

JUDGMENT OF THE COURT

4 November 1997 \*

In Case C-20/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Social Security Commissioner (United Kingdom) for a preliminary ruling in the proceedings pending before him between

**Kelvin Albert Snares**

and

**The Adjudication Officer**

on the interpretation and validity of Articles 4(2a) and 10a of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), as subsequently amended by Council Regulation (EEC) No 1247/92 of 30 April 1992 (OJ 1992 L 136, p. 1),

\* Language of the case: English.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. Gulmann, H. Ragnemalm and M. Wathelet (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida (Rapporteur), P. J. G. Kapteyn, J. L. Murray, D. A. O. Edward, J.-P. Puissochet, G. Hirsch, P. Jann and L. Sevón, Judges,

Advocate General: P. Léger,  
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Mr Snares, by H. Mountfield, Barrister, instructed by D. Thomas, of the Child Poverty Action Group,
- the United Kingdom Government, by L. Nicoll, of the Treasury Solicitor's Department, acting as Agent, and N. Paines, Barrister,
- the German Government, by E. Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and B. Kloke, Oberregierungsrat in that Ministry, acting as Agents,
- the Spanish Government, by A. J. Navarro González, Director General of Community Legal and Institutional Coordination, and G. Calvo Díaz, Abogado del Estado, of the State Legal Service, acting as Agents,
- the French Government, by C. de Salins, Assistant Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and A. de Bourgoing, Chargé de Mission in that directorate, acting as Agents,

- the Austrian Government, by W. Okressek, Ministerialrat in the Constitutional Affairs Department of the Bundeskanzleramt, acting as Agent,
- the Council of the European Union, by M. Bishop and A. Lo Monaco, Legal Advisers, acting as Agents,
- the Commission of the European Communities, by C. Docksey and M. Patakia, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Snares, represented by H. Mountfield; the United Kingdom Government, represented by L. Nicoll and N. Paines; the Spanish Government, represented by P. Plaza Garcia, Abogado del Estado, of the State Legal Service, acting as Agent; the French Government, represented by C. de Salins and A. de Bourgoing; the Council, represented by M. Bishop and A. Lo Monaco; and the Commission, represented by C. Docksey, at the hearing on 18 March 1997,

after hearing the Opinion of the Advocate General at the sitting on 6 May 1997,

gives the following

### Judgment

- 1 By order of 17 January 1996, received at the Court on 22 January 1996, the Social Security Commissioner referred for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation and validity of Articles 4(2a) and

10a of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6, hereinafter 'Regulation No 1408/71'), as subsequently amended by Council Regulation (EEC) No 1247/92 of 30 April 1992 (OJ 1992 L 136, p. 1).

- 2 Those questions were raised in a dispute between Mr Snares, a United Kingdom national, and the Adjudication Officer concerning the award of the disability living allowance (hereinafter 'DLA') provided for under United Kingdom legislation.

### **The national legislation**

- 3 Prior to 1 April 1992, United Kingdom legislation provided for two invalidity benefits: attendance allowance (hereinafter 'AA') and mobility allowance (hereinafter 'MA'). Both were non-contributory and non-means tested benefits.
- 4 DLA was introduced on 1 April 1992 under the Disability Living Allowance and Disability Working Allowance Act 1991.
- 5 This new allowance is also non-contributory, is not linked to incapacity for work, and is non-means tested. It has two components: a care component, intended for dependent persons and corresponding to the former AA, and a mobility component, intended for those with impaired walking ability and corresponding to the

former MA. The care component is payable at three different rates depending on the nature of the person's disablement and care needs, while the mobility component is payable at two different rates depending on the nature and extent of impairment of the ability to walk. The two highest rates of the care component correspond to those at which AA was payable and the higher rate of the mobility component corresponds to that at which MA was payable.

- 6 Thus, with effect from 1 April 1992, AA, in the case of recipients under the age of 65, and MA already awarded were converted into awards of the care and mobility components of DLA. As from that date, no new awards of AA or MA were to be made, with the exception of AA in the case of recipients over the age of 65.
  
