JUDGMENT OF THE COURT
12 May 1998 *

In Case C-85/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Bayerisches Landessozialgericht (Higher Social Court of Bavaria) (Germany) for a preliminary ruling in the proceedings pending before that court between

María Martínez Sala

and

Freistaat Bayern

on the interpretation of Articles 1, 2, 3(1) and 4(1)(h) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), as amended by Council Regulation (EEC) No 3427/89 of 30 October 1989 (OJ 1989 L 331, p. 1), and of Article 7(2) of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475),

* Language of the case: German.

THE COURT,

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

Advocate General: A. La Pergola,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mrs Martínez Sala, by Antonio Pérez Garrido, Leiter der Rechtsstelle at the Spanish Embassy in Bonn,

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Bernd Kloke, Oberregierungsrat in that Ministry, acting as Agents,

— the Spanish Government, by D. Luis Pérez de Ayala Becerril, Abogado del Estado, State Legal Service, acting as Agent,

— the Commission of the European Communities, by Peter Hillenkamp, Legal Adviser, and Klaus-Dieter Borchardt, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mrs Martínez Sala, represented by Antonio Pérez Garrido; of the German Government, represented by Ernst Röder; of the

Spanish Government, represented by D. Luis Pérez de Ayala Becerril; of the French Government, represented by Claude Chavance, Foreign Affairs Secretary at the Foreign Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent; of the United Kingdom Government, represented by Stephen Richards, Barrister; and of the Commission, represented by Klaus-Dieter Borchardt, at the hearing on 15 April 1997,

after hearing the Opinion of the Advocate General at the sitting on 1 July 1997,

gives the following

Judgment

1 By order of 2 February 1996, received by the Court on 20 March, the Bayerisches Landessozialgericht referred to the Court for a preliminary ruling pursuant to Article 177 of the EC Treaty four questions on the interpretation of Articles 1, 2, 3(1) and 4(1)(h) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6), as amended by Council Regulation (EEC) No 3427/89 of 30 October 1989 (OJ 1989 L 331, p. 1), and on the interpretation of Article 7(2) of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475).

2 The four questions were raised in proceedings between Mrs Martínez Sala and Freistaat Bayern (State of Bavaria) concerning the latter's refusal to grant her child-raising allowance for her child.

Community law

3 Article 7(2) of Regulation No 1612/68 provides that a worker who is a national of a Member State is to enjoy, in the territory of other Member States, the same social and tax advantages as national workers.

4 Under Article 1(a)(i) of Regulation No 1408/71, the terms 'employed person' and 'self-employed person' mean, for the purposes of the implementation of that regulation, any person 'who is insured, compulsorily or on an optional continued basis, for one or more of the contingencies covered by the branches of a social security scheme for employed persons or self-employed persons'. Article 2 provides that the regulation is to 'apply to employed or self-employed persons who are or have been subject to the legislation of one or more Member States'.

5 Article 3(1) of Regulation No 1408/71 provides: 'Subject to the special provisions of this Regulation, persons resident in the territory of one of the Member States to whom this Regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State.'

6 Article 4(1)(h) of Regulation No 1408/71 provides that the regulation is to apply 'to all legislation concerning ... family benefits'. According to Article 1(u)(i), 'family benefits' means 'all benefits in kind or in cash intended to meet family expenses under the legislation provided for in Article 4(1)(h), excluding the special childbirth allowances mentioned in Annex II'.

7 According to Annex I, point I — 'Employed persons and/or self-employed persons (Article 1(a)(ii) and (iii) of the Regulation)', C ('Germany') —, to Regulation No 1408/71,

'If the competent institution for granting family benefits in accordance with Chapter 7 of Title III of the Regulation is a German institution, then within the meaning of Article 1(a)(ii) of the Regulation:

(a) "employed person" means any person compulsorily insured against unemployment or any person who, as a result of such insurance, obtains cash benefits under sickness insurance or comparable benefits;

(b) "self-employed person" means any person pursuing self-employment who is bound:

— to join, or pay contributions in respect of, an old-age insurance within a scheme for self-employed persons, or

— to join a scheme within the framework of compulsory pension insurance.'

