

benefits which come within it rests entirely on the factors relating to each benefit, in particular its purposes and the conditions for its grant.

2. Article 4 (4) of Regulation No 1408/71 must be interpreted as also excluding from the field of application of that regulation special national schemes (such as that referred to in Article 1 (4) of the Belgian Royal Decree of 27 June 1969), the essential objective of which is to offer to workers who fought in the allied forces between 1940 and 1945 and who suffer incapacity for work attributable to an act of war a testimony of national recognition for the hardships suffered during that period and to grant them, by increasing the rate of the early retirement pension, a benefit by reason of the services thus rendered to their country.
3. It follows from all the provisions of Regulation (EEC) No 1612/68 of the Council and from the objective pursued that the social and tax advantages which this regulation extends to workers who are nationals of other Member States are all those

which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other Member States therefore seems suitable to facilitate their mobility within the Community.

4. A benefit based on a scheme of national recognition, (such as the benefit granted by the Belgian Royal Decree of 27 June 1969), cannot be considered as an advantage granted to a national worker by reason primarily of his status of worker or resident on the national territory and for that reason does not fulfil the essential characteristics of the "social advantages" referred to in Article 7 (2) of Regulation (EEC) No 1612/68. It does not therefore come within the substantive field of application of that regulation and is not therefore, as regards the conditions for the grant of that benefit, subject to the provisions of the latter.

In Case 207/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour du Travail, Liège, for a preliminary ruling in the action pending before that court between

MINISTÈRE PUBLIC

and

- (1) GILBERT EVEN, residing at Herstal;
- (2) OFFICE NATIONAL DES PENSIONS POUR TRAVAILLEURS SALARIÉS (O.N.P.T.S.),  
Brussels,

on the interpretation of certain provisions of Regulation No 1408/71, in particular those of Articles 3 (1) and 4 (4),

THE COURT (First Chamber)

composed of: J. Mertens de Wilmars, President of Chamber, A. O'Keeffe and G. Bosco, Judges,

Advocate General: H. Mayras  
Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Facts and Issues

#### I — Facts and written procedure

1. Mr Gilbert Even, who was born on 4 July 1915 and is a French national residing in Belgium, has been in receipt of a permanent war service 10% invalidity pension in France since 26 June 1944 as the result of a wound sustained as a soldier on 13 May 1940.

After reaching 60 years of age, Mr Even applied on 17 January 1975 to the Office National des Pensions pour Travailleurs Salariés (hereinafter referred to as "the O.N.P.T.S.") in Belgium for an early retirement pension which is normally paid at the full rate at 65 years of age. As Mr Even had worked as an employed person in Belgium and in France, the pension is calculated by aggregation and apportionment pursuant to Regulation

No 1408/71 of the Council of 14 June 1971.

The pension thus paid is 25% less than the full pension which Mr Even would have been able to receive at 65 years of age: the legal source of this reduction on the ground of early retirement (five years) is Article 5 of the Royal Decree No 50 of 24 October 1967.

Under the system of that royal decree the normal retirement age for male workers is in fact 65 years. However, Article 5 (1) of the decree provides as follows:

“The retirement pension ... may at the choice and request of the person concerned start to run during the period of five years preceding the normal pension age; in this case it shall be reduced by 5% per year of early payment.”

The decision granting Mr Even the retirement pension thus reduced was the subject-matter of an action brought by Mr Even before the Tribunal du Travail [Labour Tribunal], Liège. In support of this action, Mr Even called in aid Article 3 (1) of Regulation No 1408/71, which provides as follows:

“... persons resident in the territory of one of the Member States to whom this regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State.”

Basing himself on that provision he relied, by the same right as Belgian nationals, upon the provisions of the Royal Decree of 27 June 1969 laying down the conditions under which a scheme of national recognition entitles an employed person to an *early* retirement pension *without reduction*. Mr

Even relied in particular upon Article 1 of that decree, according to which:

“The reduction provided for ... in Article 5 (1) of the Royal Decree No 50 of 24 October 1967 ... shall not apply to persons who satisfy the following conditions:

- (1) ...
- (2) ...
- (3) ...
- (4) are of Belgian nationality, have served in the allied forces between 10 May 1940 and 8 May 1945 and are in receipt of a war service invalidity pension granted by an allied country for incapacity for work due to an act of war ...”

