the right to higher benefits awarded previously by another Member State. If the amount of family benefits actually received by the worker in the Member State in which he resides is less than the amount of the benefits provided for by the legislation of the other Member State, he is entitled to a supplement to the benefits from the competent institution of the latter State equal to the difference between the two amounts.

In Case 733/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal du Travail [Labour Tribunal] de Charleroi, for a preliminary ruling in the action pending before that court between

CAISSE DE COMPENSATION DES ALLOCATIONS FAMILIALES DES RÉGIONS DE CHARLEROI ET DE NAMUR [Family Allowances Compensation Fund for the Charleroi and Namur Regions]

and

COSIMO LATERZA

on the interpretation to be given to Article 77 (2) (b) (i) 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 (Official Journal, English Special Edition 1971 (II), p. 416),

THE COURT (First Chamber)

composed of: A. O'Keeffe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: J.-P. Warner
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Isssues

I — Facts and written procedure

1. Mr Cosimo Laterza, an Italian national, having been employed in Italy from 1950 to 1955, was employed as a miner in Belgium from December 1955 to December 1969 when he ceased to work as a miner because of invalidity. The "Fonds National de Retraite des Ouvriers Mineurs" [National Pension Fund for Miners] (hereinafter referred to as "the Pension Fund") by a decision of 12 May 1970 awarded him an invalidity pension under Belgian law alone; in the case in point under the "régime spécial des ouvriers mineurs" ["the special scheme for miners"].

At the date when this benefit was granted the applicable Community regulation was Regulation No 3, in Annex F to which the special Belgian scheme for miners is classified as Type B legislation. It is therefore by reason of the duration of his completed insurance periods that the Pension Fund awarded Mr Laterza an invalidity pension of BFR 4 826.50 per month.

Mr Laterza returned to Italy in February 1971 and married on 18 October 1971. In consequence of this marriage his invalidity pension was increased to BFR 6 921 per month as from 1 November 1971. Since two children were born on 12 June 1972 and 21 March 1974 the competent Caisse de Compensation des Allocations Familiales [Family Allowances Compensation Fund] (hereinafter referred to as "the Family Allowances Fund") paid Mr Laterza family allowances in respect of his dependent children from 1 October 1972 to 31 October 1975, on the basis of the provisions of Belgian law relating thereto.

In the meantime Mr Laterza's file was forwarded on 11 June 1970 to the Istituto Nazionale della Previdenza Sociale [National Social Welfare Institution] (hereinafter referred to as the "INPS") in Italy with a view to his being awarded a proportional invalidity pension payable by the Italian social welfare institution by applying provisions of Community law relating to aggregation and the award of *pro rata* pensions.

INPS had initially, on the strength of Regulation No 3, refused to recognize Mr Laterza's invalidity solely on the basis of the decisions taken by the Belgian authorities. It was then invited by the Belgian social security institution to reconsider its position in the light of Article 40 (3) of Regulation No 1408/71 which runs:

"A decision taken by an institution of a Member State concerning the degree of invalidity of a claimant shall be binding on the institution of any other Member State concerned, provided that the concordance between the legislations of these States on conditions relating to the degree of invalidity is acknowledged in Annex IV".

Since there is that concordance between the Belgian and Italian systems in question, INPS awarded Mr Laterza on 7 January 1977 a proportional Italian pension as from the entry into force of the said regulation, namely 1 October 1972.

The Belgian institution, having regard to the award of this proportional pension, has

— on the one hand, pursuant to Article 12 (2) of Regulation No 1408/71,

reduced the amount of the invalidity pension paid by it to Mr Laterza on the basis of its own legislation by an amount corresponding to the proportional Italian pension;

— on the other stopped paying family allowances in respect of the dependent children and sought repayment of those family allowances paid from 1 October 1972 to 31 October 1975, the date when payment was suspended pending the Italian decision (a sum of BFR 104 189 in all).

