

concept of social advantage covers the income guaranteed to old people by the legislation of a Member State.

3. Article 7 (2) of Regulation No 1612/68 must be interpreted as meaning that the grant of a social advantage, such as the income

guaranteed to old people by the legislation of a Member State, to dependent relatives in the ascending line of a worker cannot be conditional on the existence of a reciprocal agreement between that Member State and the Member State of which such a relative is a national.

In Case 261/83

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

CARMELA CASTELLI

and

OFFICE NATIONAL DES PENSIONS POUR TRAVAILLEURS SALARIÉS (ONPTS)
[National Pensions Office for Employed Persons],

on the interpretation of Articles 1, 2, 3 and 4 of Regulation 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) and of Articles 7 and 10 of Regulation 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),

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, G. Bosco and R. Joliet, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: D. Louterman, Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

Carmela Castelli, born on 16 February 1890, left her country of origin, Italy, after the death of her husband to settle in Belgium with her son who worked there as an employed person and is now entitled to a pension there.

Mrs Castelli has a partial survivor's pension granted on the basis of the insurance periods completed in Italy by her late husband as an employed person. She has lived in Belgium since May 1957 but has never had the status of an employed person there.

By a decision of 22 December 1978 the Office National des Pensions pour Travailleurs Salariés (hereinafter referred to as "the National Office") refused to allow her the guaranteed income for old persons under the Law of 1 April 1969 (*Moniteur Belge* of 29 April 1969) on the ground that she was not of Belgian nationality or a national of a country with which Belgium had concluded a reciprocal agreement in the matter, was not a Stateless person or a refugee within the meaning of the Law of 28 March 1952 on aliens control and was not entitled to a retirement pension or a

survivor's pension in Belgium; she did not therefore fulfil the conditions set out in Article 1 of the Law of 1 April 1969.

Referring *inter alia* to the judgments of the Court of Justice of 22 June 1972 (Case 1/72 *Frilli*, [1972] ECR 457) and 16 December 1976 /Case 63/76 *Inzirillo*, [1976] ECR 2057), Mrs Castelli contested that decision before the Tribunal du Travail [Labour Tribunal], Liège. By judgment of 23 May 1980 the Tribunal dismissed her application, taking the view that the Law of 1 April 1969 was a social assistance law falling within the ambit of social security, which was covered by EEC rules, only to the extent to which it supplemented an advantage granted to a national of a Member State by the Belgian social security system. As she was not entitled to a Belgian pension the plaintiff could not obtain the pension supplement represented by the guaranteed income.

Mrs Castelli appealed to the Cour du Travail, Liège, claiming that the absence of a reciprocal agreement was of no consequence in the case of a Community citizen. She requested that Regulations Nos 1408/71 and 1612/68 be applied, stressing that the concept of reciprocity was inherent in the Community regulations, which embodied the principle of equality of treatment, the corollary of which was the principle of reciprocity.

On 4 November 1983 the Cour du Travail, Liège (Sixth Chamber), decided, in pursuance of Article 177, to stay the proceedings and to submit the following questions to the Court of Justice for a preliminary ruling:

“(a) In the light of the principle of equality of treatment laid down by the Community regulations on social security, is the fact that there is no reciprocal agreement between two Member States of the Community capable of precluding the grant of the guaranteed income for old people, when the claimant, although never having been an employed person in the territory of the State in which she resides at the time of making her application, duly satisfies the minimum residence requirement under the legislation of that State for the provision of the benefit claimed, is dependent on her son, who has worked in Belgium and draws an early retirement pension or ordinary retirement pension in Belgium, and receives a proportion of a pension at the expense of her country of origin, namely Italy, an EEC Member State, under the Italian employed persons’ scheme?”

(b) In view of the fact that the appellant receives a proportion of a pension under the Italian scheme, may her case be treated in the same way as that of a person who, in Belgium, receives a proportion of a Belgian retirement or survivor’s pension thereby justifying payment of a supplement in the form of the guaranteed income for old people?”