After the Tribunal du Travail, Liège, had granted this request by judgment of 7 February 1977, the Ministère Public [Public prosecutor's department] and the O.N.P.T.S. lodged appeals — a main appeal and an appeal on a point of law respectively — before the Cour du Travail [Labour Court], Liège.

The Ministère Public and the O.N.P.T.S. have both maintained that that judgment conflicts with the provisions of the Royal Decree of 27 June 1969 on the ground that that decree concerned only persons to whom a scheme of national recognition “obtained under Belgian legislation” applies whereas in the present case the rights relied upon by Mr Even were conferred upon him by France. The O.N.P.T.S. added moreover that the benefit of an early retirement pension without reduction is reserved to Belgian nationals and that Mr Even does not, in addition, come within any of the schemes enumerated by law and does not, besides, fulfil the conditions for it.

The Cour du Travail, Liège, after taking into consideration the above-mentioned provisions of Article 3 (1) of Regulation No 1408/71, pointed out moreover that Article 4 (4) of the same regulation specifies that it does not apply

“... to benefit schemes for victims of war or its consequences ...”

The problem therefore arises, in its opinion, whether, in so far as it grants to various classes of beneficiaries under a scheme of national recognition listed by it an early employed person's retirement pension without reduction, the financial burden of which is directly borne by the Belgian State instead of being borne at least in the main by social security contributions paid by employers and workers, the Royal Decree of 27 June 1968 should not be regarded as a benefit scheme for victims of war or its consequences or at least as a scheme which may be treated as such within the meaning of the above-mentioned Article 4 (4), so that it does not come within the scope of Regulation No 1408/71 and is consequently not covered by the rule of equality of treatment laid down in Article 3 (1) of the regulation.

Taking the view that such a problem relates to the interpretation of Community law, the Cour du Travail, Liège, decided by a judgment of 8 September 1978 to stay the proceedings and to refer to the Court of Justice under Article 177 of the EEC Treaty the following questions:

“(a) Must Article 4 (4) of 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, which stipulates that the said regulation does not apply to benefit schemes for victims of war or its consequences, be interpreted restrictively as meaning that it applies only to a legislation or legislations ‘taken as a whole’ establishing or regulating a specific benefit scheme or schemes for victims of war or its consequences which are obviously outside the scope of the existing social security schemes or on the contrary more broadly as covering certain special legal provisions such as those which are the subject-matter of the Royal Decree of 27 June 1969 laying down the conditions under which a scheme of national recognition entitles an employed person to an early retirement pension without reduction (and in particular those referred to in Article 1 (4) of the said royal decree) which conditions supplement the Belgian legislation on pensions for employed persons established and regulated by the Royal Decree No 50 of 24 October 1967 by providing for the grant, payable directly and solely by the Belgian State, of ‘special’ pension benefits in favour of the various classes of beneficiaries under a scheme of national recognition which those provisions list?

(b) In the event of the Court of Justice giving a strict (restrictive) interpretation of Article 4 (4) of Regulation (EEC) No 1408/71 does the Court consider that in accordance with the restriction contained in Article 3 (1) of the said regulation which

enshrines the principle of equality of treatment 'subject to the special provisions of this regulation' there could be, either in the aforementioned regulation or in the Regulation (EEC) No 574/72 fixing the procedure for implementation, one or more special provisions in the matter of the pensions in question preventing the application of the principle that 'persons resident in the territory of one of the Member States to whom this regulation applies shall ... enjoy the same benefits under the legislation of any Member State as the nationals of that State'?

- (c) In the event of the principle of non-discrimination contained in the aforementioned Article 3 being held to be applicable does this mean that a nationality clause such as that which provides 'be of Belgian nationality' in Article 1 (4) of the Royal Decree of 27 June 1969 must be treated as not applicable and consequently considered void as regards the non-Belgian nationals of the various Member States of the European Communities?"