In support of this last decision the Belgian institution relied on the provisions of Article 77 (2) (b) (i) of Regulation No 1408/71 under which family allowances are granted irrespective of the Member State in whose territory the pensioner or the dependent children are residing:

"(b) to a pensioner who draws pensions under the legislation of more than one Member State:

(i) in accordance with the legislation of whichever of these States he resides in provided that, taking into account where appropriate the provisions of Article 79 (1) (a), a right to one of the benefits referred to in paragraph 1 is acquired under the legislation of that State".

By virtue of these provisions as from 1 October 1972 only the (lower) Italian family allowances corresponding to the Italian proportion of the invalidity pension awarded by the INPS are payable to Mr Laterza.

2. Mr Laterza refused to repay the sums claimed by the Family Allowances Fund and the latter sued him before the Tribunal du Travail de Charleroi, which, by a judgment of 11 October 1979, asked the Court to rule whether *Article 77 (2) (b) (i)* of Regulation (EEC) No 1408/71

"must be interpreted as meaning that entitlement to family benefits from the Member State in whose territory the recipient of an invalidity pension resides (in this case Italy), takes away the right to higher family benefits awarded previously by another Member State (in this case Belgium)".

3. A certified copy of the judgment making the reference was received at the Court on 17 October 1979.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by Mr Laterza, represented by Daniele Rossini, Director of the social welfare service "Patronato ACLI", and also by the Commission of the European Communities, represented by its Legal Adviser Jean Amphoux, acting as Agent.

Having heard the report of the Judge-Rapporteur and the views of the Advocate General the Court decided by an order of 30 January 1980 to assign the case to the First Chamber.

On 4 February 1980 the Court put to the parties to the main action a question which Mr Laterza answered in writing on 14 February 1980.

II — Observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

Mr *Laterza* stresses first that he had become entitled to a full invalidity

pension under the scheme for miners and to increased family allowances in respect of his invalidity by virtue only of insurance periods completed in Belgium.

In consequence of the application to his case of the Community regulations he ceased to be entitled to Belgian family allowances and is now in a less favourable position than that resulting in his case from the application of Belgian national law alone.

Such a result cannot be in keeping with Articles 48 to 51 of the Treaty the aim of which is to give migrant workers treatment which in certain respects is more favourable than that resulting from the application of national law alone.

Article 77 (2) (b) (i) of Regulation No 1408/71 clearly and expressly forbids a double payment of family allowances. It is therefore necessary to look for a solution which avoids unjustified overlapping of benefits without however involving the loss of the worker's rights under the law of the State awarding the most favourable benefits. The solution in this case would be to allow Mr Laterza to receive the family allowances under the Belgian scheme reduced by the family allowances awarded under the Italian scheme.

It should be noted, on the other hand, that Article 77 (2) (b) (i) of Regulation No 1408/71 does not state whether account is to be taken of the residence of the pensioner when the event giving rise to entitlement to family allowances occurred (the award of a pension) or any later residence.

The provision in question may therefore be interpreted as meaning that the initial award of family allowances, which took account of the pensioner's residence when his pension rights were determined, must be regarded as final and cannot be altered to take account of any subsequent transfers of residence to the territory of other Member States. This stabilization of entitlement to family benefits appears to be confirmed by Article 90 (1) of Regulation (EEC) No 574/72 of the Council which reads: "In order to receive benefits under Article 77 or 78 of the regulation, a claimant shall submit a claim to the institution of his place of residence, in accordance with the procedures laid down by the legislation administered by that institution". There is no provision that a pensioner must set in motion a review of his rights by making a fresh application every time he transfers his residence to the territory of another Member State.

Mr Laterza therefore suggests that the question referred to the Court by the Tribunal du Travail be answered in the negative but that it be stated that any benefits which may be payable under the legislation of the Member State to which the pensioner has transferred his residence are to be deducted from the higher family allowances awarded under the legislation of another Member State.

The *Commission of the European Communities* points out, in the first place, that the purpose of Article 77 (2) of Regulation No 1408/71 is to determine under which law benefits for dependent children of pensioners are awarded.

