JUDGMENT OF THE COURT
OF 28 MAY 1974 [1]

Odette Callemeyn
v Belgian State
(preliminary ruling requested by the Tribunal du travail Tournai)

Case 187/73

Summary

1. *Social security for migrant workers — Handicapped persons — Grant of benefits provided by national legislations — Character — Benefits within the meaning of Article 4 (1) (b) of Regulation (EEC) No 1408/71 — Criteria*

2. *Social security for migrant workers — Regulation No 1408/71 — More favourable to those entitled, as compared with the European Interim Agreement on social security schemes of 11. 12. 1953 — Precedence*

1. The benefits mentioned in Article 4 (1) (b) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 embrace those provided by the national provisions granting benefits to handicapped persons, insofar as these provisions relate to workers within the meaning of Article 1 (a) of this Regulation and confer upon them a legally protected entitlement to the grant of these benefits.

2. In the framework of its field of application to persons and to matters covered, Regulation No 1408/71 takes precedence over the European Interim Agreement on social security schemes in respect of old age, invalidity and survivors signed in Paris on 11 December 1953 and referred to in Article 7 (1) (b) of the Regulation, insofar as it is more favourable for those entitled, than the Agreement.

In Case 187/73

Reference to the Court under Article 177 of the EEC Treaty by the Tribunal du Travail of Tournai (Belgium) for a preliminary ruling in the action pending before that Court between

MRS ODETTE CALLEMEYN, spouse of R. Verbeke, residing at Mouscron (Belgium),

and

THE BELGIAN STATE, represented by the Minister for Social Security, Brussels,

1 — Language of the Case: French.

on the interpretation of the provisions 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 Community' (OJ 1971 L 149), particularly as regards benefits for handicapped persons,

THE COURT

composed of: R. Lecourt, President, A. M. Donner and M. Sørensen, Presidents of Chambers, R. Monaco (Rapporteur), J. Mertens de Wilmars, P. Pescatore, H. Kutscher, C. Ó Dálaigh and A. J. Mackenzie Stuart, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The judgment making the reference and the written observations submitted under Article 20 of the EEC Statute of the Court may be summarized as follows:

I — Facts and written procedure

1. Mrs Odette Callemeyn, a French national, has since 24 August 1957, the date of her marriage to Mr Roger Verbeke, a Belgian national, resided at Mouscron (Belgium).

Suffering from a permanent incapacity to work to the extent of 70 %, she benefited as an employed person from the Belgian sickness and invalidity insurance. On 9 March 1972 Mrs Callemeyn made an application to the Belgian Ministry of Social Security with a view to obtaining the ordinary benefit for handicapped persons under the Belgian Law of 27 June 1969. This application was, by decision of 26 February 1973, rejected mainly on the grounds that since the grant of ordinary benefit to handicapped persons is under the terms of the Law subject to a nationality condition, she could be entitled to this benefit only under the European Interim Agreement on social security schemes in respect of old age, invalidity and survivors, signed at Paris on 11 December 1953 within the framework of the Council of Europe.

Although Annex I to this Agreement states that it applies in Belgium to special benefits of the kind applied for, Mrs Callemeyn was nevertheless unable to benefit under the Law of 27 June 1969 since she does not comply with the conditions of residence and as regards

first medical diagnosis of the illness which caused the invalidity, imposed by Article 2 of the Agreement.

On 2 March 1973 Mrs Callemeyn appealed to the Tribunal du travail (Labour Court) of Tournai against this rejection.

This court, having examined the Belgian Law of 27 June 1969 setting up the system of benefits for handicapped persons, as well as Article 2 of the aforementioned Interim Agreement, desired to know whether it is not in the event appropriate to apply the provisions 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 Community'.

Taking these considerations into account, the Tribunal du Travail decided by judgment of 27 November 1973 to stay the proceedings and to refer the following preliminary questions to the Court under Article 177 of the EEC Treaty:

'1. Insofar as it concerns employed persons, does the scheme of benefit for handicapped persons set up under the Law of 27 June 1969 come within the ambit of Regulation (EEC) 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? In other words, does the list of benefits in Article 4 (EEC) No 1408/71 embrace the provisions made by national legislation for payment of grants to handicapped persons insofar as these provisions relate to employed persons?