2. A copy of the judgment making the reference reached the Court Registry on 21 September 1978.

The Office National des Pensions pour Travailleurs Salariés, represented by its General Administrator, Mr. R. Masyn, and the Commission of the European Communities, represented by Mrs Marie-José Jonczy, a member of the Commission's Legal Service, acting as Agent, assisted by Messrs Henri Scheyvaerts and Francis Herbert, Advocates at the Brussels Bar, submitted written observations pursuant to Article

20 of the Protocol on the Statute of the Court of Justice of the EEC.

After hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry and to refer the case to the First Chamber for examination pursuant to Article 95 of the Rules of Procedure.

- II — Written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — The *Office National des Pensions des Travailleurs Salariés*, having set out the facts forming the basis of the dispute, emphasizes that even if the Royal Decree of 27 June 1969 laying down the conditions under which a scheme of national recognition entitles an employed person to an early retirement pension without reduction is applied only to persons of Belgian nationality this does not involve an infringement of the principle of equality of treatment enshrined in Article 3 (1) of Regulation No 1408/71.

The benefit provided for by that decree comes in fact within the social security benefits introduced for victims of war which Regulation No 1408/71 excludes from its field of application.

Referring to the judgment delivered by the Court of Justice on 6 July 1978 in Case 9/78, the *Gillard* case, [1978] ECR 1661, the O.N.P.T.S. points out that in view of the similarity between that case and the present case, the Court of Justice

can in this instance only confirm the principles stated in that judgment. The O.N.P.T.S. adds moreover that the origins of the Royal Decree of 27 June 1969 show very clearly that the Belgian legislature considers the early pension without reduction as a benefit granted to victims of war.

As clearly shown by the statements made by the Minister for Social Welfare during the sitting of the Belgian Senate on 23 February 1955, the benefits granted to beneficiaries under a scheme of national recognition should in fact be considered as a benefit scheme for victims of war or its consequences and not as a benefit scheme coming within social security. They are moreover directly financed by the State whereas the pension scheme is financed by contributions from workers and employers, the State merely in this case granting an annual subsidy.

On the basis of these considerations, the O.N.P.T.S. considers that the first question might be answered as follows:

“The provision contained in Article 4 (4) of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971 must be interpreted broadly as including the benefits provided for by the Royal Decree of 27 June 1969.”

If the Court of Justice rules to that effect the reply to the other questions becomes purposeless.

B — The *Commission of the European Communities* points out first of all that the problem discussed in the present case is similar to that settled by the Court in its judgment of 6 July 1978 in Case 9/78, the *Gillard* case.

As regards the *first question*, in its opinion it is in particular clear from an examination of the Belgian legislation referred to that:

— Although it is not in dispute that the principle of early retirement comes within the substantive field of application of Regulation (EEC) No 1408/71, the title of the Royal Decree of 27 June 1969 refers however to a “scheme of national recognition”;

— The Royal Decree of 27 June 1969 was adopted pursuant to the last paragraph of Article 6 of Royal Decree No 50 of 24 October 1967 according to which: “The King may also . . . determine in respect of each category of beneficiaries under a scheme of national recognition the circumstances in which those beneficiaries are permitted to obtain an early retirement pension, the method of calculation of the pension and the manner in which the financial burden resulting from the application of the rules which he lays down shall be borne”;

— All the cases set out in Article 1 of the Royal Decree of 27 June 1968 make the benefit of the early retirement pension without reduction subject to a service rendered during a period of war or to a hardship suffered during or as a result of such a period of war.

In view of these factors it therefore seems that the objectives of and conditions for the grant of the early pension without reduction granted by the Royal Decree of 1969 are the same as those of the French legislation taken into consideration by the Court in the judgment in the *Gillard* case.

Having regard to the similarity in fact and in law between the two cases it therefore follows that the same reply should be given to the first question asked by the court making the reference as that given in the judgment of the Court of 6 July 1978.

Whilst considering that such a reply makes the other questions purposeless the Commission however takes the view that it is also necessary to adopt a viewpoint on the *second and third questions* so as to deal with any eventualities.

It points out with regard to the second question that assuming that the grant of an early retirement pension without reduction by virtue of a scheme of national recognition is considered as being included among the schemes of social security coming within the substantive field of application of Regulation No 1408/71 it is necessary to acknowledge that that regulation does not contain special provisions limiting the application of the principle of equality of treatment as regards old-age pensions.

