OPINION OF MR ADVOCATE GENERAL DARMON DELIVERED ON 21 JUNE 1984 [1]

Mr President,
Members of the Court,

1. This reference for a preliminary ruling made by the Cour de Cassation du Royaume de Belgique [Court of Cassation of the Kingdom of Belgium] concerns a situation which has already been considered by the Court.

A national of a Community Member State — in this case Salvatore Patteri, an Italian, who had retired and was drawing an invalidity pension — returned with his family to live in his country of origin after working in another Member State — in this case Belgium. Is he entitled to obtain from the competent Belgian institution, namely the Caisse de Compensation pour Allocations Familiales du Bâtiment, de l'Industrie et du Commerce du Hainaut [Family Allowances Compensation Fund for the Building Trade, Industry and Commerce, Hainaut, (hereinafter referred to as "the Fund"], payment of the difference between the amount of family allowances that he used to receive in Belgium and the lesser amount which is payable in Italy?

2. Case 733/79 *(Laterza)* was presented in precisely the same terms and concerned the same countries and the same national laws.

In its judgment of 12 June 1980, [2] the Court answered the question submitted to it by the Tribunal de Travail [Labour Tribunal], Charleroi, as follows: [3]

"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."

3. That decision is well known both to the parties in this case and to the Cour d'Appel and the Cour de Cassation to which the dispute was subsequently referred.

Yet the Cour de Cassation considers that the argument raised by the Fund in support of its appeal "raises questions of Community law which do not appear to have been submitted to the Court of Justice of the European Communities". It refers the following two questions to the Court:

"1. Does Article 51 of the Treaty of Rome authorize the Council of Ministers only to adopt such measures as are necessary to secure for migrant workers the actual payment of social security benefits, the said benefits continuing to be governed, as regards the principle and the amount thereof, exclusively by separate bodies of rules giving rise to separate claims against separate institutions, and is it therefore appropriate to interpret

1 — Translated from the French.

2 — Case 733/79, *Caisse de Compensation des Allocations Familiales de Charleroi et de Namur* v *Laterza*, [1980] ECR 1915.

3 — Paragraph 10, p. 1926.

the provisions of Regulation No 1408/71, and in particular Article 7 thereof, as conferring a direct right upon individuals only to the extent necessary to secure the actual payment of benefits, the principle and the amount of which continue to be governed exclusively by the various national laws, so that the said provision cannot create for migrant workers direct entitlement to payment by the authorities of a Member State of family allowances which are not payable under the national law of that Member State?

2. If it is necessary to interpret Article 77 (2) (b) (i) of Regulation No 1408/71 as meaning that entitlement to the payment of family benefits by the Member State in whose territory the recipient of an invalidity pension resides does not take away a previously acquired right to higher benefits payable by another Member State, or at least to a supplement equal to the difference between the two amounts, establishing for the recipient a right which was not created by the legislation of either Member State, is Regulation No 1408/71 valid in the light of Article 51 of the Treaty of Rome?"

4. The Fund clearly stated, both in its written observations and its oral submissions, that it was hoping for a departure from the *Laterza* decision, although it is aware that that decision follows directly from those in earlier cases [1] and that the Court has recently confirmed it. [2]

To that end, the Fund maintains that Article 77 (2) (b) (i) can be construed only within the limits of the powers conferred on the Council by Article 51 of the EEC Treaty, that is to say, for the purpose of pursuing the two specific aims provided for therein, namely:

(a) aggregation of insurance periods, and

(b) the "exporting" of benefits from one country to another within the Community.

In the Fund's view, that question concerning the Council's powers, to which the whole issue can be reduced, has never been clearly put to the Court and, in any event, has never been expressly answered by the Court.

More specifically, in the Fund's view, the Court has never declared:

"whether — and, if so, to what extent — Article 51 of the Treaty empowers the Council of Ministers to adopt a regulation which has the effect of obliging the authorities of a Member State, contrary to the express provisions of the relevant national law [3], to pay family allowances in respect of children who are not resident in the territory of that State, where not only does no entitlement exist in the State in which they are resident ... but also such an entitlement" is recognized by the latter State.

Accordingly, the Fund considers that the relevant provision of Article 77 ought to be interpreted:

either "in accordance with the natural meaning of its wording", that is to say

1 — In particular, the judgment of 6. 3. 1973 in Case 100/78, *Rossi*, [1979] ECR 831.

2 — Judgment of 24. 11. 1983 in Case 320/82, *D'Amario*, [1983] ECR 3811.

3 — In this case, Article 51 (3) of the Consolidated Belgian Laws on family allowances, which provides that the benefits in question "shall not be payable in respect of children brought up outside the Kingdom".

contrary to the Court's judgment in *Laterza*, as establishing a private international law rule of renvoi within the Community legal order enabling the national legislation applicable to family allowances to be determined: entitlement to benefits from a Member State other than the State of residence exists, having regard to the requirement imposed on the Council by Article 51 (b) of the Treaty, only where the legislation of the State of residence does not confer such an entitlement;

or

as the Court interpreted it in *Laterza*, which would render Article 77 invalid in the light of Article 51 of the Treaty. Article 51 neither requires nor appears to authorize the Council — which is empowered to designate the applicable legislation — to combine the legislation of two States so as to secure for the migrant worker and his dependants entitlement to the "difference" at issue.