Article 42 (2) of Regulation No 3/58, which preceded Regulation No 1408/71, provided that a beneficiary of a pension under the legislation of one Member State was entitled to the allowances

provided for by that legislation if he was resident in the territory of the said State, but that, if he was resident in another Member State, he retained that entitlement up to the amount of family allowances and/or supplements to the pension in respect of dependent children awarded by the legislation of the country of residence.

As the application of this system proved to be too complex Regulation No 1/64 amended Article 42 by providing that persons entitled to pensions payable under the laws of more than one Member State were entitled to family allowances as provided for in the legislation of the Member State where they were resident, if one of the institutions responsible for paying their pensions was in that Member State. The above-mentioned rule to the effect that entitlement of pensioners to family allowances is determined under the legislation of only one Member State has been incorporated in substance in Article 77 (2) (b) of Regulation No 1408/71.

The validity of Article 42 (2) of Regulation No 3 has been acknowledged by the Court in its judgment of 13 July 1976 in Case 19/76 *Pietro Triches* v *Caisse de Compensation pour Allocations Familiales de la Région Liégeoise* [1976] ECR 1243).

The question referred to the Court by the Tribunal du Travail de Charleroi asks in effect whether the rule laid down by the Court of Justice and formulated in its judgment of 6 March 1979 (Case 100/78, *Claudino Rossi* v *Caisse de Compensation pour Allocations Familiales des Régions de Charleroi et Namur* [1979] ECR 831) on the scope of the rule against overlapping benefits contained in Article 79 (3) of Regulation No 1408/71 also holds good for the application of Article 77 (2) of the same regulation. In the *Rossi* case, on the point whether entitlement to benefits for dependent children of pensioners, which is provided for in Article 79 in the event of the children becoming entitled to family allowances under the legislation of another Member State by virtue of the pursuit of a professional activity was to be suspended completely or only partially up to the amount of those family allowances, the Court in fact held that the rule against overlapping "is applicable only to the extent to which it does not, without cause, deprive the persons concerned of the benefit of a part of the legislation of a Member State".

The judgments in both the *Triches* and the *Rossi* cases lay down the principle that the Community rules cannot be applied "in the absence of an express exception consistent with the aims of the Treaty" in such a way as to deprive a migrant worker or his dependants of the benefit of rights acquired under the legislation of only one Member State.

It appears that no such result can be produced in this case since according to Belgian Law (Article 51 (3) of the Lois coordonnées relatives aux allocations familiales pour travailleurs salariés [Consolidated laws on family allowances for employed persons]) "family allowances are not payable for the benefit of children educated outside the Kingdom". Consequently the right of the person concerned to be paid Belgian family allowances irrespective of the place where he or his dependent children reside within the Community exists solely by virtue of Community law.

The provision at issue is based on the view that, in principle, the same dependent children make the recipient eligible only once for the provision of family benefits. It may therefore be regarded as a rule against overlapping benefits like Article 79 (3), which was the subject-matter of the *Rossi* case.

There are however differences between these two provisions which raise the question whether the partial effect of the rule against overlapping of benefits in Article 79 (3), which was recognized in the judgment in the *Rossi* case, can also be held to exist in the case of Article 77 (2) (b) (i).

To begin with, Article 79 (3) suspends, in certain circumstances, the exercise of a right which nevertheless continues to exist. The provisions of Article 77 (2) appear on the other hand to be rules dealing with conflict of laws to determine which law applies in different circumstances. It follows strictly speaking from this, that the applicability of the legislation of one Member State for the provision of family benefits to a person excludes the applicability of the legislation of another Member State.

Moreover the extension of the precedent set by the *Rossi* case to Article 77 (2) (b) (i) would necessarily involve the simultaneous application of the laws of several Member States for the award of benefits for dependent children and this runs counter to the desire for simplification which prompted the authors of the above-mentioned Regulation No 1/64.