(c) May the appellant be regarded as a member of the family of her son, who was, successively, an employed person, the recipient of an early retirement pension and the recipient of an ordinary retirement pension in Belgium, for the purposes of the Community regulations, particularly Regulation No 1408/71 and Regulation No 1612/68?”

The judgment making the reference was lodged at the Court Registry on 21 November 1983.

In pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by Carmela Castelli, the appellant before the Cour du Travail, represented by D. Rossini, a trade union representative; by the National Office, the respondent before the Cour du Travail, represented by R. Masyn, general manager; by the Commission of the European Communities, represented by J. Griesmar, a member of its Legal Department, acting as Agent, assisted by F. Herbert, of the Brussels Bar; by the Government of the Italian Republic, represented by O. Fiumara, *Avvocato dello Stato*, acting as Agent; and by the Government of the United Kingdom, represented by G. Dagtoglou of the Treasury Solicitor’s Department, acting as Agent.

Upon 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.

By order of 11 April 1984 the Court also decided, in pursuance of Article 95 (1) and (2) of the Rules of Procedure, to assign the case to the First Chamber.

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

In her observations *Carmela Castelli* points out that her Italian survivor’s pension amounts to BFR 9 650 per month, whereas the monthly income guaranteed to old persons by the Belgian Law of 1 April 1969 is BFR 11 297. She considers herself entitled to the difference between those two amounts

and explains that she is not entitled to the Italian "social aid pension", which in principle corresponds to the Belgian guaranteed income, because in Italy she is entitled to a survivor's pension of a larger amount than the social aid pension.

In claiming the Belgian guaranteed income Mrs Castelli relies on Articles 2 (1) and 3 (1) of Regulation No 1408/71, as interpreted by the Court of Justice. She refers to the wording of Article 2 (1), which provides that: "This regulation shall apply to workers who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States ... as well as to the members of their families and their survivors," and points out that Article 1 (f), for the definition of the expression "member of the family", refers to the relevant national legislation. However, in Belgium the income guaranteed to old persons is not granted on the basis of the recipient's capacity as a worker or member of the family of a worker but solely on the basis of a "personal right" conferred on persons who fulfil conditions as to age, residence and income.

Mrs Castelli considers that the condition of reciprocity, introduced by the Belgian Law of 1 April 1969, before an old person of foreign nationality may receive the guaranteed income in Belgium must be set aside for nationals of Member States of the EEC. Such a condition is incompatible with "the rule of equality of treatment which is one of the fundamental principles of Community law" (*paragraph 19 of the Frilli*

judgment, previously cited). She claims that the concept of reciprocity is inherent in the Community regulations and that equality of treatment between citizens of one and the same Community cannot therefore depend on any reciprocal agreement between the States which have signed the Treaty establishing that Community. Mrs Castelli therefore draws the conclusion that she should be entitled to the income guaranteed for old persons on an equal footing with Belgian nationals, even though she has never worked in Belgium and has never acquired the right to a personal pension in Belgium.

Irrespective of the definition of the guaranteed income for old persons as a personal right, that is to say dependent upon the status of the person as such, Mrs Castelli considers the argument that the existence of such a right must depend on activity as an employed person in Belgium. She concedes that if the argument is correct she does not possess such a right directly. However, she possesses it indirectly as the mother of a worker who has been employed in Belgium for several years and who has acquired the right to a pension there. Relying on the *Kermaschek* judgment of 23 November 1976 (Case 40/76, [1976] ECR 1669) she claims a derived right in her capacity as a member of the family of a worker.

In the alternative Mrs Castelli observes that if the guaranteed income for old persons cannot in this case be regarded as an advantage arising from social security by reason of the fact that she

has never worked in Belgium, it should be defined as a social advantage under Article 7 (2) of Regulation No 1612/68. She would then be entitled to such an advantage under Article 10 of that regulation, which mentions amongst the members of the migrant worker's family relatives in the ascending line living under his roof. That is confirmed, moreover, by the *Inzirillo* judgment, already referred to, which states that: "In the light of the equality of treatment which Regulation No 1612/68 seeks to bring about . . ., the matters covered by Article 7 (2) must be defined in such a way as to include every social and tax advantage, whether or not linked to a contract of employment."