With regard to the third question, the reply which it calls for follows from many judgments in which the Court of Justice has stated that national provisions contrary to the prohibition on all discrimination based on nationality may not be applied to the migrant worker in question who, in so far as he fulfils the other conditions to which the grant of a benefit is subject, must therefore receive that benefit in the same conditions as a national worker.

Having made these observations, the Commission considers it appropriate to specify in addition, beyond the wording of the questions asked by the court making the reference and so as to provide it with all factors of interpretation which might be useful to it, the scope of the principle of equality of treatment, regardless of the applicability of Regulation (EEC) No 1408/71.

The rule of equality of treatment laid down in Article 3 of that regulation is, according to the Commission, merely a

specific application within the field covered by Article 51 of the Treaty of the fundamental prohibition against discrimination laid down in Article 7 of the Treaty. This principle was restated as regards freedom of movement for workers in Article 48 (2) of the Treaty and implemented by Regulation (EEC) No 1612/68 of the Council on freedom of movement for workers within the Community. Article 7 of that regulation prohibits all discrimination by reason of nationality in respect of conditions of employment and work and Article 7 (2) provides that a migrant worker must enjoy in the host Member State the same *social and tax advantages* as national workers.

The problem thus arises in the present case whether the concept of *social advantages* must be interpreted as including advantages such as those granted by the Royal Decree of 27 June 1969.

Having recalled the case-law of the Court of Justice in this field according to which the scope of the concept of social advantages laid down in Article 7 (2) of Regulation No 1612/68 is as broad as possible, the Commission expresses the view that such a concept should be able to cover all advantages granted to nationals of the Member States which are intended to compensate wholly or in part for a loss of or inadequate income or increased or excessive charges, or whose aim is to redress in a more general way the underprivileged financial or material situation of certain categories of person.

This concept does not include social security benefits since the EEC Treaty has provided for a different legal basis for the progressive attainment of freedom of movement for workers on the one hand (Article 49) and for the field of social security on the other

(Article 51). This does not however mean that the benefits excluded from the field of social security under Article 4 of Regulation No 1408/71 are covered by the concept of social advantages contained in Article 7 of Regulation No 1612/68.

In accordance with the principles deduced by the Court of Justice and in the circumstances laid down by that Court, social and medical assistance as referred to by the Advocate General in Case 1/72, the *Frilli* case, no doubt comes within the concept of social advantages. In the same way that concept covers benefits for victims of war: they also come within the application of the principle of equality of treatment.

As regards the attainment of "real equality of treatment with the nationals ... in regard to economic matters and social benefits" mentioned by the Advocate General in Case 7/75 the benefit of an early retirement pension without reduction granted to national workers within the context of a scheme of national recognition certainly comes within the concept of social advantages.

Article 7 (2) of Regulation No 1612/68 therefore makes it impossible for the benefit thereof to be refused to a migrant worker solely on the basis of his nationality.

It is of course possible to ask whether the fact that Article 4 of Regulation No 1408/71 makes a clear distinction between benefit schemes for victims of war and social security and social assistance schemes does not indicate that, more generally, schemes for victims of war are, in particular on account of the

very close link of recognition with the Member State granting them, excluded from the application of the Community rule, especially that of the principle of equality of treatment as laid down *inter alia* in Article 7 of Regulation No 1612/68. However, the reply to such a question can only be in the negative.

The distinction laid down in Article 4 of Regulation No 1408/71 aims to delimit the substantive field of application of that regulation, in other words the field of Article 51 of the Treaty which lays down rules relating to a specific aspect of freedom of movement for workers, whereas the principle of freedom of movement for workers is laid down in Article 48 (2) of the Treaty, the only possible restrictions, which must be interpreted restrictively, being enumerated in Article 48 (3).

If therefore that distinction expressed the concern of the Community legislature generally to exempt from Community law schemes for victims of war, such a principle would be illegal in the light of Article 48 (2) and (3) of the Treaty.

This principle cannot in fact be covered by the power left to the Member States to adopt discriminatory measures justified on grounds of public policy, public security or public health. The cases listed in Article 48 (3) all relate to the search for employment and the right of employment but they do not refer to the conditions of that employment. They cannot therefore concern the detailed rules for the grant of an early pension.