Finally it may be recalled that the Court in the judgment in the *Triches* case expressly acknowledged the validity of Article 42 (2) of Regulation No 3, as amended by Regulation No 1/64, the effect of which is in substance the same as that of Article 77 (2) of Regulation No 1408/71. Now, an admission that such a provision is valid is also by implication an admission that when this provision applied it could paralyse altogether the application of laws other than those of the Member State where the pensioner resides as far as concerns benefits for dependent children.

The Commission, having stated that on the basis of these considerations the answer to be given to the question raised by the Tribunal du Travail can only be in the affirmative, nevertheless takes the view that such a result cannot be completely satisfactory. In fact quite convincing arguments can be put forward in support of the contrary view.

In the first place it may be noted that the technical differences between Article 77 (2) (b) (i) and Article 79 (3) are not as great as they appear at first sight. The jurisdiction conferred by the first is not final: it only continues as long as certain conditions are fulfilled. If Mr Laterza leaves Italy in order to reside in another Member State, law other than Italian law becomes applicable as far as allowances for dependent children are concerned.

That cannot be invalidated by the fact that when the Council adopted Regulation No 1408/71 it stated in its minutes that determining the legislation applicable within the meaning of Article 77 (2) (b) (i) is a once-and-for-all decision, after which there are under no circumstances any grounds for subsequently invoking other laws. This statement which, as such, has no legal effect of its own, does not relate to the provision at issue.

Finally the effect of Article 77 (2) (b) (i) with regard to entitlement to family benefits is closer to that of the suspensory rule laid down by Article 79 (3) than merely reading it through might at

first suggest. In the case of Article 77 as well entitlement to Belgian family allowances is simply suspended: if Mr Laterza returned to Belgium this entitlement would revive in full.

Consequently the situations covered by Article 77 (2) (b) (i), on the one hand, and Article 79 (3), on the other, are very similar. Further to that it must be added that the two situations are in every way comparable. In both cases the right to family benefits is suspended, either because the person concerned pursues a professional or trade activity which confers the right to benefits of the same kind under the legislation of another Member State, or because that person transfers his residence to another Member State where he acquires the right to family allowances. There appears therefore to be hardly any justification for the fate of the person concerned being settled differently in the two cases.

According to the case-law of the Court Community regulations cannot, in the absence of an express exception consistent with the aims of the Treaty, be applied in such a way as to deprive, without cause, a migrant worker or his dependants of the benefit of a part of the legislation of a Member State. Moreover failure to apply that case-law to this case would have paradoxical consequences if the situations which would then arise for the person concerned is compared with that of a worker who has the same social insurance history in Belgium but has not previously been employed in Italy and for this reason retains all his rights to Belgian family benefits.

The reference to the judgment in the *Triches* case does not appear in the least to be a determining factor militating against extending the judgment in the *Rossi* case to the situation covered by Article 77 (2) (b). On the one hand, the Court on that occasion had to express an opinion only on the validity of Article 42 (2) of Regulation No 3 and not on the scope of its provisions; on the other hand, it must be borne in mind that the judgment in the *Rossi* case was delivered after the judgment in the *Triches* case.

Finally the reply advocated by the Commission does not give rise to greater difficulties as regards implementation than those connected with the implementation of Article 79 (3) in accordance with the principle laid down in the *Rossi* case.

For all these reasons the Commission suggests that the question raised by the Tribunal du Travail de Charleroi be answered as follows:

"Article 77 (2) (b) (i) of Regulation No 1408/71 must be interpreted as meaning that a person drawing a pension under the legislation of a Member State, who resides in the territory of another Member State where he is paid a pension and where he has acquired the right to family benefits, is entitled, if the amount of family benefits which he can claim under the legislation of the first Member State is greater than the amount of the family benefits actually received in the second Member State, to be awarded a supplement payable by the competent institution of the first Member State equal to the difference between the two amounts".