In conclusion Mrs Castelli proposes that the Court should reply as follows to the preliminary questions put to it by the Cour du Travail, Liège:

"Regard being had to the principle of equality of treatment applied by the Community regulations on social security, the grant of a benefit such as the 'guaranteed income' for old persons made available by the legislation of a Member State cannot be dependent upon the existence of a reciprocal agreement between two Member States.

Where all other legal conditions are satisfied, the grant of such a benefit cannot be refused to nationals of another Member State who, though never having had the status of employed persons within the State concerned, regularly reside there and are members of the family of a migrant worker."

The National Office, for its part, concentrates its attention in the first place on Question (b) submitted by the Cour du Travail, Liège. It does so by reference to the analytical scheme contained in *paragraph 4* of the *Frilli* judgment cited above. Thus an examination of how the guaranteed income may be classified, regard being had to the concept of "social advantages" within the meaning of Article 7 (2) of Regulation No 1612/68, may be contemplated only if it is established that the guaranteed income is not a social security benefit within the meaning of Regulation No 3 (replaced in the meantime by Regulation No 1408/71).

The National Office takes the view that in that judgment the Court of Justice is stating that the grant of the guaranteed income is reserved to persons entitled to a pension based on a period of employment in the Member State which recognizes a right to a pension. Not having herself had the status of an employed person in Belgium, Mrs Castelli is thus not entitled to claim the benefit of Regulation No 1408/71 on which she relies in claiming the income guaranteed to old persons by the Belgian Law.

By frequent references to cases decided by the Belgian courts and to administrative practice, the National Office shows that, as regards both case-law and administration, its interpretation of the *Frilli* judgment has prevailed, so that the legal position regarding the grant of the income guaranteed by the Belgian Law of 1 April 1969 to old persons entitled to a pension paid by Belgium is settled. Furthermore, its reading of the position is corroborated by Article 122 of the Belgian Law of 8 August 1980 relating to

the 1979/1980 Budget proposals which replaced the first subparagraph of Article 1 (2) of the Law of 1 April 1969 by the following provision: "Every recipient must be either Belgian, a Stateless person or a refugee recognized under the Law of 28 March 1952 on aliens control, or a national of a country with which Belgium has concluded a reciprocal agreement or has recognized the existence of *de facto* reciprocity in the matter, or any other person of foreign nationality who has acquired a right in Belgium to an employed person's retirement or survivor's pension."

The working documents preceding the adoption of that Law show clearly that the amendment to the first subparagraph of Article 1 (2) of the Law of 1 April 1969 was intended to adapt Belgian legislation to the exact import of the *Frilli* judgment.

Consequently the National Office suggests that the answer to be given to Question (b) submitted by the Cour du Travail, Liège, should be as follows:

"Regard being had to Article 122 of the Law of 8 August 1980 amending the first subparagraph of Article 1 (2) of the Law of 1 April 1969 laying down a scheme of guaranteed income for old persons in conformity with the judgment of the Court of Justice of the European Communities in the case of *Frilli v Belgian State*, the grant of a partial pension under the Italian scheme cannot be assimilated to the grant of a partial Belgian retirement or survivor's pension so as to justify the award of the

supplement represented by the guaranteed income for old persons."

As to Questions (a) and (c) the National Office makes a detailed analysis of the judgments of the Court of 11 April 1973 in Case 76/72 *Michel S.*, [1973] ECR 457, 17 June 1975 in Case 7/75 *Mr and Mrs F.*, [1975] ECR 679 and 16 December 1976 in Case 63/76 *Inzirillo*, cited above, and of the opinions of the Advocates General preceding those judgments and reaches the conclusion that hitherto the Court has delivered judgment in substance only on certain specific cases of handicapped children of employed persons. Without giving rise to abuses and in that way overturning the spirit of Regulations Nos 1408/71 and 1612/68, it cannot therefore validly be maintained that the right of the mother of an employed person to install herself in a Member State leads to an obligation on the part of that State to guarantee a certain monthly income. From the philosophy behind those regulations it follows that the members of the family enjoy only rights derived from an occupation pursued by a worker who is a national of another Member State. The guaranteed income, however, is a purely personal advantage, since there is no correlation between the grant of that advantage and the status of a member of the family as a worker, and the question whether or not there are children does not affect the matter.

