In Case 76/72

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

MICHEL S. of Brussels

and

LE FONDS NATIONAL DE RECLASSEMENT SOCIAL DES HANDICAPÉS, of Brussels

on the interpretation of Article 7 of Regulation No 1612/68/EEC of the Council of 15 October 1968, relating to the freedom of movement for workers within the Community (OJ L 257 of 19 October 1968, p. 2),

THE COURT

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

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

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

1. The plaintiff in the main action, born in 1954, arrived in Belgium on 15 May 1957 with his parents, who were of Italian nationality. His father was at first a wage-earner in Belgium; from 1962 until his death, which occurred in 1971, he received an invalidity pension.

The plaintiff in the main action is suffering from serious mental deficiency. In 1970 his father had made on his behalf an application for 'registration' with the defendant in the main action (The National Foundation for the rehabilitation of the handicapped — hereafter referred to as 'Fonds'). This was so that his son could take advantage of certain benefits which it was the duty of the Fonds to decide whether to grant

or not. These benefits were governed by a law of 16 April 1963 (Moniteur belge of 23 April 1963 p. 4266) which refers to persons of Belgian nationality whose possibilities of employment are reduced because of a serious inadequacy or diminution of their physical or mental capacity. By a Royal Decree of 29 May 1968 (Moniteur belge of 14 June 1968 p. 6683), the scope of this law was extended to persons of foreign nationality, 'without prejudice to the application of international conventions concerning the rehabilitation of the handicapped', on condition *inter alia*, that such persons had established their residence in Belgian territory 'before the incapacity was first diagnosed'.

The Fonds rejected the above-mentioned application on the ground that the disablement of the plaintiff in the main action, being of hereditary origin, must have been first diagnosed before the date of his arrival in Belgium.

2. Before the Tribunal du Travail of Brussels, to whom he had brought on appeal to have this decision set aside, the plaintiff in the main action asserted that, in any case and without his Italian nationality operating against him, he had the right to benefit from the abovementioned Belgian legislation. That was by virtue of Article 7 of Regulation No 1612/68 of which paragraph 2 lays down that 'the worker being a national of a Member State shall enjoy the same social and financial benefits as the workers of that State' when he is in the territory of other Member States.

The Fonds, without disputing that the said Regulation applies equally to the families of workers, did however object that by 'social benefits', the abovementioned provision only included benefits resulting from employment, consequently those benefits resulting from social security. The Belgian law of 16 April 1963, on the other hand, applied to all the disabled whatever their social status, and the system which it set up was essentially a non-contributory scheme. Hence the said law did not fall within Regulation No 1612/68. This argument was confirmed by the fact that the Preamble to this Regulation referred *(inter alia)* to Article 48 of the EEC Treaty, a provision which established as a principle 'the abolition of any discrimination based on nationality between workers of Member States as regards employment, remuneration and other conditions of work and employment'. This wording did not include such benefits as were in question in the case in issue.

By judgment dated 10 November 1972, the national court decided to refer the following question to the Court:

'Do the benefits provided by the Belgian law of 16 April 1963 relating to the rehabilitation of the handicapped constitute social benefits within the meaning of Article 7 of Regulation No 1612/68 of the Council of the Community?'

3. The judgment referring the matter was received by the Court Registry on 24 November 1972.

The plaintiff in the main action, the Government of the Italian Republic and the Commission of the European Communities submitted their written observations in accordance with the provisions of Article 20 of the Statute of the Court of Justice of the EEC.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to proceed without any preparatory inquiry.

The oral observations of the defendant in the main action, the Italian Government and the Commission were made at the hearing on 14 March 1973.

The plaintiff in the main action was represented by D. Rossini, a trade union delegate in the legal department for Italian workers of the Fédération des Syndicats Chrétiens. The defendant in the main action was represented by Me. Schellekens; the Italian Government by Adolfo Maresca, Ambassador, assisted

by Giorgio Zagari, a deputy at the Avvocatura generale dello Stato; and the Commission by its legal adviser Italo Telchini.

The Advocate-General presented his opinion at the hearing on 4 April 1973.

II — Observations submitted before the Court

The observations submitted before the Court may be summarized as follows:

The *plaintiff in the main action* is of the opinion that Regulation No 1612/68 has a general application and applies equally to the members of the family of the worker who need vocational retraining or rehabilitation to enable them to work. In the case in issue, if the plaintiff in the main action does not gain such retraining, he will remain unemployed for the rest of his life. Such a result would infringe the fifth recital of the said Regulation, whereby 'the right of freedom of movement requires the elimination of obstacles which impede the mobility of workers, especially as regards the right of the worker to be reunited with his family and the conditions of integration of such family in the environment of the host country'. It would likewise be incompatible with Article 12 of the same Regulation, which reads as follows:

'The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to courses of general education, of apprenticeship and of vocational training on the same conditions as nationals of that state, if they reside within its territory.