- 7 At the material time, DLA was payable under sections 71 to 76 of the Social Security Contributions and Benefits Act 1992 and the Social Security (Disability Living Allowance) Regulations 1991 (hereinafter 'the DLA Regulations').
  
- 8 Section 71(6) of the Social Security Contributions and Benefits Act provides that:

'A person shall not be entitled to a disability living allowance unless he satisfies prescribed conditions as to residence and presence in Great Britain.'

9 Regulation 2(1) and (2) of the DLA Regulations provides as follows:

(1) Subject to the following provisions of this regulation, the prescribed conditions for the purposes of [section 71(6) of the Social Security Contributions and Benefits Act 1992] as to residence and presence in Great Britain in relation to any person on any day shall be that —

(a) on that day —

(i) he is ordinarily resident in Great Britain; and

(ii) he is present in Great Britain; and

(iii) he has been present in Great Britain for a period of, or for periods amounting in the aggregate to, not less than 26 weeks in the 52 weeks immediately preceding that day; and

...

(2) For the purposes of paragraph (1)(a)(ii) and (iii), notwithstanding that on any day a person is absent from Great Britain, he shall be treated as though he were present in Great Britain if his absence is by reason only of the fact that on that day —

...

- (d) his absence from Great Britain is, and when it began was, for a temporary purpose and has not lasted for a continuous period exceeding 26 weeks; or
  
- (e) his absence from Great Britain is temporary and for the specific purpose of his being treated for incapacity, or a disabling condition, which commenced before he left Great Britain, and the Secretary of State has certified that it is consistent with the proper administration of the Act that, subject to the satisfaction of the foregoing condition in this subparagraph, he should be treated as though he were present in Great Britain.'

### The Community legislation

- 10 Prior to 1 June 1992, the date on which Regulation No 1247/92 entered into force, Article 4 of Regulation No 1408/71 provided as follows:

'1. This regulation shall apply to all legislation concerning the following branches of social security:

...

- (b) invalidity benefits, including those intended for the maintenance or improvement of earning capacity;

...

2. This regulation shall apply to all general and special social security schemes, whether contributory or non-contributory ... .

...

4. This regulation shall not apply to social and medical assistance ...'.

11 Article 5 of Regulation No 1408/71 added the following provision:

'The Member States shall specify the legislation and schemes referred to in Article 4(1) and (2) ... in declarations to be notified and published in accordance with Article 97.'

12 Finally, Article 10 of Regulation No 1408/71 provided:

'1. Save as otherwise provided in this regulation, invalidity, old-age or survivors' cash benefits, pensions for accidents at work or occupational diseases and death grants acquired under the legislation of one or more Member States shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated.'

- 13 Regulation No 1247/92, adopted on the basis of Articles 51 and 235 of the EEC Treaty, inserted a paragraph 2a in Article 4 of Regulation No 1408/71. That provision is worded as follows:

‘2 a. This regulation shall also apply to special non-contributory benefits which are provided under legislation or schemes other than those referred to in paragraph 1 or excluded by virtue of paragraph 4, where such benefits are intended:

- (a) either to provide supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in paragraph 1(a) to (h),

or

- (b) solely as specific protection for the disabled.’

- 14 At the same time Article 5 of Regulation No 1408/71 was amended in order to ensure that the declaration made by Member States under this provision should also cover ‘the special non-contributory benefits referred to in Article 4(2a)’. The United Kingdom has not made any declaration in regard to those benefits.

- 15 Regulation No 1247/92 also added Article 10a, which provides as follows:

‘1. Notwithstanding the provisions of Article 10 and Title III, persons to whom this regulation applies shall be granted the special non-contributory cash benefits referred to in Article 4(2a) exclusively in the territory of the Member State in which they reside, in accordance with the legislation of that State, provided that

such benefits are listed in Annex IIa. Such benefits shall be granted by and at the expense of the institution of the place of residence.

2. The institution of a Member State under whose legislation entitlement to benefits covered by paragraph 1 is subject to the completion of periods of employment, self-employment or residence shall regard, to the extent necessary, periods of employment, self-employment or residence completed in the territory of any other Member State as periods completed in the territory of the first Member State.