In the case of Mrs Castelli the National Office concludes that she cannot rely on her son's capacity as a person about to receive, or in receipt of, a pension from the Belgian State to claim the guaranteed income. That is all the more true inasmuch as Mrs Castelli has not even provided any evidence that she is dependent on her son, so that she certainly does not fulfil the condition laid down in Article 10 of Regulation No 1612/68.

Hence the National Office considers it appropriate to reply as follows to Questions (a) and (c) submitted by the Cour du Travail, Liège:

“Since the grant of the guaranteed income is a purely personal advantage, a person claiming it must fulfil personally the conditions laid down by the legislation providing for that advantage.

The concept of ‘member of the family’ as defined by Regulations Nos 1408/71 and 1612/68 has therefore no relevance as regards the grant of that advantage.

Even if it were relevant, an applicant would have to prove that he was dependent upon a national of a Member State, as provided by Article 10 of Regulation No 1612/68.”

The *Commission of the European Communities* takes as the starting point for its observations the idea that this case concerns essentially the question of the possible extension of the said *Frilli* judgment as to the distinction between social security benefits referred to by Regulation No 1408/71 and social aid benefits which are excluded from that regulation. It observes that in this case Mrs Castelli, as distinct from Mrs Frilli, is not entitled to any social security benefit payable by the Belgian institutions, has never worked in Belgium, has a social security benefit payable by the Italian institutions and is dependent upon her son, who is entitled to a pension in Belgium and with whom she resides.

The Commission notes that in the *Frilli* judgment the Court ruled: “The guaranteed income granted by legislation of general application of a Member State giving old people who are resident in that State a right to a minimum pension must be considered, as regards employed and assimilated persons within the meaning of Regulation No 3” (now Regulation No 1408/71) “who have a right to a pension in the same State, as an old-age benefit within the meaning of Article 2 (1) (c) of the same regulation” (now Article 4 (1) (c) of Regulation No 1408/71). The Commission regards the problem as limited to the question whether that answer, given by the Court to one of the preliminary questions raised in the *Frilli* case, is exhaustive in the sense that it sets out the only circumstances in which the advantage of the guaranteed income for old persons is to be considered a social security benefit. In fact Mrs Castelli, who has no entitlement to a pension in Belgium, is not one of the persons to whom Regulation No 1408/71, as described in the *Frilli* judgment, applies.

Hence the Commission interprets the questions submitted by the Cour du Travail, Liège, as asking whether the criterion of a material connection is equally satisfied either by the fact that Mrs Castelli is entitled to a pension in Italy or by the fact that her son is entitled to a pension in Belgium.

According to the Commission, the principles set out in the *Frilli* judgment and in later case-law cannot be extended to cases in which the worker is entitled to a pension in a Member State other than the one under whose legislation the guaranteed income is claimed. In that respect the Commission stresses the express reference in the operative part of the *Frilli* judgment to entitlement *in the*

same State to a pension by virtue of a previous professional or trade activity. The same principle is moreover corroborated in the judgments of 22 May 1974 in Case 187/73 *Callemeyn*, [1974] ECR 553, 9 October 1974 in Case 24/74, *Biason*, [1974] ECR 999, 13 November 1974 in Case 39/74, *Costa*, [1974] ECR 1251 and 5 May 1983 in Case 139/82 *Piscitello*, [1983] ECR 1427. The Commission regards as wholly correct paragraph 12 of the last-mentioned judgment which states: "... in view of the broad terms in which the beneficiaries are defined, such legislation" (that is, legislation making provision for a guaranteed income for old persons) "fulfils a dual purpose which consists not only in guaranteeing a minimum means of subsistence to persons who are entirely outside the social security system but also in supplementing the income of recipients of inadequate social security benefits".

