OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 30 MAY 1984 [1]

Mr President,
Members of the Court

1. The Court is called upon, in the context of a dispute regarding payment of family allowances under the French scheme, to interpret Article 48 of the EEC Treaty and 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. It should be stated first of all that, under Articles L 511 and L 524 of the Code de la Sécurité Sociale, such benefits are to be paid to all persons who reside in France and have at least two dependent children also residing in France. The rules adopted for the implementation of those provisions lay down the conditions under which a son who is studying abroad may be regarded as resident for the purposes of the allowances.

Richard Meade, a United States national, has, since 1973, resided with his wife and two sons, all of British nationality, in Paris, where he works as a legal adviser. In 1977, the elder son went to school in the United Kingdom, to Radley College, Abingdon. In 1980, the competent institution (the Caisse d'Allocations Familiales de la Région Parisienne [Family Allowances Fund for the Paris Region, hereinafter referred to as "the Fund"] learned that the conditions for payment of benefits laid down in French law (the son's residence in France) had not been complied with and, moreover, that the conditions under which the son might be considered resident did not exist. It therefore suspended payment of benefits and demanded repayment from Mr and Mrs Meade of some FF 6 436.80 wrongly paid in the period from March 1978 to January 1980.

The amount was not repaid and the Fund instituted proceedings against the Meades before the Commission de Première Instance du Contentieux et de la Sécurité Sociale et de la Mutualité Sociale Agricole [Social Security and Agricultural Social Insurance Mutual Benefit Appeals Board, hereinafter referred to as "the Board"], Paris, seeking a declaration that the benefits must be repaid. The Meades contended that the refusal to pay benefits while their son was pursuing his studies or training abroad constituted an obstacle to freedom of movement for persons and was as such contrary to Article 48 of the EEC Treaty.

By an interlocutory decision of 3 June 1983, the Board stayed proceedings and under Article 177 of the EEC Treaty referred the following question to the Court of Justice for a preliminary ruling:

"Is the Caisse d'Allocations Familiales entitled, on the basis of Article 48 of the EEC Treaty, to demand repayment of the family allowances paid to the parents of a young man of British nationality on the ground that he is pursuing his studies in England and to suspend payment of the said allowances on the same ground?"

2. At first sight, the Board is asking the Court of Justice to establish whether a specific decision taken by a French public body is compatible with

1 — Translated from the Italian.

Community law. However, such an examination is beyond the jurisdiction of the Court of Justice as laid down in Article 177. None the less, according to settled case-law, the Court, on the basis of the information supplied by the national court or tribunal, may extract from the question as drafted the underlying problem regarding the interpretation of Community law. In this case, the expressions used and the details supplied by the tribunal show that what the latter wishes to ascertain is the scope *ratione personae* and *ratione materiae* of the basic provisions on the free movement of workers (Article 48 *et seq.* of the EEC Treaty) and of the regulation on the application of social security schemes to migrant workers.

Let us begin with Article 48. The freedom of movement guaranteed by that article applies only to "workers of the Member States". The Court is aware of the identity of the persons to whom that formula refers. The fact that Articles 48 to 51 contain numerous references to the *employment* of those to whom it applies and that the Treaty contains other, independent, rules relating to movement which deal with self-employed persons, shows in the clearest possible way that the provision in question refers only to employed persons. Obviously, students, who pursue no professional or trade activity, do not come into that category (see judgment of 1. 12. 1977 in Case 66/77 *Kuyken* v *Rijksdienst voor Arbeidsvoorziening* [1977] ECR 2311). At the very most, students can enjoy a right of movement only as persons for whom services are intended.

I might add that the workers referred to in Article 48 must be Community citizens. That article itself confirms it. In any event, there is no doubt that the authors of the Treaties of Paris and Rome intended to limit freedom of movement to citizens of the Member States: see the express provisions to that effect in Article 69 of the ECSC Treaty and Article 96 of the EAEC Treaty.

3. It follows from the foregoing that Article 48 cannot be applied either to a national of a non-member country or to a student. However, the dispute pending before the Board deals with social security benefits. The Court must therefore examine Regulation No 1408/71 which governs the application of social security schemes to migrant workers.

That regulation was adopted for the purpose of implementing Article 51 of the EEC Treaty and defines the persons entitled to Community benefits in a way in which is wider than the definition used in regard to freedom of movement for workers. The regulation applies, in fact, to all those who are insured (compulsorily, voluntarily or on an optional continued basis) in a Member State provided that they are covered by a social security scheme for employed or self-employed persons (Article 1). The persons concerned must also be nationals of one of the Member States (to which are assimilated refugees and stateless persons residing in a Member State), members of their families or their survivors (Article 2). Once again, therefore, nationals of non-member countries and students as such are excluded from the scope of the Community rules, unless, of course, the

national rules assimilate students to workers by granting them benefits of the kind provided for in Regulation No 1408/71.

4. During the oral procedure, Mr Meade personally provided some clarification of his wife's position regarding employment. He stated that she had worked in his chambers as a secretary, without however being paid, from 1974 to 1977. Since that date she has worked as a paid director of various companies. According to Mr Meade, the French social security institution should thus have paid her family allowances within the meaning of the Community rules.

However, the Court, as it is well aware, does not have jurisdiction, in the context of proceedings under Article 177 of the EEC Treaty, to adjudicate upon the facts of a case. The accuracy of such data does not come within the power of review of the Court of Justice but remains subject to the jurisdiction of the national court. It will be for the latter to assess whether, at the material time, the concept of employed person contained in Article 1 of Regulation No 1408/71 could be applied to Mrs Meade and whether she therefore was entitled to be paid family allowances for her son residing in the territory of another Member State as provided for in Article 73 (2) of that regulation.

5. On the basis of those simple and undisputed points, I propose that the Court reply as follows to the question referred to it for a preliminary ruling by the Commission de Première Instance du Contentieux de la Sécurité Sociale et de la Mutualité Sociale Agricole, Paris, by interlocutory decision of 3 June 1983, in proceedings brought by the Caisse d'Allocations Familiales de la Région Parisienne against Mr and Mrs Richard Meade:

"Article 48 *et seq.* of the EEC Treaty must be interpreted as meaning that the right of free movement is limited to employed persons who are nationals of one of the Member States. For the purposes of social security benefits alone, Article 2 of Regulation No 1408/71 also applies to stateless persons and refugees resident in a Member State."