It is moreover impossible in the present case to obstruct the application of the principle of equality of treatment either by the consideration of the special link between a national and a Member State as regards the performance of the duty



of military service and its consequences or by the consideration of the special protection and aid owed by a Member State to its nationals as regards the after effects of war.

State fulfils the objective conditions and is therefore in exactly the same situation as certain nationals in receipt of the advantage.

As to the first point, it follows from the case-law of the Court of Justice that the fact that a migrant worker has performed a duty of military service as regards his own Member State is likely to have consequences in relation to the conditions of employment of that worker in another Member State so that the principle of equality of treatment applies to the worker concerned, in particular with regard to the "social advantages" referred to in Article 7 of Regulation No 1612/68.

It is moreover necessary to observe that certain legislative provisions adopted in Belgium confirm, if necessary, that a refusal based only on nationality to grant workers who are nationals of the Member States the advantages granted under a scheme of national recognition is not, even in national law, justified by considerations relating to public policy or to public health.

The principle of equality of treatment must therefore be fully applied.

As to the second point, it also follows from the case-law of the Court of Justice that the prohibition on discrimination laid down in Article 7 of Regulation (EEC) No 1612/68 must be interpreted as relating also to the special protection granted, for social reasons, by the legislation of a Member State to specific categories of workers.

In view of all these observations, the Commission therefore considers that the following replies might be given to the questions asked:

"(1) Article 4 (4) of Regulation No 1408/71 must be interpreted as meaning that that regulation does not apply to social security benefits introduced in favour of persons in receipt of a war service invalidity pension such as the benefit provided for in Article 1 (4) of the Belgian Royal Decree of 27 June 1969.

It is of course conceivable that a Member State might make the grant of an advantage subject, as regards the entitlement to pension rights, to one or more objective conditions relating to the services rendered or the hardships endured by a worker: in this case, the class of beneficiaries is restricted even amongst the nationals of the Member State concerned and there is no discrimination against foreigners who do not fulfil these conditions.

However, the grant of such benefits is, pursuant to Article 48 (2) of the EEC Treaty and Article 7 (2) of Regulation (EEC) No 1612/68 of the Council, subject to the prohibition on discrimination based on nationality.

However, the principle of equality of treatment prohibits a refusal to grant a benefit solely on the ground of nationality where a national of another Member

(2) The second and third questions are purposeless."

III — Oral procedure

The Office National des Pensions pour Travailleurs Salariés, represented by Mr J. Peltot, acting as Agent, and the Commission of the European Communities, represented by Mrs

M. J. Jonczy, acting as Agent, assisted by Mr F. Herbert, presented oral argument at the hearing on 8 March 1979.

The Advocate General delivered his opinion at the hearing on 29 March 1979.

### Decision

- 1 By judgment of 8 September 1978, received at the Court on 21 September 1978, the Cour du Travail, Liège, submitted to the Court several questions for a preliminary ruling on the interpretation of the provisions of Articles 3 and 4 of Regulation (EEC) No 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community.
- 2 These questions have been raised within the context of a dispute between the Office National des Pensions pour Travailleurs Salariés (hereinafter referred to as "the O.N.P.T.S."), Brussels, and a French national who has been in receipt of an early retirement pension paid by the O.N.P.T.S. since reaching 60 years of age.
- 3 Pursuant to Article 5 of the Belgian Royal Decree No 50 of 24 October 1967, the retirement pension, paid at the normal rate at 65 years of age, may start to run at the choice and upon the request of the person concerned during the period of 5 years preceding the normal pension age but in that case it is reduced by 5% per year of early payment.
- 4 However, Article 1 (4) of the Royal Decree of 27 June 1969 laying down the conditions under which a scheme of national recognition entitles an employed person to an early retirement pension without reduction provides that the above-mentioned reduction does not apply to Belgian nationals who have served in the allied forces between 10 May 1940 and 8 May 1945 and

are in receipt of a war service invalidity pension granted by an allied nation for incapacity for work attributable to an act of war.

- 5 In the present case Mr Even, who was in receipt under the French legislation of a permanent war service 10% invalidity pension as a result of a war wound sustained on 13 May 1940, claims the benefit granted by that provision of an early retirement pension without reduction, relying upon the principle of equality of treatment between national workers and workers of another Member State enshrined in the Community rules.
  