3. Where entitlement to a benefit covered by paragraph 1 but granted in the form of a supplement is subject, under the legislation of a Member State, to receipt of a benefit covered by Article 4(1)(a) to (h), and no such benefit is due under that legislation, any corresponding benefit granted under the legislation of any other Member State shall be treated as a benefit granted under the legislation of the first Member State for the purposes of entitlement to the supplement.

4. Where the granting of a disability or invalidity benefit covered by paragraph 1 is subject, under the legislation of a Member State, to the condition that the disability or invalidity should be diagnosed for the first time in the territory of that Member State, this condition shall be deemed to be fulfilled where such diagnosis is made for the first time in the territory of another Member State.'

<sup>16</sup> DLA is listed in Point (f) of Section L (United Kingdom) of Annex IIa to Regulation No 1408/71.

## The main proceedings

- 17 Mr Snares worked in the United Kingdom as an employee for 25 years and, as such, paid contributions to the United Kingdom social security scheme. In April 1993, when he was 39, he suffered a serious accident which left him with severely impaired mobility. He applied for DLA, and his claim was treated as having been made on 1 September 1993.
- 18 On the basis of the assessment of his care and mobility needs, the Adjudication Officer awarded Mr Snares the middle rate of the care component and the higher rate of the mobility component of DLA with effect from 1 September 1993.
- 19 Mr Snares also received invalidity benefit in the United Kingdom (which was subsequently converted into incapacity benefit). It is common ground that this is a contributory benefit and, as such, falls within the scope of Article 10 of Regulation No 1408/71.
- 20 In November 1993, Mr Snares decided to settle in Tenerife, where his immediate family, and in particular his mother, live, so that she could look after him. He informed the United Kingdom authorities that his absence would not be temporary and that he would be selling the home that he owned in the United Kingdom.
- 21 On 6 January 1994, the Adjudication Officer decided that his entitlement to DLA ceased with effect from his departure on 13 November 1993. That decision was confirmed on review on 16 February 1994.

- 22 On 21 July 1994, the Salisbury Social Security Appeal Tribunal disallowed Mr Snares' appeal against those decisions and decided that he was not entitled to either component of DLA while resident in Tenerife. In its reasons, the Salisbury Social Security Appeal Tribunal stated that the effect of the amendment to Regulation No 1408/71 by Regulation No 1247/92 from 1 June 1992 was to oust the provisions of Community law allowing claimants to receive payments of DLA while living abroad, with the result that the United Kingdom legislation imposing that residence condition was fully effective as from that date. As Mr Snares' entitlement to the benefit in question had arisen on 1 September 1993, and thus after Regulation No 1247/92 had entered into force, he ceased to be entitled to DLA under either United Kingdom legislation or Community law since his departure from the United Kingdom.
- 23 The Chairman of the Salisbury Social Security Appeal Tribunal granted Mr Snares leave to appeal against that decision to the Social Security Commissioner.
- 24 According to the Social Security Commissioner, it is common ground that, on 13 November 1993, Mr Snares ceased to satisfy subparagraphs (i) and (ii) of Regulation 2(1)(a) of the DLA Regulations. As from that date, he was no longer actually present in Great Britain and it was accepted that he was no longer ordinarily resident there. Nor did he fall within any of the cases set out in Regulation 2(2) in terms of which a person is to be treated as present in Great Britain. Finally, once he had left, his absence could not be treated as temporary.
- 25 As to whether Mr Snares ought none the less to be entitled to DLA under Regulation No 1408/71, the Social Security Commissioner found that the parties' views differed and decided to stay proceedings in order to refer the following questions to the Court for a preliminary ruling:

'1. Is the effect of the terms of Articles 4(2a) and 10a of Council Regulation (EEC) No 1408/71, as inserted by Council Regulation (EEC) No 1247/92 with effect

from 1 June 1992, to remove from the scope of Article 4(1) of Regulation No 1408/71 a benefit which prior to 1 June 1992 would have been accepted, in the case of a person who by reason of previous occupational activity was or had been covered by the social security legislation of the relevant Member State, as falling within the scope of Article 4(1), with the consequence that a person who after 1 June 1992 becomes entitled to such a benefit under the legislation of one Member State may not rely on the provisions of Article 10(1) of Regulation No 1408/71 in order to challenge a withdrawal of entitlement on the sole ground that the person resides in the territory of another Member State?