Member States shall encourage steps which permit such children to attend the abovementioned courses under the best conditions'.

The argument supported by the Fonds likewise runs counter to the fact that it receives subsidies from the European Social Fund according to Decision No 72/74/EEC of the Commission of 22 November 1971 (OJ L 20 of 24 January 1972, p. 4). It was, therefore, abnormal for the Fund to place nationals of Member States on the same footing as nationals of third countries.

The *defendant in the main action* explains in detail the task and organization of the Fonds.

Article 7 of Regulation No 1612/69 only relates to workers themselves. That follows not only from the clear wording of this provision but also from the fact that the rights conferred especially on the close relations of the workers are governed by Articles 10 to 12 of the Regulation under the heading 'Families of workers'. (cf the rectification made in the said Regulation and published in OJ No L 295 of 7 December 1968 p. 12). These rights are much more restricted than those which the Regulation confers on workers. In particular, the expression 'courses of general education, of apprenticeship and vocational training' which appear in Article 12 of the Regulation, do not refer to the handicapped, but only to persons in good health. Besides, this expression has a more limited scope than the expressions 'rehabilitation' and 're-training' used in Article 7 (3).

Moreover, even if one supposes that the plaintiff in the main action can be considered a worker, he could not claim the application of the abovementioned Article 7. The expression 'social benefits' used in this provision relates only to benefits having a direct or indirect relation with an occupation, whereas the scope of the Belgian law of 16 April 1963 is independent of the exercise of such an activity.

The *Italian Government* submits that in accordance with the spirit of the Court's case law and in particular with the judgment of 22 June 1972 (Frilli v État belge, Case 1/72, 'guaranteed income to the elderly', Rec. 1972, p. 457) the expression 'social benefits' must be given a wide interpretation, in such a way as

to embrace benefits granted under the heading of rehabilitation.

The prohibition on 'any discrimination on grounds of nationality' which has been established as a principle by Article 7 of the EEC Treaty leads to the conclusion that every national of a Member State resident in Belgium must enjoy the benefits provided for by the Belgian law of 16 April 1963 on the same basis as Belgian nationals. The principle set out in the provision cited applies to all the spheres of activity governed by the Treaty, including that of employment; and likewise it controls the interpretation of Community secondary law.

The rehabilitation of the handicapped, within the meaning of the law referred to above, constitutes a 'social benefit' for Belgian workers and must therefore be extended to workers of other Member States residing in Belgium. The fact that the grant of this benefit is independent of a relationship of employment is of no importance.

According to the *Commission* it could be asked whether Article 7 (2) of Regulation No 1612/68 is the only provision which can be invoked in the question at issue.

The Fonds is a body governed by public law within the jurisdiction of the Ministre de l'Emploi et du Travail and administered by a board of management composed *inter alia,* of organizations which represent employers and workers. By the terms of Article 3 of the Belgian law of 16 April 1963, its task is, in particular, to promote the training and vocational rehabilitation and retraining of the handicapped. Throughout the whole duration of this training, rehabilitation and retraining, the Fonds grants the handicapped allowances and supplementary remuneration. It also arranges for them to be placed in suitable employment. In accordance with Article 24 of the abovementioned law, the expenses of the Fonds are met, *inter alia,* in addition to state subsidies, 'by the proceeds of an additional premium or contribution for compensation for injury resulting from accidents at work, collected by insurers approved for the purpose of compensation for accidents', and 'by the proceeds of employers' contributions'. The law confers a right on the persons fulfilling the conditions which it has laid down.

It follows from all these factors that the benefits granted by the Fonds do not arise either from social security or from assistance in the classic sense of the term. That is, moreover, confirmed by the fact that the European Social Fund, whose task, by the terms of Article 123 of the EEC Treaty, is that 'of rendering the employment of workers easier and of increasing their geographical and occupational mobility within the Community', has granted its aid to the Belgian Fonds, the defendant in the main action.