2. Insofar as it is more favourable for those entitled, does Regulation No 1408/71 of the Council replace the European Interim Agreement on social security schemes in respect of old age, invalidity and survivors, signed in Paris on 11 December 1953 and referred to in Article 7 of the Regulation!'

2. The order referring the matter was registered at the Court on 7 December 1973.

The Belgian State, represented by the Minister for Social Security, assisted by J. Donis, the Italian Government, represented by Ambassador Adolfo Maresca as agent, assisted by Arturo Marzano, Avvocato dello Stato, and the Commission of the European Communities, represented by Richardt Larsen, Legal Adviser, as agent, assisted by Marie-José Jonczy, member of the Legal Service, submitted written observations under Article 20 of the Protocol on the Statute of the Court of Justice.

The Court, on the report of the Judge-Rapporteur, after hearing the Advocate-General, decided to open the oral procedure without a preparatory inquiry.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — Observations submitted by the Belgian State

On the *first question,* the Belgian State points out that under Article 4 thereof, Regulation No 1408/71 covers legislation concerning the nine 'branches of social security', arrived at by Convention No 102 on the minimum norms of the I.L.O.

In the absence of definitions contained in Article 1 of the said Regulation (except in the case of 'family benefits'), one must, in order to determine whether a legislation relating to benefits for handicapped persons falls under one or other branch, refer to the contents of Convention No 102, which is not affected by Regulation No 1408/71.

The ordinary benefit for handicapped persons provided by the Belgian Law of 27 June 1969 provides a rate fixed in

proportion to the percentage of the permanent inability to work of the handicapped person, diminished by the proportion of his means which exceeds an amount laid down by the Law. Since the only comparison possible is with the invalidity benefits under Article 4 (1) (b) of Regulation No 1408/71, the question therefore amounts to asking whether a benefit granted under the conditions of Article 4 of the Law of 27 June 1969 really amounts to an invalidity benefit within the meaning above indicated. For this to be the case three conditions must be present: the benefit must have the purpose of maintaining or improving the earning capacity of the beneficiary and assumes an inability on the part of the latter to exercise an occupational activity to a degree laid down, as well as an incapacity, permanent or subsisting after the termination of the sickness benefit.

Put in a different way, for there to be an approximation to the invalidity benefits within the meaning of Article 4 (1) (b) of Regulation No 1408/71, the ordinary benefit for handicapped persons must, apart from a state of permanent incapacity, involve a connexion between the diminution in earning capacity and the amount of the benefits concerned.

But it is precisely such a link which is absent in the case of the ordinary benefit for handicapped persons. It appears from the medical guidance scale which is provided by the legislation relating to the grant of benefits to handicapped persons (cf. Arrêté ministériel of 19 March 1959, Moniteur Belge, 21 April 1959) that the degrees of invalidity allowing an assessment of the degree of permanent incapacity to work on the part of the person involved were prepared by the medico-social service of the Ministry for Social Security (Ministère de la prévoyance sociale) without any reference to a specific occupation: this scale was prepared in a global manner, without regard to any considerations of an occupational or social kind.

Contrary to invalidity benefits, the benefits to handicapped persons are not therefore a replacement income, intended to compensate for a reduction in the beneficiary's earning capacity; it can even be granted to persons who have never worked.

The Belgian State adds that if, against all likelihood, the allocation in question ought to be regarded as an invalidity benefit, only workers within the meaning of Article 1 (a) of Regulation No 1408/71 could invoke the benefit of the provisions relating to invalidity, appearing under Title III, Chapter 2, of the said Regulation.

As regards the *second question,* the Belgian State is of the opinion that Community Regulations take the place of the Interim Agreements, where they concern a national of the Member States, and always within the limits of the area of applicability, as regards matters covered, of Regulation No 1408/71.

Accordingly it suggests the following answer to the questions asked:

'1. A benefit to handicapped persons that only has the object of guaranteeing a decent livelihood, without regard to any reduction in earning capacity, cannot be considered as an invalidity benefit within the meaning of Article 4 (1) (b) of Regulation No 1408/71.

It likewise cannot be referred to by any of the other possibilities set out in the said Article.

2. As regards nationals of the Member States, Regulation No 1408/71 takes the place of the Interim Agreements to the extent that they come within the area of applicability as regards persons and matters covered, of the Regulation, as they are defined in Article 2 and 4'.