2. If the answer to Question 1 is yes, is Council Regulation (EEC) No 1247/92 made within the powers granted by the Treaty of Rome, and in particular by Articles 51 and 235 of that Treaty?

26 By order of 24 May 1996, Mr Snares was granted legal aid.

### The first question

27 The essence of the first question raised by the Social Security Commissioner is whether, on a proper construction, Article 10a of Regulation No 1408/71, as amended by Regulation No 1247/92, read in conjunction with Annex IIa, applies to DLA, with the result that the position of a person such as the claimant in the main proceedings, who, after 1 June 1992 when Regulation No 1247/92 entered into force, satisfied the conditions for the award of that benefit, is governed exclusively by the system of coordination established by the said Article 10a.

- 28 It should be noted at the outset that a person such as Mr Snares comes within the scope *ratione personae* of Regulation No 1408/71 in so far as he was subject, as an employed person, to the social security scheme of the United Kingdom.
- 29 In terms of Article 10a of Regulation No 1408/71, as amended by Regulation No 1247/92, persons to whom that regulation applies are entitled to the special non-contributory cash benefits referred to in Article 4(2a), in accordance with the coordination rules which it sets out, provided that such benefits are listed in Annex IIa. That is the case with regard to DLA, which is mentioned under Point (f) of Section L (United Kingdom) of that annex.
- 30 The fact that the Community legislature refers to legislation, such as that relating to DLA, in Annex IIa to Regulation No 1408/71 must be accepted as establishing that benefits granted pursuant to that legislation are special non-contributory benefits falling within the scope of Article 10a of Regulation No 1408/71 (see, in particular, to that effect, Case 24/64 *Dingemans v Bestuur der Sociale Verzekeringsbank* [1964] ECR 647, at p. 654).
- 31 Furthermore, the wording of Article 10a implies that the benefits to which it refers also come within Article 4(2a) of Regulation No 1408/71, as amended by Regulation No 1247/92.
- 32 In those circumstances, a benefit such as DLA must, by reason of the fact that it is listed in Annex IIa, be regarded as being exclusively governed by the coordination rules of Article 10a and, consequently, as being a special non-contributory benefit within the meaning of Article 4(2a).

- 33 That interpretation is borne out by the third, fourth, fifth and sixth recitals in the preamble to Regulation No 1247/92, from which it is clear that the intention of the legislature was to provide a specific system of coordination taking account of the special characteristics of certain benefits falling simultaneously within the categories of both social security and social assistance and treated, according to the Court's case-law, as social security benefits in regard to workers already covered by the social security scheme of the State whose legislation is relied on (see, in particular, Case C-356/89 *Newton v Chief Adjudication Officer* [1991] ECR I-3017). As the Advocate General has shown in points 59 to 63 of his Opinion, a benefit such as DLA is indeed a benefit of that kind.
- 34 In addition, contrary to the argument put forward by Mr Snares, the fact that the United Kingdom has not made a declaration under Article 5 of Regulation No 1408/71, as amended by Regulation No 1247/92, in so far as it provides that Member States are to specify the special non-contributory benefits covered by Article 4(2a), does not preclude classification of DLA as a special non-contributory benefit within the meaning of the latter provision.
- 35 As the Court has consistently held (see, in particular, Case 70/80 *Vigier v Bundesversicherungsanstalt für Angestellte* [1981] ECR 229, paragraph 15; Case C-251/89 *Athanasopoulos and Others v Bundesanstalt für Arbeit* [1991] ECR I-2797, paragraph 28; and Joined Cases C-88/95, C-102/95 and C-103/95 *Martínez Losada and Others v Instituto Nacional de Empleo and Instituto Nacional de la Seguridad Social* [1997] ECR I-869, paragraph 21), the fact that rules have not been mentioned in the declaration made by a Member State is not conclusive in this regard and is therefore not of itself proof that those rules do not come within the scope of the provision in question.
- 36 Finally, it is common ground that a person such as Mr Snares, whose disability, which constitutes the basis for payment of DLA, occurred after the entry into force of Regulation No 1247/92 inserting Articles 4(2a) and 10a in Regulation No 1408/71, comes exclusively within the scope of the latter provisions and cannot rely on the transitional provisions set out in Article 2 of Regulation No 1247/92,

