgment in Case C-114/88 *Delbar* v *Caisse d'allocations familiales de Roubaix-Tourcoing* [1989] ECR 4067.

27 — As is well known, this category did not fall within Article 73 (old version) of Regulation No 1408/71 and therefore was not covered by the judgment in *Pinna I*.

28 — See paragraph 10 of the judgment in the *Delbar* case, cited above.

C — Conclusion

53. For all these reasons I propose that the reply to be given to the Sozialgericht, Frankfurt am Main, should be that Spanish workers employed in the Federal Republic of Germany are entitled under German legal provisions (Bundeskindergeldgesetz) to family benefits (Kindergeld) for their children living in Spain, with effect from 15 January 1986.