B — Observations by the Italian Government

The Italian Government points out that the problem raised by the reference may

be examined from two angles: it is a matter of knowing whether benefits for handicapped persons provided by measures of a general character on the part of a state may be considered as 'social benefits' within the meaning of Article 4 (1) and (2) of Regulation No 1408/71 of the Council or whether they simply constitute 'social advantages' within the meaning of Article 7 (2) of Regulation No 1612/68 of the Council of 15 October 1968 (OJ 1968 L 257).

1. Despite the fact that the reference from the national court relates to the first aspect of the problem, the Italian Government considers it appropriate first to examine the second aspect, since the definition of the character of the benefits aforementioned on the basis of Regulation No 1612/68 might render it unnecessary to rule on the connexion between Regulation No 1408/71 and the Paris Interim Agreement of 11 December 1953.

According to the Italian Government, the grant of benefits to handicapped persons provided by general provisions under internal law of a Member State falls under 'social advantages', referred to by Article 7 (2) of Regulation No 1612/68.

The equality of treatment — which this provision seeks to establish — between workers from the Community and workers who are the nationals of a Member State is in fact only an expression of the fundamental principle of Article 7 of the Treaty prohibiting any discrimination on grounds of nationality. Besides one must not forget that the basic Regulations No 3 and No 1408/71 deal with 'Social Security' and that this covers the systems of both 'social insurance' and social assistance'. Social insurance and social assistance are in fact two aspects of 'social security'. The benefits to which workers are entitled under the general system of social security cannot be called 'social advantages' or not, depending on whether Regulations No 3 and No 1408/71 are or are not applicable thereto. Nothing therefore prevents a benefit excluded by Article 4 (4) from the field of application of Regulation No 1408/71, being due to the migrant worker by way of 'social advantage' within the meaning of Article 7 (2) of Regulation No 1612/68.

Moreover, it would be wrong to think that the possibility for migrant workers to benefit from the social advantages provided for by the abovementioned Regulation is available only to 'active' workers. Such a theory would clash not only with the case law of the Court but equally with Article 7 (2) of Regulation No 1612/68, referring to both 'social' and 'tax' advantages. This theory would lead to the absurd result that in the field of tax advantages the principle of equality of treatment would, as regards income resulting from salaried employment, only apply to the period during which the beneficiary works and not after he ceases such work. Besides, the erroneous character of this thesis is indirectly confirmed by Article 48 (3) (d) of the Treaty as well as by Article 7 of Regulation No 1251/70 of the Commission of 29 June 1970 (OJ 1970 L 142).

Finally, it is useless to argue that the grant involved is provided by provisions of a general character which do not take into account the existence of a working relationship. If such an argument were well-founded it would become an easy matter for Member States to evade the provisions of Community law by extending any social security system to all their nationals.

Thus the Italian Government suggest, by way of reply, that primary benefits to handicapped persons under national provisions of a general character must be considered as 'social advantages' within the meaning of Article 7 (2) of Regulation No 1612/68.

2. Turning now to an examination of the other aspect of the problem, the Italian Government first expresses its views on the *second question* referred by the Belgian court.

(a) On this subject, it must be noted that Article 7 (1) of Regulation No 1408/71 only refers to 'obligations' arising from the Interim Agreement and does not refer to 'rights of beneficiaries'. Further, the limited extent of this reference is confirmed by the wording of paragraph 2 of the same Article, which, in referring to provisions under other international agreements, uses the expression 'shall continue to apply'. In any event, there are no valid reasons for denying that Article 5 of the Interim Agreement refers to the provisions of Regulation No 1408/71 which are more favourable for the beneficiary, all the more so since the principles of applying the system that is more favourable for the interested party form the basis of Community legislation.

(b) As regards the *first question,* the Italian Government recognizes the absence of a clear criterion that would within the social security system, permit a distinction to be drawn between benefits due by way of social insurance and those provided by way of social assistance. In this respect it recalls the difficulties inherent in the very definition of the concept of 'social security', that have for a long time been encountered in international relations. After having underlined the fluid and evolving nature of such a concept, considered over several years, the Italian Government considers itself entitled to conclude that at present the system of social insurance has more and more replaced that of social assistance, so much so that benefits originally thought of as a form of assistance have in law taken on the character of benefits arising under social insurance. The difference between the two types of benefit does not lie in the nature of the advantages granted to the beneficiary, nor in the sources of finance provided for this purpose, but in the legal position of the beneficiary *vis-à-vis* the competent national authority. The fact that the beneficiary can invoke a right to the grant of such benefits is sufficient to classify them amongst benefits due by way of insurance.