according to which that regulation does not affect the maintenance of rights of individuals who, prior to its entry into force, were already in receipt of the benefit (Article 2(1)) or fulfilled the conditions for receiving it (Article 2(2)).

- 37 The answer to the question submitted must therefore be that, on a proper construction of Article 10a of Regulation No 1408/71, as amended by Regulation No 1247/92, read in conjunction with Annex IIa, DLA falls within the scope of that provision and is therefore a special non-contributory benefit within the meaning of Article 4(2a) of that regulation, with the result that the position of a person such as the claimant in the main proceedings, who, after 1 June 1992 when Regulation No 1247/92 entered into force, satisfied the conditions for the award of that benefit, is governed exclusively by the system of coordination established by the said Article 10a.

### The second question

- 38 The second question raised by the Social Security Commissioner seeks to determine whether Regulation No 1247/92 is valid in the light of Articles 51 and 235 of the EEC Treaty, now the EC Treaty, in so far as that regulation sets aside, in the case of DLA, the principle of waiver of residence clauses laid down in Article 10 of Regulation No 1408/71.
- 39 The first point to note is that, according to Article 10(1) of Regulation No 1408/71, the principle that residence clauses should be waived applies 'save as otherwise provided in this Regulation'. Accordingly, the Community legislature has *inter alia* restricted, in Article 69 of Regulation No 1408/71, the right to export unemployment benefits to a period of three months. In its judgment in Joined Cases 41/79, 121/79 and 796/79 *Testa and Others v Bundesanstalt für Arbeit* [1980] ECR 1979, paragraph 14, the Court ruled that such a limitation is not contrary to Article 51 of the Treaty.

- 40 As is clear from paragraphs 28 and 33 of the present judgment, but for the specific system of coordination established by Regulation No 1247/92, a person in Mr Snares' position would have been able to rely on the principle of exportability of invalidity benefits laid down in Article 10(1) of Regulation No 1408/71 in order to retain entitlement to DLA.
- 41 However, as regards special non-contributory benefits such as those at issue in the main proceedings, the Court has pointed out on numerous occasions that the principle of the exportability of social security benefits applies so long as derogating provisions have not been adopted by the Community legislature (see, in particular, Case 87/76 *Bozzone v Office de Sécurité Sociale d'Outre-Mer* [1977] ECR 687; Case 139/82 *Piscitello v Istituto Nazionale della Previdenza Sociale* [1983] ECR 1427, paragraph 16; Joined Cases 379/85, 380/85, 381/85 and 93/86 *Caisse Régionale d'Assurance Maladie Rhône-Alpes and Others v Giletti and Others* [1987] ECR 955, paragraph 16; and Case C-236/88 *Commission v France* [1990] ECR I-3163, paragraph 16).
- 42 Second, the Court has in the past accepted that the grant of benefits closely linked with the social environment may be made subject to a condition of residence in the State of the competent institution (Case 313/86 *Lenoir v Caisse d'Allocations Familiales des Alpes-Maritimes* [1988] ECR 5391, paragraph 16).
- 43 As the Advocate General has explained in points 85 to 88 of his Opinion, benefits such as DLA fall within the category of benefits which, as regards the detailed rules for granting them, are closely linked to a particular economic and social context.
- 44 If a person in Mr Snares' position does not, in a particular case, satisfy the conditions applied by his new State of residence to the award of invalidity benefit, or if he receives a lower benefit there than that which he hitherto received in another

Member State, that cannot invalidate the system established by Article 10a of Regulation No 1408/71.