Furthermore, the social benefits referred to in Article 7 (2) of Regulation No 1612/68 do not arise from social security. In this respect, there is no difficulty in admitting that this expression likewise covers the benefits granted by the Fonds. But it could be asked if it is not rather Article 7 (3) which mentions in particular 'teaching in vocational schools and rehabilitation or retraining centres' which is applicable in such cases as this. It is true that this provision is only aimed at workers themselves, whereas the plaintiff in the main action has never been a worker. Strictly speaking, he could however be considered, within the meaning of Article 1 of the law of 16 April 1963, as a worker whose possibilities of employment are effectively reduced because of an inadequacy or a diminution of at least 30 % in (his) physical capacity or of at least 20 % in (his) mental capacity. 'But in any case, the plaintiff in the main action is the son of a worker, so that Article 12 of Regulation No 1612/68 applies to him.'

In these circumstances the plaintiff in the main action has the right, by virtue of the Community rule, to enjoy the benefits provided for by the Belgian

legislation in question. By refusing him these benefits the Fonds would seem to accept the erroneous argument according to which its task lies outside the sphere of freedom of movement for workers, covered by Articles 48 to 51 of the EEC Treaty and the Regulations enacted to implement these provisions. In support of its interpretation the Commission also invokes the judgment delivered by the Court in December 1972 in Case 44/72 (Marsman v Firma Rosskamp) in which it was held that 'the prohibition against discrimination in conditions of work and employment, which Article 48 of the Treaty and Article 7 of Regulation No 1612/68 of the Council enact, concerns also the special protection, in particular against dismissal, which the laws of a Member State grant for reasons of a social nature to specific categories of workers'.

Thus the reply to the question raised by the Tribunal du Travail of Brussels should be as follows:

'Workers who are nationals of Member States and the members of their families have the right to take advantage of the benefits provided for by the Belgian law of 16 April 1963, which relates to the rehabilitation of the handicapped, on the same basis as nationals of that State'.

Grounds of judgment

1 By judgment of 10 November 1972, received at the Court on 24 November 1972, the Tribunal du Travail of Brussels referred, under Article 177 of the EEC Treaty, the question whether the benefits provided for by the Belgian law of 16 April 1963 which relate to the rehabilitation of the handicapped constitute social benefits within the meaning of Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 (OJ L 257 of 19 October 1968, p. 2) relating to freedom of movement for workers within the Community.

2 It appears from the dossier that this application concerns the case of a person of Italian nationality who has never held the position of a worker and whose possibilities of employment are reduced because of an inadequacy or diminution in his mental capacity. He is the son of an Italian worker who was employed in Belgium until his death.

3 By the question which has been raised it is asked whether Article 7 of Regulation No 1612/68 confers on this child the right to take advantage, under the same conditions as Belgian nationals, of benefits provided for by the above-mentioned Belgian law, which in particular has as its object to realize or improve the aptitude for work of the handicapped of Belgian nationality, whether or not these persons are workers or the children of workers.

4 By Royal Decree of 29 May 1968, the scope of the said law has been extended, under certain conditions, to persons of foreign nationality.

5 Whilst the Court, acting within the framework of Article 177, has no jurisdiction to apply the Community rule to a specific case, nor, consequently, to pronounce on a provision of national law with regard to such rule, it can however provide a national court with the factors of interpretation depending on Community law which could be useful to it in evaluating the effects of such provision.

6 By Article 7 (1) of Regulation No 1612/68, 'the worker who is a national of a Member State, shall not, within the territory of other Member States, be treated differently by reason of his nationality from the workers of that State, in relation to any conditions of work and employment, in particular in matters of remuneration, dismissal, and reinstatement in occupation or re-employment if he becomes unemployed'.

7 By virtue of Article 7 (2) and (3), the said worker when in the territory of other Member States, shall enjoy 'the same social benefits . . . as the workers of that State' and 'on the same basis and under the same conditions as workers of that State, teaching at vocational schools and centres of rehabilitation and retraining'.

8 As is apparent in particular from the use of the expressions 'reinstatement in occupation', 'rehabilitation' and 'retraining', the provisions of Article 7 extend to measures provided by national legislation with a view to allowing handicapped workers to recover their ability to work.

9 However, the benefits referred to by the said Article are those which, being connected with employment, are to benefit the workers themselves. Benefits reserved for the members of their families on the other hand, are excluded from the application of Article 7.

10 This interpretation results as much from the wording of this Article as from the scheme of Regulation No 1612/68, in which Article 7 appears in Part 1, Title 2, headed 'Exercise of employment and equality of treatment', this Title being followed by a third Title reserved for 'Families of workers' (cf rectification to the same Regulation, OJ L 295 of 7 December 1968, p. 12).

11 With a view to placing the national court in a position to act with a complete knowledge of the Community rule, it is appropriate to investigate whether the provisions of this third Title of the Regulation confer on persons in the same position as the plaintiff in the main action the right to take advantage of the benefits in question under the same conditions as nationals who are in a similar position.