Basing itself upon these principles, the Italian Government analyses the legal system of benefits to handicapped people set up by the Belgian Law of 27 June 1969. After having examined the nature of the administrative and legal authorities competent to grant them and having drawn attention to the fact that the law in question explicitly grants to the parties involved the right, guaranteed by the right of access to the courts, to obtain these benefits, it concludes that these are benefits provided by way of social insurance and thus fall within the scope of application of Regulation No 1408/71. In support of this conclusion it points to the fact that Article 4 (1) (b) of this Regulation includes amongst invalidity benefits also those 'intended for the maintenance or improvement of earning capacity'. Besides, it matters little that the Belgian Law was possibly not notified in accordance with Article 5 of this Regulation. It is clear from the Court's case law that legislation which may not have been the subject of such a notification is equally applicable under the Community regulations on social security.

C — *Observations presented by the Commission of the European Communities*

(a) On the *first question,* the Commission points out that whilst the Belgian Law of 27 June 1969 does not appear in the declaration made by the Kingdom of Belgium under Article 5 of Regulation No 1408/71, this omission nevertheless does not imply that the said Law is excluded from the field of application of this Regulation. Since the declarations by the Member State, referred to in Article 5 abovementioned, replace Annex B of the old Regulation No 3, and since the Court has in its case law *(Van Der Veen,* Case 100/63, Rec. 1964, p. 1107) found that Annex B had only a value as a pointer, it follows that these declarations also have only a similarly limited value.

This being the case, it is therefore a matter of defining the benefits provided by the Belgian Law of 27 June 1969 in the light of the criteria which define the field of application of Regulation No 1408/71. Whilst under the provisions of Article 177 of the Treaty the Court is not competent to interpret national law, it is nevertheless competent to furnish the national court with 'the elements of interpretation of Community law which might guide it in applying the consequences of the law'.

It emerges from the Belgian Law of 27 June 1969 that apart from the condition of nationality, Mrs Callemeyn satisfies the other conditions which are there laid down for entitlement to the ordinary benefit for the handicapped. Besides, this Law corresponds to the mixed systems of 'social security — assistance', described by the Court in its judgment No 1/72 (*'Frilli'*, Rec. 1972, p. 457). Bearing in mind this judgment, Regulation No 1408/71 ought, pursuant to Article 4 (1) (b) thereof, to apply to all invalidity benefits, and the term 'benefits', within the meaning of Article 1 (t) of the said Regulation, ought to be interpreted in the widest possible sense.

It therefore follows that to the extent that it concerns workers within the meaning of Regulation No 1408/71, the system of benefits for handicapped persons set up by the Belgian Law of 27 June 1969 falls within the provisions of this Regulation. In these circumstances one cannot set up a nationality condition against Mrs Callemeyn, since such a condition is incompatible with the fundamental principle of equality of treatment laid down under Article 3 of Regulation No 1408/71.

The Commission concludes, as regards the first question, by suggesting the following reply:

'The 'benefits' granted by general legislation of a Member State and providing handicapped persons resident in that State with the right to a minimum invalidity pension must be treated, as regards employed persons or those treated as such, within the meaning of Regulation No 3 and of Regulation No 1408/71, who are in such State entitled to a sickness — invalidity insurance, as 'invalidity benefits' within the meaning of Articles 2 (1) (b) and 4 (1) (b) respectively of those Regulations'.

(b) On the *second question* the Commission affirms that the purpose of the European Interim Agreements of the Council of Europe is much less ambitious than that of the Community regulations, since it limits itself to ensuring equality of treatment under national social security legislations and conventions without however affecting them or taking their place. On the other hand, the Community regulations have as their objective the setting up of a system for coordinating national social security legislation on the basis of the most uniform possible rules, in order to bring about the free movement of workers within the Community. It follows from this objective that within the framework of its field of application, the Community regulations take the place of bilateral conventions concluded between Member States and multilateral conventions to which at least two Member States are parties.