- 6 He claims that he fulfils all the conditions required by Article 1 (4) of the Royal Decree of 27 June 1969 for the grant of the social advantage sought except that of nationality and that the refusal of that benefit amounts to discrimination based on nationality which is contrary to the Treaty.
  
- 7 In order to settle this problem, the Cour du Travail, Liège, delivering judgment on appeal from the judgment of the Tribunal du Travail, Liège, which had granted the plaintiff's request, referred to the Court of Justice the following questions:
  - “(a) Must Article 4 (4) of Regulation (EEC) No 1408/71 of the Council of the European Communities of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, which stipulates that the said regulation does not apply to benefit schemes for victims of war or its consequences, be interpreted restrictively as meaning that it applies only to a legislation or legislations ‘taken as a whole’ establishing or regulating a specific benefit scheme or schemes for victims of war or its consequences which are obviously outside the scope of the existing social security schemes or on the contrary more broadly as covering certain special legal provisions such as those which are the subject-matter of the Royal Decree of 27 June 1969 laying down the conditions under which a scheme of national recognition entitles an employed person to an early retirement pension without reduction (and in particular those referred to in Article 1 (4) of the said royal decree) which conditions supplement

the Belgian legislation on pensions for employed persons established and regulated by the Royal Decree No 50 of 24 October 1967 by providing for the grant, payable directly and solely by the Belgian State, of 'special' pension benefits in favour of the various classes of beneficiaries under a scheme of national recognition which these provisions list?

- (b) In the event of the Court of Justice giving a strict (restrictive) interpretation of Article 4 (4) of Regulation (EEC) No 1408/71 does the Court consider that in accordance with the restriction contained in Article 3 (1) of the said regulation which enshrines the principle of equality of treatment 'subject to the special provisions of this regulation' there could be, either in the aforementioned regulation or in Regulation (EEC) No 574/72 fixing the procedure for implementation, one or more special provisions in the matter of the pensions in question preventing the application of the principle that 'persons resident in the territory of one of the Member States to whom this regulation applies shall . . . enjoy the same benefits under the legislation of any Member State as the nationals of that State'?
- (c) In the event of the principle of non-discrimination contained in the aforementioned Article 3 being held to be applicable does this mean that a nationality clause such as that which provides 'be of Belgian nationality' in Article 1 (4) of the Royal Decree of 27 June 1969 must be treated as not applicable and consequently considered void as regards the non-Belgian nationals of the various Member States of the European Communities?"
- 8 In order to reply to the first question it is important essentially to examine whether a benefit such as referred to in Article 1 (4) of the Belgian Royal Decree of 27 June 1969 may be regarded as a social security benefit within the meaning of Article 4 (1) (c) of Regulation No 1408/71 and on that account comes within the substantive field of application of that regulation defined by the above-mentioned Article 4.
- 9 As the national court specifies in its judgment making the reference, the provisions of Article 4 (4) of the Belgian Royal Decree of 27 June 1969 "supplement the Belgian legislation on pensions for employed persons established and regulated by the Royal Decree No 50 of 24 October 1967".

- 10 However, the fact that a provision of that kind does or does not come within national social security legislation is not by itself determining for the purpose of concluding that the benefit laid down in that provision is in the nature of a social security benefit within the meaning of Regulation No 1408/71.
- 11 In fact, as the Court stated in its judgment of 6 July 1978 in the *Gillard* case, Case 9/78, the distinction between benefits which are excluded from the field of application of Regulation No 1408/71 and benefits which come within it rests entirely on the factors relating to each benefit, in particular its purposes and the conditions for its grant.
- 12 It is clear from the file that the essential objective of the benefit granted under the national provisions in question is to offer to Belgian workers who fought in the allied forces between 10 May 1940 and 8 May 1945 and suffer incapacity for work attributable to an act of war a testimony of national recognition for the hardships suffered during that period and to grant them, by increasing the rate of the early retirement pension, a benefit by reason of the services thus rendered to their country.
- 13 In view of this objective and of these conditions for its grant, such a benefit does not exhibit the factors relating to a social security benefit within the meaning of Article 4 (1) of the regulation.
- 14 Article 4 (4) of Regulation No 1408/71, defining the substantive field of application of that provision, provides that the regulation does not apply *inter alia* "to benefit schemes for victims of war or its consequences".
- 15 For those reasons it is necessary to reply to the first question that Article 4 (4) of Regulation No 1408/71 must be interpreted as referring also to special schemes such as that referred to in Article 1 (4) of the Belgian Royal Decree of 27 June 1969 laying down the conditions under which a scheme of national recognition entitles an employed person to an early retirement pension without reduction.