It draws the conclusion that if it were to be considered that entitlement to an Italian pension provided entitlement in Belgium to the guaranteed income for old persons, thus by that very fact giving that benefit the status of a social security benefit within the meaning of Regulation No 1408/71, that would mean that, in the interpretation of Article 42 of that regulation, a social security right would be created in a Member State in which the claimant has never worked and is accordingly not insured. Regulation No 1408/71 would thus no longer be restricted to the coordination envisaged by Article 51 of the EEC Treaty but would be playing a part in the actual creation of the social security right.

As regards the question to what extent a member of the family of a worker within the meaning of Article 2 (1) of Regu-

lation No 1408/71 may receive the guaranteed income as a social security benefit, the Commission takes the view that the fact that that income is a supplement to a social security benefit referred to in Article 4 of the regulation implies that one and the same person must be involved. In view of the express provisions of Articles 2 (1) and 1 (f) of Regulation No 1408/71 the connection between the Belgian guaranteed income for old persons and Regulation No 1408/71 by the indirect means of Mrs Castelli's possible status as a member of the family of a worker would then not be possible.

Moreover the Commission is of the opinion that Mrs Castelli's position is governed by Article 10 of Regulation No 1612/68, according to which: "The following shall, irrespective of their nationality, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State: ... (b) dependent relatives in the ascending line of the worker and his spouse."

Since the personal applicability of Regulation No 1612/68 is established, the Commission has no doubt that the income guaranteed in Belgium for old persons is a social advantage within the meaning of Article 7 (2) of that regulation. In that case, the grant of that advantage is subject to the principles of equal treatment by the application of Article 7 (1). It refers to the judgment of 30 September 1975 in Case 32/75 *Cristini*, [1975] ECR 1085, the judgment

in *Inzirillo* already cited and to the judgment of 14 January 1982 in Case 65/81 *Reina*, [1982] ECR 33. According to the Commission it cannot be maintained that Article 7 of Regulation No 1612/68 relates to equality of treatment for the worker alone. The *Cristini* and *Inzirillo* judgments confirm in fact that the equality of treatment referred to in Article 7 of Regulation No 1612/68 also prohibits discrimination against the members of the worker's family referred to in Article 10 of the regulation.

It would therefore be contrary to the aim and spirit of the Community rules on the free movement of workers to make the grant of certain social advantages to members of the migrant worker's family subject to conditions different from those on which the same social advantage is granted to members of the families of national workers.

The Commission concludes that the guaranteed income granted by a Member State to old persons living within its territory cannot depend, as regards a member of a migrant worker's family referred to in Article 10 of Regulation No 1612/68, upon the existence of a reciprocal agreement with the Member State of which the member of the family is a national.

Finally the Commission suggests that the Court should reply as follows to the question referred to it by the Cour du Travail, Liège:

- "1. Article 4 of Regulation No 1408/71 must be interpreted in such a way that legislation providing for a guaranteed income for old persons

residing within the Member State concerned may be regarded as falling within the sphere of application of Regulation No 1408/71 only if, conferring on recipients a legally defined position irrespective of any individual and discretionary appraisal of their needs or personal situation, it is capable of ensuring for the persons referred to in Article 2 (1) of Regulation No 1408/71 an income supplementary to a social security benefit received by those persons in the Member State concerned.

2. By virtue of Article 10 of Regulation No 1612/68 dependent relatives in the ascending line of the worker and his spouse are to be regarded as members of his family and have therefore the right to install themselves with him.
3. Article 7 (2) of Regulation No 1612/68 must be interpreted in such a way that a social advantage such as the guaranteed income for old persons provided for by the legislation of a Member State cannot be made subject, as regards its grant to members of the family of the worker referred to by Article 10 of Regulation No 1612/68, to conditions different from those governing the grant of the same advantage to the members of the family of a national worker."