III — Oral procedure

The Caisse de Compensation des Allocations Familiales des Régions de Charleroi et de Namur, represented by Mrs Debrulle, and the Commission of the European Comunities, represented by its Legal Adviser, J. Amphoux, presented oral argument at the hearing on 13 March 1980.

The Advocate General delivered his opinion at the sitting on 27 March 1980.

Decision

1 By a judgment of 11 October 1979 the Tribunal du Travail de Charleroi referred to the Court, pursuant to Article 177 of the EEC Treaty, a question on the interpretation of Article 77 (2) (b) (i) 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 (Official Journal, English Special Edition 1971 (II), p. 416).

2 This question was raised in an action relating to the decision of the competent Belgian social security institution not to acknowledge that an Italian worker in receipt of a Belgian invalidity pension and residing in Italy was entitled, as from 1 October 1972, to Belgian allowances for dependent children and to order him to repay the allowances paid from the said date to 31 October 1975.

3 The file forwarded by the national court shows that the worker in question, after working in Italy from 1950 to 1955 and in Belgium from 1955 to 1969, was on 1 June 1970 awarded an invalidity pension under Belgian legislation alone and until 1 October 1972 received the allowances for dependent children provided for by that legislation. Mr Laterza's entitlement to these allowances was governed up to the aforesaid date by Article 42 (1) of Regulation No 3 under the provisions whereof "beneficiaries of a pension due in pursuance of the legislation of one Member State only, and who permanently reside in the territory of another Member State are entitled to family allowances in accordance with the provisions of the legislation of the country liable for payment of the pension as though they were permanently resident in that country". Paragraph (3) of the said article goes on to say that the provisions of paragraph (1) "apply irrespective of the Member State in whose territory the children reside".

4 After the Belgian social security institution had on 11 June 1970 laid the file relating to this invalidity provision before the competent Italian authorities and requested them to take over the responsibility for a proportion of the invalidity pension in pursuance of the Community law provisions relating to aggregation and apportionment, the Italian social security institution, on 27 December 1976, awarded the worker, on the basis of Article 40 (3) of Regulation No 1408/71, a proportional pension and also the family allowances provided for by Italian legislation as from the entry into force of the said regulation, that is to say from 1 October 1972.

5 On the basis of the grant of those benefits the Belgian institution reduced the amount of the invalidity pension paid up to 1 October 1972 by the amount of the said proportional pension, decided to stop payment of the allowances for dependent children provided for under Belgian legislation as from that date, and at the same time sought repayment from Mr Laterza of the allowances paid up to 31 October 1975 (namely BFR 104 189), the date when the payment of those benefits had been suspended pending the decision of the Italian authorities on the award of a proportional pension. In support of its decision the Belgian social security institution referred to the provision of Article 77 (2) (b) (i) of Regulation No 1408/71 according to which family allowances for persons receiving pensions for old age, invalidity or an accident at work or occupational disease are to be granted irrespective of the Member State in whose territory the pensioner or the children are residing:

"(b) to a pensioner who draws pensions under the legislation of more than one Member State:

(i) in accordance with the legislation of whichever of these States he resides in provided that . . . a right to one of the benefits referred to in paragraph 1 is acquired under the legislation of that State".

6 Mr Laterza challenges the basis of this decision. Since the amount of the allowances for dependent children provided for by Italian legislation is less than that of the Belgian allowances, he points out that the above-mentioned decision leads in this case to his rights to family benefits being reduced and maintains that the provisions in question cannot be interpreted and applied in such a way as to take away from the insured person his right to the greatest amount of benefits payable to him under the law of a Member State, the objectives of Article 51 of the Treaty and of Regulation No 1408/71 being disregarded.

7 It is in the context of this dispute that the Tribunal du Travail de Charleroi has asked the Court to rule whether Article 77 (2) (b) (i) of Regulation No 1408/71

"must be interpreted as meaning that entitlement to family benefits from the Member State in whose territory the recipient of an invalidity pension resides (in this case Italy) takes away the right to higher family benefits awarded previously, by another Member State (in this case Belgium)".