In this connection the Commission recalls the principle laid down by Article 6 of Regulation No 1408/71 and which appeared in Article 5 of Regulation No 3. This principle admittedly contains a number of exceptions, amongst which is that provided by Article 7 (1) (b) of Regulation No 1408/71 in favour of obligations arising from the European Interim Agreement of 11 December 1953 on social security, entered into between the Member States of the Council of Europe. But one must in this respect draw a distinction between obligations entered into by Member States of the Community as between themselves and those contracted with the other members of the Council of Europe. Just as Member States have substituted the Community regulations for bilateral agreements, so in their relationship *inter*

se they have substituted these regulations for international conventions and for the European Interim Agreements.

After having pointed out that one ought in this matter to draw upon the case law of the Court concerning Article 6 and 7 of Regulation No 1408/71 *(Walder,* Case 82/72, Rec. 1973, p. 599), the Commissions explains that the aforementioned exception contained in Article 7 is justified by reference to the obligations, arising from the Interim Agreements, entered into by the Member States of the Community towards third countries. On the one hand the Community regulations cannot be put on a par with 'agreement' within the meaning of Article 3 of the Interim Agreements, so much so that it would have been contrary to the legal nature of these acts to extend their applicability, by means of the expedient of the Interim Agreements, to nationals of third countries. On the other hand it is normal that the setting up of the Community's own system of coordination should not affect the rights of the nationals of third States that are parties to the Interim Agreements. Besides, the situation is no different from that which one finds in the case of bilateral agreements concluded between Member States, where the Community regulations only took their place within the limits of their field of application to persons and matters.

The Commission suggests that the second question be answered as follows:

'Regulation No 1408/71 of the Council takes the place of the European Interim Agreements on social security schemes in respect of old age, invalidity and survivors, signed at Paris on 11 December 1953, within the framework of the area of application of this Regulation, and this is so even if applying these Agreements would confer upon those entitled to these benefits advantages superior to those arising from the said Regulation. The same applies to Regulation No 3 of the Council'.

III — Oral procedure

The oral observations of the Belgian State and of the Commission of the European Communities were made at the hearing on 2 April 1974.

The Advocate-General delivered his opinion on 30 April 1974.

Law

1 By judgment dated 27 November 1973, received at the Registry of the Court on 7 December 1973, the Tribunal du travail of Tournai referred to the Court of Justice, under Article 177 of the Treaty, preliminary questions on the interpretation of certain provisions 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 Community (OJ 1971 L 149).

2 These questions are referred in the course of proceedings concerning the refusal by the Belgian State to grant the plaintiff in the national proceedings — a person of French nationality married to a Belgian and residing in

Belgium — the benefit of the Belgian Law of 27 June 1969 relating to the grant of benefits to handicapped persons, on the grounds that the party interested does not fulfil all the conditions for entitlement imposed by that Law as well as by the European Interim Agreement of 11 December 1953 on Social Security Schemes in respect of old age, invalidity and survivors.

3 The first question asks whether the advantages referred to by Article 4 of Regulation No 1408/71 of the Council include measures provided by a national law granting benefits to handicapped persons insofar as these measures concern workers.

4 Under the provisions of Article 4 (1) thereof, Regulation No 1408/71 applies to all legislation concerning branches of social security as defined by that provision.

5 On the other hand paragraph 4 of the same Article provides that the Regulation does not apply to 'social and medical assistance'.

6 Although it may appear desirable, from the point of view of the application of the Regulation, to draw a clear distinction between legislation concerning social security on the one hand and assistance on the other, the possibility cannot be excluded that some laws may fall within both these categories, because of the class of persons to whom they apply, of their objectives and of their manner of application, and thus not be amenable to any overall classification.

7 Whilst in some of its features, legislation concerning the grant of benefits to handicapped persons is akin to social assistance, especially when need is the essential criterion in its implementation and there are no conditions as to periods of employment, of membership or of contributions, yet it is nevertheless close to social security to the extent that, departing from the consideration of each case on its merits — a characteristic feature of assistance — it confers upon beneficiaries a legally defined position.

8 In view of the widely-drawn definition of people entitled to benefit, such a legislation fulfils in fact a double function, which is on the one hand to guarantee a minimum income to handicapped persons who are entirely outside the social security system and, on the other hand, to provide supplementary means to persons entitled to social security benefits who are permanently incapacitated from work.

9 Under the provisions of Article 4 (1) (b) thereof, Regulation No 1408/71 applies to 'invalidity benefits, including those intended for the maintenance or improvement of earning capacity'.