The *Government of the Italian Republic* states, in its observations submitted to the Court, that the court making the reference was of the opinion that the facts underlying the *Frilli* judgment referred to above were different from those alleged in the case now before it.

The *Frilli* judgment related to a person in receipt of an old-age benefit under the Belgian system, whereas this case involves a person receiving a pension benefit under the system of another Member State. According to the Italian Government that difference does indeed exist but has no significance since Mrs Castelli is entitled to a partial survivor's pension under the social security system of a Member State. As regards the first question referred to the Court, the Italian Government claims that, just as it is not possible to impose a condition relating to the nationality of the person concerned or to reciprocity between Member States without committing a breach of the principle of equality of treatment, similarly it is not possible either to impose a condition relating to the nationality of the old-age benefit without committing a breach of the same principle.

As to the second question submitted by the court of reference, it seems clear that for the payment of the income guaranteed by the Belgian Law to old persons account must be taken of entitlement to social security or social assistance benefits in another Member State to the extent to which account is taken of such benefits in Belgium.

As to the third question, the Italian Government takes the view that it follows from the *Inzirillo* judgment, previously cited, that just like a descendant who is dependent upon a migrant worker, an ascendant residing in Belgium with his son on whom he depends has the right under Article 10 (1) (b) of Regulation No 1612/68 to install himself with him. He too is thus entitled to a social security benefit.

namely whether Mrs Castelli's case may be treated in the same way as that of a person who, in Belgium, receives a proportion of a Belgian retirement or survivor's pension, is the crucial question since, if it is answered affirmatively, answers to the remaining questions are not strictly necessary in order that the court of reference may give judgment. The United Kingdom's view is that it is first necessary to determine under which regulation Mrs Castelli may invoke the principle of equality of treatment. If she receives her Italian pension as the survivor of an employed or self-employed person, the principle of equality of treatment derives from Article 3 of Regulation No 1408/71. If, on the other hand, she does not receive it in that capacity the principle of equality of treatment should be considered in the light of Regulation No 1612/68, Article 10 (1) (b) of which gives to a worker's relatives in the ascending line a right to install themselves with him.

The United Kingdom then emphasizes that even if the principle of equality of treatment is to be applied in conformity with Regulation No 1408/71, it is not necessary to treat a pension payable in one Member State as having the effect in another Member State of giving a benefit such as the Belgian guaranteed income for old people the status of a social security benefit supplementing another social security benefit which is inadequate. Otherwise in the view of the United Kingdom there would be a risk of the enforced exportation of the Belgian guaranteed income for old people as a result of the combined effect of the *Biason* and *Piscitello* judgments referred to above.

The *United Kingdom* observes that the second question referred to the Court,

By way of illustration of that point the United Kingdom cites the example of a

person who has been employed in one Member State only. He receives from that State a retirement pension which is paid under legislation covered by Article 4 (1) of Regulation No 1408/71. His resources are such that he also qualifies for a guaranteed minimum pension for old persons. According to the aforementioned *Frilli* judgment that pension must be regarded as a social security benefit within the material scope of Regulation No 1408/71.

entitled whilst resident in the other two countries. If, later, the person concerned returns to the first Member State where the minimum level of subsistence is lower, he would lose entitlement to that State's guaranteed minimum pension for old persons. He would, however, retain entitlement to the minimum level of subsistence awarded in Member State No 2 even though he had never worked in that State or contributed to its economy.

The person concerned subsequently transfers his residence to Member State No 2 and in accordance with the *Biason* and *Piscitello* judgments he is able to continue to receive both pensions in the new country of residence. If the minimum level of subsistence in Member State No 2 is higher than the total of the two pensions which he is already receiving and his resources are such that he qualifies for a minimum income allowance in that State and if in addition the answer to Question (b) submitted by the Cour du Travail, Liège, is in the affirmative, he will be entitled to receive the allowance. What is more, that allowance will have to be regarded as a social security benefit and within the material scope of Article 4 (1) of Regulation No 1408/71 because it supplements payments which are within that provision.