8 As the Court stated in its judgment of 6 March 1979 (Case 100/78, *Claudino Rossi* v *Caisse de Compensation pour Allocations Familiales des Régions de Charleroi et Namur* [1979] ECR 831) the regulations on social security for migrant workers did not set up a common scheme of social security, but "allowed different schemes to exist, creating different claims on different institutions against which the claimant possesses direct rights by virtue either of national law alone or of national law supplemented, where necessary, by Community law". In the same case the Court also stated that "the Community rules could not, in the absence of an express exception consistent with the aims of the Treaty, be applied in such a way as to deprive a migrant worker or his dependants of the benefit of a part of the legislation of a Member State" or to lead to a reduction in the benefits payable by virtue of that legislation supplemented by Community law. In laying down and developing the rules for coordinating national laws Regulation No 1408/71 is in fact guided by the fundamental principle stated in the seventh and eight recitals of the preamble to the regulation, that the aforesaid rules must guarantee to workers who move within the Community all the benefits which have accrued to them in the various Member States whilst limiting them "to the greatest amount" of such benefits.

9 In accordance with these principles the provisions of Article 77 (2) (b) (i) of Regulation No 1408/71 cannot be applied in such a way as to deprive the worker, by substituting the benefits provided by one Member State for the benefits payable by another Member State, of the most favourable benefits. The guiding principles of Regulation No 1408/71 require on the other hand that where, in the case covered by Article 77 (2) (b) (i), the amount of the benefits provided by the Member State in which the worker is residing is less than that of the benefits awarded by the other State responsible for paying them the worker continues to be entitled to the greatest amount and receives

from the competent social security institution of this latter Member State a supplement to the benefits equal to the difference between the two amounts.

10 For these reasons the answer should be given to the question referred to the Court that Article 77 (2) (b) (i) of Regulation No 1408/71 must be interpreted as meaning that entitlement to family benefits from the State in whose territory the recipient of an invalidity pension resides does not take away the right to higher benefits awarded previously by another Member State. If the amount of family benefits actually received by the worker in the Member State in which he resides is less than the amount of the benefits provided for by the legislation of the other Member State, he is entitled to a supplement to the benefits from the competent institution of the latter Member State equal to the difference between the two amounts.

Costs

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

On those grounds,

THE COURT (First Chamber)

in answer to the question referred to it by the Tribunal du Travail de Charleroi, by judgment of 11 October 1979, hereby rules:

Article 77 (2) (b) (i) of Regulation No 1408/71 must be interpreted as meaning that entitlement to family benefits from the State in whose territory the recipient of an invalidity pension resides does not take away the right to higher benefits awarded previously by another Member State. If the amount of family benefits actually received by the worker in

the Member State in which he resides is less than the amount of the benefits provided for by the legislation of the other Member State, he is entitled to a supplement to the benefits from the competent institution of the latter State equal to the difference between the two amounts.

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 12 June 1980.

J. A. Pompe
Deputy Registrar

A. O'Keeffe
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 27 MARCH 1980

My Lords,

This case comes before the Court by way of a reference for a preliminary ruling by the Tribunal du Travail of Charleroi. The plaintiff in the proceedings before the Tribunal is the Caisse de Compensation des Allocations Familiales des Régions de Charleroi et Namur (which I shall call "the CCAF"). The defendant is Mr Cosimo Laterza. The queston at issue in those proceedings is as to Mr Laterza's entitlement to Belgian family allowances.

The papers before us show that, besides the CCAF, at least three other Belgian social security institutions have been concerned with Mr Laterza's case, namely the Fonds National de Retraite des Ouvriers Mineurs, the Caisse de Prévoyance du Centre and the Caisse de Compensation des Allocations Familiales de l'Industrie Charbonnière des bassins de Charleroi et de la Basse Sambre. The respective roles of those institutions are however irrelevant to the question Your Lordships have to decide and, to simplify matters, I propose to refer to them without distinction as "the Belgian authorities".

The facts of the case are these.