10 Under Article 1 (t) of the same Regulation, the expression 'benefits' must be understood in the widest possible sense as referring to all benefits 'including all elements thereof payable out of public funds, revalorization increases and supplementary allowances, subject to the provisions of Title III'.

11 Thus, as regards an employed person or a person treated as such, who is in a Member State entitled to an invalidity pension, legislation that assures to handicapped persons a right to 'benefit', that is legally protected, falls, so far as these workers are concerned, within the field of social security, within the meaning of Article 51 of the Treaty and of the regulations made thereunder, even if such legislation might fall outside this field so far as other categories of beneficiaries are concerned.

12 The difficulties that might arise from the application of the Community regulations to these provisions must not prejudice the rights which the workers referred to by Article 1 (a) of Regulation No 1408/71 derive from the principles of the social legislation of the Community.

13 This is the case at any rate whenever a person who is a worker within the meaning of the abovementioned Article 1 (a) already falls, by reason of earlier employment, under the social security system of the Member State whose legislation, guaranteeing benefits to the handicapped, is invoked.

14 Moreover, Article 7 (1) and (2) of Regulation No 1612/68 of the Council of 15 October 1968, on freedom of movement for workers within the Community (OJ 1968, No L 257), provides that a worker who is a national of a Member State shall, on the territory of the other Member States, 'enjoy the same social and tax advantages as national workers'.

15 Accordingly, the reply to the first question must be that the benefits mentioned in Article 4 (1) (b) of Regulation No 1408/71 of the Council of 14 June 1971 embrace those provided by the national provisions granting benefits to handicapped persons, insofar as these provisions relate to workers within the meaning of Article 1 (a) of this Regulation and confer upon them a legally protected entitlement for the grant of these benefits.

16 The second question asks whether Regulation No 1408/71 of the Council of 14 June 1971, in so far as it is more favourable for those entitled, replaces the European Interim Agreement on social security schemes in respect of old age, invalidity and survivors signed in Paris on 11 December 1963 and referred to in Article 7 of the Regulation.

17 Under the provisions of Article 6 (a) thereof, Regulation No 1408/71 replaces, subject to the provisions of Articles 7, 8 and 46 (4), as regards persons and matters which it covers, the provisions of any social security convention binding ...' (a) two or more Member States exclusively'.

18 Under Article 7 (1) (b) of Regulation No 1408/71 the provisions of the Regulation shall not affect obligations arising from the European Interim Agreements on social security of 11 December 1953 concluded between the Member States of the Council of Europe.

19 Furthermore, Article 5 of the European Interim Agreements provides that these do not derogate from the provisions of national laws and regulations, international agreements or bilateral or multilateral agreements that are more favourable to those entitled.

20 Thus, to apply Regulation No 1408/71 in preference to the European Interim Agreements, to the extent that it is more favourable than those Agreements for those entitled, does not infringe the obligations arising from these Agreements and is not therefore capable of infringing Article 7 (1) (b) of the Regulation.

21 For these reasons it must be concluded that in the framework of its field of application to persons and to matters covered, Regulation No 1408/71 takes precedence over the European Interim Agreement on social security schemes in respect of old age, invalidity and survivors signed in Paris on 11 December 1953 insofar as it is more favourable for those entitled.

Costs

22 The costs incurred by the Belgian State, the Government of the Italian Republic and the Commission of the European Communities, which have submitted their observations to the Court, are not recoverable, and as these proceedings are, insofar as the parties to the main action are concerned, a

step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Tribunal du Travail of Tournai by judgment of 27 November 1973, hereby rules:

1. **The benefits mentioned in Article 4 (1) (b) of Regulation No 1408 of the Council of 14 June 1971 include those provided by national provisions granting benefits to the handicapped to the extent that these provisions concern workers within the meaning of Article 1 (a) of this Regulation and confer on the latter a legally protected right to the grant of these benefits.**

2. **Within its field of application to persons and to matters covered, Regulation No 1408/71 takes precedence over the European Interim Agreement on Social Security Schemes in respect of old age, invalidity and survivors, signed in Paris on 11 December 1953, and referred to in Article 7 (1) (b) of the Regulation, to the extent that this Regulation is more favourable than the said Agreement for those entitled.**

Lecourt		Donner	Sørensen
Monaco	Pescatore	Kutscher	Ó Dálaigh

Delivered in open court in Luxembourg on 28 May 1974.

A. Van Houtte	R. Lecourt
Registrar	President