Subsequently the person concerned transfers his residence to Member State No 3. By virtue of Article 10 (1) of that regulation as applied in the *Biason* and *Piscitello* judgments, the residence requirements of Member State No 2 will be waived and the person concerned will be able to enjoy in Member State No 3 the benefits to which he had become

On the basis of that hypothetical example the United Kingdom considers that equality of treatment should be extended no further than absolutely necessary, lest Article 10 (1) of Regulation No 1408/71 be given a dynamic application which was not intended.

III — Oral procedure

At the sitting on 21 June 1984 oral argument was presented by the appellant in the main proceedings, represented by D. Rossini, a representative of Patronato ACLI, by the respondent in the main proceedings, represented by J. Peltot, an official of the National Office, by the Italian Government, represented by O. Fiumara, Avvocato dello Stato, and by the Commission of the European Communities, represented by F. Herbert, Advocate.

The Advocate General delivered his opinion at the same sitting.

Decision

- 1 By judgment of 4 November 1983 which was received at the Court on 21 November 1983, the Cour du Travail [Labour Court], Liège, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty, three questions on the interpretation 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) and 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) in relation to the application of the Belgian Law of 1 April 1969, which provides for a guaranteed income for old persons.
- 2 The questions were raised in the course of proceedings between Mrs Castelli and the Office National des Pensions des Travailleurs Salariés (ONPTS) [National Pensions Office for Employed Persons, hereinafter referred to as "the National Office"].
- 3 Mrs Castelli is an Italian national and is entitled in Italy to a partial survivor's pension. Since May 1957 she has lived in Belgium with her son who receives a Belgian retirement pension. Mrs Castelli has never worked in Belgium.
- 4 By a decision of 22 December 1978, the National Office refused to allow Mrs Castelli the income guaranteed to old people under the Law of 1 April 1969, on the ground that she did not fulfil the conditions set out in Article 1 of that law, since she was not a Belgian national, or a national of a country with which Belgium had concluded a reciprocal agreement, and she was not entitled to a retirement pension or a survivor's pension in Belgium.
- 5 Mrs Castelli contested the decision of the National Office before the Tribunal du Travail [Labour Tribunal], Liège. By judgment of 23 May 1980, that tribunal dismissed her application. Mrs Castelli then appealed to the Cour du Travail, Liège, on the ground that the requirement of reciprocity imposed by the Belgian Law was contrary to Community law.

- 6 The Cour du Travail, Liège, considered that, in order to give judgment, it required a ruling from the Court and submitted the following questions to the Court:

“(a) In the light of the principle of equality of treatment laid down by the Community regulations on social security, is the fact that there is no reciprocal agreement between two Member States of the Community capable of precluding the grant of the guaranteed income for old people, when the claimant, although never having been an employed person in the territory of the State in which she resides at the time of making her application, duly satisfies the minimum residence requirement under the legislation of that State for the provision of the benefit claimed, is dependent on her son, who has worked in Belgium and draws an early retirement pension or ordinary retirement pension in Belgium, and receives a proportion of a pension at the expense of her country of origin, namely Italy, an EEC Member State, under the Italian employed persons’ scheme?

(b) In view of the fact that the appellant receives a proportion of a pension under the Italian scheme, may her case be treated in the same way as that of a person who, in Belgium, receives a proportion of a Belgian retirement or survivor’s pension thereby justifying payment of a supplement in the form of the guaranteed income for old people?

(c) May the appellant be regarded as a member of the family of her son, who was, successively, an employed person, the recipient of an early retirement pension and the recipient of an ordinary retirement pension in Belgium, for the purposes of the Community regulations, particularly Regulation No 1408/71 and Regulation No 1612/68?”

- 7 The questions concern the position of a national of a Member State who receives a social security benefit in that State and who moves to another Member State where she has never worked and where she is dependent on her son, who is himself in receipt of a social security benefit in the latter State. They are intended to establish whether that person is entitled to receive the guaranteed income for old people provided for by the legislation of the second State, or at least the difference between that income and the lowest amount of the social security benefit paid by the first Member State, either by way of old age benefit under Regulation No 1408/71, or by way of social advantage under Regulation No 1612/68.