- 45 The Court has held (see, in particular, *Martínez Losada and Others*, cited above, paragraph 43) that, in the absence of harmonization in social security matters, the Member States remain competent to define the conditions for granting social security benefits, even if they make them more strict, provided that the conditions adopted do not give rise to overt or disguised discrimination between Community workers.
- 46 Moreover, the system established by Article 10a of Regulation No 1408/71 contains coordination rules whose very purpose, as is clear from the sixth recital in the preamble to Regulation No 1247/92, is to protect the interests of migrant workers in accordance with the provisions of Article 51 of the Treaty.
- 47 Thus, the State of residence is obliged, in appropriate cases, to take account of periods of employment, self-employment or residence completed in other Member States (Article 10a(2)), to treat benefits due under the legislation of other Member States as if they had been granted under the applicable legislation, with regard to entitlement to supplementary benefits (Article 10a(3)), and to treat first diagnosis of the disability or invalidity in the territory of another Member State as first diagnosis in the State of residence (Article 10a(4)).
- 48 Furthermore, benefit entitlement is not conditional on the claimant's having previously been subject to the social security legislation of the State in which he applies for the benefit, whereas this was the case prior to the entry into force of Regulation No 1247/92 (see, in particular, *Newton*, cited above).

- 49 In the light of those considerations, it must be concluded that the system of coordination established by Regulation No 1247/92, in so far as it applies to DLA, is not at variance either with Article 51 of the Treaty or, indeed, with Article 235 thereof. The latter provision merely made it possible, in adopting that regulation, to extend the coordination of social security schemes for which it provides to self-employed workers and members of their families, since the Treaty had not provided specific powers to that end.
- 50 Admittedly, a person in Mr Snares' position could be refused a right of residence in another Member State, in this case Spain, if, contrary to the requirements of Article 1 of Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity (OJ 1990 L 180, p. 28), he was not in receipt of an invalidity or early retirement pension, or old-age benefits, or of a pension in respect of an industrial accident or disease of an amount sufficient to avoid becoming a burden on the social security system of that State during his period of residence there.
- 51 If, however, as the Court has found in the present judgment, the Community legislature was entitled, without infringing Article 51 of the Treaty, to decide that special non-contributory benefits such as DLA were to be awarded in accordance with the legislation of the State of residence and at its expense, that conclusion cannot be called in question on the ground that application of that rule could have the effect of diminishing the means of the person concerned. Such a situation would, as noted in paragraph 45 of this judgment, arise from differences existing between the national social security schemes in the absence of harmonization.
- 52 The answer to the second question must therefore be that examination of Regulation No 1247/92, in so far as it sets aside, in the case of DLA, the principle of waiver of residence clauses laid down in Article 10 of Regulation No 1408/71, has not disclosed any factor of such a kind as to affect its validity.

**Costs**

- 53 The costs incurred by the United Kingdom, German, Spanish, French and Austrian Governments, the Council of the European Union and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national tribunal, the decision on costs is a matter for that tribunal.

On those grounds,

**THE COURT**

in answer to the questions referred to it by the Social Security Commissioner by order of 17 January 1996, hereby rules:

1. On a proper construction of Article 10a of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983, as subsequently amended by Council Regulation (EEC) No 1247/92 of 30 April 1992, read in conjunction with Annex IIa, disability living allowance falls within the scope of that provision and is therefore a special non-contributory benefit within the meaning of Article 4(2a) of that regulation, with the result that the position of a person such as the claimant in the main proceedings, who, after 1 June 1992 when Regulation No 1247/92 entered into force, satisfied the conditions for the award of that benefit, is governed exclusively by the system of coordination established by the said Article 10a.

**2. Examination of Regulation No 1247/92, in so far as it sets aside, in the case of disability living allowance, the principle of waiver of residence clauses laid down in Article 10 of Regulation No 1408/71, has not disclosed any factor of such a kind as to affect its validity.**

Rodríguez Iglesias

Gulmann

Ragnemalm

Wathelet

Mancini

Moitinho de Almeida

Kapteyn

Murray

Edward

Puissochet

Hirsch

Jann

Sevón

Delivered in open court in Luxembourg on 4 November 1997.

R. Grass

G. C. Rodríguez Iglesias

Registrar

President