

Case C-310/91

Hugo Schmid

v

Belgian State, represented by the Minister van Sociale Voorzorg

(Reference for a preliminary ruling
from the Arbeidshof, Brussels)

(Social security — Disability allowances)

Report for the Hearing	I - 3012
Opinion of Advocate General Lenz delivered on 12 January 1993	I - 3022
Judgment of the Court (Fifth Chamber), 27 May 1993	I - 3037

Summary of the Judgment

- Social security for migrant workers — Community legislation — Persons covered — Members of the family of a worker — Benefit awarded on grounds other than the status of member of the family of a worker — Regulation No 1408/71 not applicable*
(Council Regulation No 1408/71, Arts 2 and 3)
 - Freedom of movement for persons — Workers — Equal treatment — Social advantages — Concept — Disability allowances — Grant of benefit by the Member State of residence to a national of another Member State, formerly an official of an international organization in favour of dependent offspring — Nationality condition — Not permissible*
(Council Regulation No 1612/68, Art. 7(2))
-
- Articles 2 and 3 of Regulation No 1408/71 must be interpreted as meaning that they cannot be relied upon by the dependent offspring of a migrant worker in order to claim a disability allowance provided for under national legislation as a right in person and not by reason of the beneficiary's status as a member of a worker's family.

Under that regulation the members of the family of a worker can claim only derived

rights, that is to say rights acquired as a member of the family of a worker.

2. The concept of a social advantage referred to in Article 7(2) of Regulation No 1612/68 comprises all advantages which, whether or not linked to a contract of employment, are generally granted to national workers because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community.

Since that is so in the case of disability allowances, a national of a Member State

who was formerly an official of an international organization can rely on the right to equal treatment guaranteed by the abovementioned provision in order to obtain an adult disability allowance provided for under the legislation of the Member State in which he resides, where that is not his country of origin, for the benefit of that person's dependent offspring. No condition as to the possession by the beneficiary of the nationality of the State of residence may be raised to defeat that claim since such a condition, even if it applies equally to the offspring of national workers, is incompatible with the requirement of equal treatment, inasmuch as it is more easily satisfied by the offspring of national workers than by the offspring of migrant workers.

REPORT FOR THE HEARING in Case C-310/91 *

I — Facts and procedure

2 June 1983 (OJ 1983 L 230, p. 6), defines 'member of the family' as follows:

1. *Legal background to the dispute*

(a) The Community legislation

Article 1(f) of Regulation (EEC) No 1408/71, as amended and updated by Council Regulation (EEC) No 2001/83 of

'(f) "member of the family" means any person defined or recognized as a member of the family or designated as a member of the household by the legislation under which benefits are provided or, in the cases referred to in Articles 22(1)(a) and 31, by the legislation of the Member State in whose territory such a person resides; where, however, the said legislation regard as a member of the family or a

* Language of the case: Dutch.