On the basis solely of the provisions of Article 77, the Government of the Federal Republic of Germany, which has submitted observations, takes the view, in common with the Fund, that

"having regard to Community law, no entitlement to Belgian family allowances exists in this instance."

5. As the Commission points out in its observations, the issue of the validity of Article 77 (2) (b) (i) raises the question of the scope of Article 51 of the Treaty.

Article 51 reads as follows:

"The Council shall, acting unanimously on a proposal from the Commission, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end it shall make arrangements to secure for migrant workers and their dependants:

(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;

(b) payment of benefits to persons resident in the territories of Member States."

Since 1964, and in particular in its judgment in *Hoekstra (née Unger)*, *Nonnenmacher* and *Kalsbeek (née van der Veen)*, the Court has defined the meaning and scope both of Articles 48 to 51 of the Treaty and of the regulations that have been issued for their implementation.

The Court has stated as follows:

"Article 51 is included in the Chapter entitled 'Workers' and placed in Title III ('Free movement of persons, services and capital') of Part Two of the Treaty ('Foundations of the Community'). The establishment of as complete a freedom of movement for workers as possible, which thus forms part of the 'foundations' of the Community, therefore constitutes the principal objective of Article 51 and thereby conditions the interpretation of the regulations adopted in implementation of that Article." [1]

[Articles 48 to 51 of the Treaty] "are designed to establish the greatest possible

1 — Judgment of 19. 3. 1964 in Case 75/63, *Hoekstra (née Unger)*, [1964] ECR 177 at p. 184.

freedom of movement for workers. This aim includes the elimination of legislative obstacles which could handicap migrant workers.

In cases of doubt the abovementioned articles and the measures taken in implementation of them must therefore be construed so as to avoid placing migrant workers in an unfavourable legal position, particularly with regard to social security." [1]

"The regulations in the field of social security have as their basis, their framework and their bounds Articles 48 to 51 of the Treaty which are aimed at securing freedom of movement for workers." "The aim of Articles 48 to 51 of the Treaty, would not be attained but disregarded if the worker were obliged, in order to avail himself of the freedom of movement which is guaranteed to him, to find himself subjected to the loss of rights already acquired in one of the Member States without having them replaced by at least equivalent benefits." [2]

It is apparent from those decisions, which have consistently been confirmed, that Article 51 is intended to safeguard the free movement of workers. The two measures provided for in paragraphs (a) and (b) are means of attaining that aim. On a more general level, they implement the principle that acquired rights should be maintained, which has been expressly endorsed in the case-law of the Court. Accordingly, the Court may not adopt the restrictive interpretation of Article 51 that is proposed by the Fund.

6. Observance of the aforementioned principle, which is intended to guarantee the free movement of workers, underlies the Court's decisions in *Rossi* and *Laterza* (to cite merely two).

Indeed, in line with the approach which it adopted in 1964, the Court pointed out in its judgment in *Rossi* that regulations relating to social security for migrant workers should be interpreted

"in the light of the aims pursued by the provisions of the Treaty (Articles 48 to 51) under which they were made" [3].

Furthermore, the Court took account of the "basis", the "framework" and the "bounds" of those articles when, in its judgment in *Laterza* (which, moreover, refers explicitly to the judgment in *Rossi*), it interpreted Article 77 (2) (b) (i) of Regulation No 1408/71.

The question of the scope of Article 51 of the Treaty having been settled, the problem at issue is the same as that which the Court had to resolve in *Laterza*.

I have already quoted the Court's answer to the question referred to it in that case [4].

Before setting out that answer, the Court pointed out that:

"In laying down and developing the rules for coordinating national laws Regulation No 1408/71 is . . . guided by the fundamental principle stated in the seventh and eighth recitals of the preamble to the regulation, that the aforesaid rules must guarantee to

1 — Judgment of 9. 6. 1964 in Case 92/63, *Nonnenmacher*, [1964] ECR 281 at p. 288.

2 — Judgment of 15. 7. 1964 in Case 100/63, *Kalsbeek (née van der Veen*, [1964] ECR 565 at pp. 573 and 574.

3 — Paragraph 12.

4 — Under 2 above.

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."

In *Laterza*, the Court interpreted Article 77 in accordance with the method referred to in *Rossi*, that is to say "in the light of" the aims of Article 51 of the Treaty. That "teleological" interpretation goes against the construction — again in this instance a restriction construction — that the Fund is asking the Court to adopt.

Is it necessary to enlarge upon the foregoing? To do so would only be to repeat the wording or at least the substance of the Court's decisions in *Rossi* and *Laterza*. Therefore, I shall merely say that by virtue of the aim of Article 51, and in the light, *inter alia*, of the seventh and eighth recitals in the preamble to Regulation No 1408/71, the Court should adhere to its previous decisions.

7. In conformity with the observations submitted by the Council, the Commission, the Italian Government and the defendant in the main proceedings, I am of the opinion that the Court should rule that:

1. The aim of Article 51 of the EEC Treaty is to establish and secure, in the field of social security, the utmost freedom of movement for workers within the Community; hence the regulations adopted by the Council in implementation of that article must be interpreted in the light of that aim.

2. Accordingly, as the Court has already ruled, "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."

3. Interpreted thus, that is to say consistently with the basis of and within the framework and the bounds of Article 51 of the Treaty, Article 77 (2) (b) (i) is valid in the light of that article.