- 8 It is appropriate to consider that problem in the first place in relation to Regulation No 1612/68, to which the third question submitted by the national court refers specifically.
- 9 Under Article 10 of Regulation No 1612/68 dependent relatives in the ascending line have the right, irrespective of their nationality, to instal themselves with a worker who is a national of one Member State and is employed in the territory of another Member State. In addition, Regulation (EEC) No 1251/70 of the Commission (Official Journal, English Special Edition 1970 (II), p. 402) extended the right to remain in the territory of a Member State to the dependent relatives in the ascending line of a national of another Member State who has been employed in the first State. It is therefore clear that the appellant in the main proceedings comes within the class of beneficiaries of Regulation No 1612/68.
- 10 By virtue of Article 7 (2) of Regulation No 1612/68, a worker who is a national of a Member State is to enjoy the same social and tax advantages as national workers. It follows from the judgments of 30 September 1975 (Case 32/75, *Cristini*, [1975] ECR 1085) and of 16 December 1976 (Case 63/76, *Inzirillo*, [1976] ECR 2057) that the equality of treatment provided for in Article 7 of Regulation No 1612/68 is also intended to prevent discrimination against a worker's dependent relatives in the ascending line, such as the appellant in the main proceedings.
- 11 As the Court has held on many occasions (judgments of 31. 5. 1979 in Case 207/78, *Even*, [1979] ECR 2019, and of 14. 1. 1982 in Case 65/81, *Reina*, [1982] ECR 33), the concept of social advantage includes all advantages "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". The effect of that definition, which has been consistently used by the Court, is that the concept of social advantage includes the income guaranteed to old people by the legislation of a Member State.

- 12 The answer must therefore be that Article 7 (2) of Regulation No 1612/68 must be interpreted as meaning that the grant of a social advantage, such as the income guaranteed to old people by the legislation of a Member State, to dependent relatives in the ascending line of a worker cannot be conditional on the existence of a reciprocal agreement between that Member State and the Member State of which such a relative is a national.
- 13 Since that reply enables the national court to decide the dispute in the main proceedings, it is not necessary to consider whether, in the situation in question, a national of a Member State is entitled to obtain the income guaranteed to old people by the legislation of another Member State under Regulation No 1408/71, either as the member of the family of a migrant worker established in that State or as a beneficiary in her own right of a social security benefit in her State of origin.

Costs

- 14 The costs incurred by the Italian Government, the United Kingdom and the Commission of the European Communities, which have 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 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 4 November 1983, hereby rules:

Article 7 (2) of Regulation (EEC) 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) must be interpreted as meaning that the grant of a social advantage, such as the

income guaranteed to old people by the legislation of a Member State, to a dependent relative in the ascending line of a worker cannot be conditional on the existence of a reciprocal agreement between that Member State and the Member State of which such a relative is a national.

Koopmans

Bosco

Joliet

Delivered in open court in Luxembourg on 12 July 1984.

For the Registrar

H. A. Rühl

Principal Administrator

T. Koopmans

President of the First Chamber

OPINION OF MR ADVOCATE GENERAL
VERLOREN VAN THEMAAT
DELIVERED ON 21 JUNE 1984¹

*Mr President,
Members of the Court,*

Of the written observations submitted in this case, which were very well summarized in the Report for the Hearing, in my view only those of the Commission are entirely convincing. I must say immediately that the new arguments put forward this morning have not altered my view in that respect.

I consider that the Belgian National Pensions Office, particularly in its

written observations, attaches too much importance to the text of the Belgian Law in question. The wording of a national Law clearly cannot be decisive in interpreting Community law.

The factual arguments which its representative has just put forward at the hearing cannot be decisive for the Court in proceedings for a preliminary ruling, as the Commission has correctly pointed out. I too take the view that the Court must proceed on the basis of the facts as

¹ — Translated from the French.