- 16 In view of this reply the other questions which have been asked by the national court become purposeless.
- 17 However, the Commission has claimed in its observations that a benefit such as that in the present case must, although it does not constitute a social security benefit within the meaning of Regulation (EEC) No 1408/71, nevertheless be considered as a social advantage within the meaning of Article 7 (2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475) and thus comes within the field of application of the provisions of the latter regulation.
- 18 It concludes from this that the grant of such a benefit, although not covered by the provisions of Regulation (EEC) No 1408/71, including those of Article 3 (1), remains subject to the provisions of Regulation (EEC) No 1612/68, in particular those of Article 7 (2) according to which a worker who is a national of a Member State enjoys in the territory of the other Member States "the same social and tax advantages as national workers".
- 19 It is necessary to examine the validity of such an argument.
- 20 Regulation (EEC) No 1612/68, which was adopted in implementation of Articles 48 and 49 of the Treaty and within the context of the measures adopted by Regulation No 38/64 of the Council of 25 March 1964 (Journal Officiel 1964, No 62, p. 965), aims to achieve freedom of movement for workers within the Community.
- 21 For this purpose it provides for the abolition of all differences in treatment between national workers and workers who are nationals of the other Member States as regards conditions of employment, work and remuneration and gives workers who are nationals of the other Member States and members of their family access to the social and tax advantages from which national workers benefit in the State of employment.

- 22 It follows from all its provisions and from the objective pursued that the advantages which this regulation extends to workers who are nationals of other Member States are all those which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other Member States therefore seems suitable to facilitate their mobility within the Community.
- 23 As it has previously been stated, the main reason for a benefit such as that granted by the Belgian national legislation in question to certain categories of national workers is the services which those in receipt of the benefit have rendered in wartime to their own country and its essential objective is to give those nationals an advantage by reason of the hardships suffered for that country.
- 24 Such a benefit, which is based on a scheme of national recognition, cannot therefore be considered as an advantage granted to a national worker by reason primarily of his status of worker or resident on the national territory and for that reason does not fulfil the essential characteristics of the “social advantages” referred to in Article 7 (2) of Regulation (EEC) No 1612/68.
- 25 It therefore follows that the benefit in question does not come within the substantive field of application of Regulation (EEC) No 1612/68 and is not therefore, as regards the conditions for the grant of that benefit, subject to the provisions of that regulation.

### Costs

- 26 The costs incurred by the Commission of the European Communities, which submitted observations to the Court, are not recoverable; as these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the Cour du Travail, Liège, by judgment of that court of 8 September 1978, hereby rules:

**Article 4 (4) of Regulation (EEC) No 1408/71 must be interpreted as referring also to special schemes such as that referred to in Article 1 (4) of the Belgian Royal Decree of 27 June 1969 laying down the conditions under which a scheme of national recognition entitles an employed person to an early retirement pension without reduction.**

Mertens de Wilmars

O'Keefe

Bosco

Delivered in open court in Luxembourg on 31 May 1979.

A. Van Houtte

Registrar

J. Mertens de Wilmars

President of the First Chamber

OPINION OF MR ADVOCATE GENERAL MAYRAS  
DELIVERED ON 29 MAY 1979<sup>1</sup>

*Mr President,  
Members of the Court,*

The case which is at present before this Court forms a parallel to the *Gillard* case on which this Court delivered judgment in plenary session on 6 July 1978 [1978]

ECR 166 *et seq.*, following my opinion of 15 June of the same year, [1978] ECR 1669 *et seq.*

Mr Gillard, a Belgian citizen who had worked in France, claimed from the competent French sickness insurance

<sup>1</sup> — Translated from the French.