12 By Article 12 of the said Regulation 'the children of a national of a Member State, who is or has been employed in the territory of another Member State, shall be admitted to courses of general education, apprenticeship and vocational training under the same conditions as the nationals of that State, if those children reside in its territory'. The Member States are directed to encourage 'steps allowing such children to follow the abovementioned courses under the best conditions'.

13 By the fifth recital of this Regulation, the latter has been adopted *inter alia* on the ground 'that the right of freedom of movement demands for its exercise, conditions which are objectively those of liberty and dignity, the elimination of obstacles which impede the mobility of workers, especially as regards the right of the worker to be reunited with his family, and the conditions of integration of such family in the environment of the host country'.

14 Such integration presupposes that, in the case of the handicapped child of a foreign worker, this child can take advantage of benefits provided by the laws of the host country with a view to the rehabilitation of the handicapped, under the same conditions as nationals who are in a similar position.

15 The fact that the abovementioned Article 12 does not expressly refer to educational arrangement provided in favour of such children, is not to be understood as denoting the intention to exclude these arrangements from the scope of the Regulation, but is explained by the difficulty of mentioning all hypotheses exhaustively, especially those of an exceptional character, in view of which it is necessary to guarantee the equality of nationals of all the Member States, in order to ensure that the right of freedom of movement can be exercised to its full extent.

16 Under these conditions, Article 12 is to be understood in the sense that it embraces the measures provided by national laws which allow the handicapped to realize or improve their aptitude for work and thus it has among its objects the guidance, training, and vocational rehabilitation and retraining of the said handicapped.

17 Finally, the application of Articles 7 and 12 of Regulation No 1612/68 to such legislation is not excluded by the fact that such legislation refers to the handicapped as a whole and not only those who have the position of workers or the children of workers.

Costs

18 The costs incurred by the Commission of the European Communities and by the Italian Government, who have submitted 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 Tribunal du Travail of Brussels, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings,
Upon hearing the report of the Judge-Rapporteur,
Upon hearing the submissions of the defendant in the main action, the Government of the Italian Republic and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulation No 1612/68/EEC of the Council of 15 October 1968, relating to freedom of movement of workers within the Community (OJ L 257 of 19 October 1968, p. 2);
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions referred to it by the Tribunal du Travail of Brussels, by judgment of that court dated 10 November 1972 hereby rules:

1. **The benefits referred to by Article 7 of Regulation No 1612/68/EEC of the Council of 15 October 1968 (OJ L 257 of 19 October 1968, p. 2) relating to the free movement of workers within the Community include measures provided by national legislation with a view to allowing the rehabilitation of the handicapped, insofar as such measures concern workers themselves;**

2. **Article 12 of the said Regulation embraces measures provided by national legislation which allow the handicapped to realize or**

improve their aptitude for work, insofar as such measures concern the children of workers.

Lecourt		Monaco	Pescatore
Donner	Kutscher	Ó Dálaigh	Sørensen

Delivered in open court in Luxembourg on 11 April 1973

A. Van Houtte	R. Lecourt
Registrar	President

OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 4 APRIL 1973 [1]

Mr President,
Members of the Court,

In 1957 Mr Rocco S., an Italian national, settled in Belgium as a wage-earner. He was accompanied by his family, including his son Michel, born on 1 September 1954, who was then two years and eight months old.

Michel S. is suffering from severe mental deficiency, apparently of congenital origin. He was provisionally placed in a specialist teaching and care establishment, the Institut medico-pédagogique Saint-Lambert at Bonneville (Belgium).

In March 1970, the father submitted on his behalf an application for registration, i.e. for him to be accepted by the National Fund for Social Rehabilitation of the Handicapped, set up by the Belgian Law of 16 April 1963, for physiotherapy and, after specialized occupational training, placing in a suitable employment.

This Law charged the National Fund, a public institution, with the task of granting persons of Belgian nationality, for whom the possibilities of employment are reduced due to deficiency or diminution in their physical or mental capacity, various benefits in kind or in money, with a view to facilitating their entry into or rehabilitation for professional and social life.

A Royal Decree of 29 May 1968 extended the benefit of this Law to persons of foreign nationality, on condition, *inter alia,* (Article 2 (1)), that they 'have established their normal residence within the national territory before their disablement was first diagnosed'.

The National Fund rejected this application on the ground that the mental incapacity of Michel S., in view of its nature and its congenital origin,

1 — Translated from the French.