The German legislation and the European Convention on Social and Medical Assistance

8 German child-raising allowance is a non-contributory benefit forming part of a set of family-policy measures. It is granted pursuant to the Bundeserziehungsgeldgesetz of 6 December 1985 (Federal Law on the Grant of Child-raising Allowance and Parental Leave, BGBl. I, p. 2154, hereinafter 'the BErzGG').

9 Paragraph 1(1) of the BErzGG, in the version thereof dated 25 July 1989 (BGBl. I, p. 1550), as amended by the Law of 17 December 1990 (BGBl. I, p. 2823), provides that any person who (1) is permanently or ordinarily resident in the territory to which the Law applies, (2) has a dependent child in his household, (3) looks after and brings up that child, and (4) has no, or no full-time, employment, is entitled to child-raising allowance.

10 Article 1(1)(a) of the BErzGG provides that 'a non-national wishing to receive the allowance must be in possession of a residence entitlement (Aufenthaltsberechtigung) or a residence permit (Aufenthaltserlaubnis)'. The referring court points out that the Bundessozialgericht (Federal Social Court) has consistently held that a person is 'in possession' of a residence entitlement only if he has a document from the Foreigners' Office duly attesting his right of residence at the start of the benefit period; mere confirmation that an application for a residence permit has been made and that the person concerned is therefore entitled to stay is not sufficient for that person to be considered to be in possession of a residence entitlement within the meaning of that legislation.

11 According to Article 1 of the European Convention on Social and Medical Assistance adopted by the Council of Europe on 11 December 1953 and in force since 1956 in Germany and since 1983 in Spain, 'each of the Contracting Parties undertakes to ensure that nationals of the other Contracting Parties who are lawfully

present in any part of its territory to which this Convention applies, and who are without sufficient resources, shall be entitled equally with its own nationals and on the same conditions to social and medical assistance provided by the legislation in force from time to time in that part of its territory.'

12 Article 6(a) of that Convention provides that 'a Contracting Party in whose territory a national of another Contracting Party is lawfully resident shall not repatriate that national on the sole ground that he is in need of assistance.'

The main proceedings

13 Mrs Martínez Sala, born on 8 February 1956, is a Spanish national who has lived in Germany since May 1968. She had various jobs there at intervals between 1976 and 1986 and was in employment again from 12 September 1989 to 24 October 1989. Since then she has received social assistance from the City of Nuremberg and the Landratsamt Nürnberger Land (Nuremberg Rural District Authority) under the Bundessozialhilfegesetz (Federal Social Welfare Law).

14 Until 19 May 1984, Mrs Martínez Sala obtained from the various competent authorities residence permits which ran more or less without interruption. Thereafter, she obtained only documents certifying that the extension of her residence permit had been applied for. In its order for reference, the Bayerisches Landessozialgericht points out that the European Convention on Social and Medical Assistance of 11 December 1953 did not, however, allow her to be deported. A residence permit expiring on 18 April 1995 was issued to Mrs Martínez Sala on 19 April 1994, and this permit was extended for a further year on 20 April 1995.

15 In January 1993, that is to say during the period in which she did not have a residence permit, Mrs Martínez Sala applied to Freistaat Bayern for child-raising allowance for her child born during that month.

16 Freistaat Bayern, by decision of 21 January 1993, rejected her application on the ground that she did not have German nationality, a residence entitlement or a residence permit.

17 By judgment of 21 March 1994, the Sozialgericht (Social Court) Nürnberg dismissed an action brought on 13 July 1993 by Mrs Martínez Sala against that decision on the ground that she was not in possession of a residence permit.

18 On 8 June 1994, Mrs Martínez Sala appealed against that judgment to the Bayerisches Landessozialgericht.

19 Taking the view that it might be possible for the appellant to rely on Regulations Nos 1408/71 and 1612/68 in order to obtain child-raising allowance, the Bayerisches Landessozialgericht stayed proceedings and referred the following questions to the Court for a preliminary ruling:

'(1) Was a Spanish national living in Germany who, with various interruptions, was employed until 1986 and, apart from a short period of employment in 1989, later received social assistance under the Bundessozialhilfegesetz (Federal Social Welfare Law, the "BSHG") still, in 1993, a worker within the meaning of Article 7(2) of Regulation (EEC) No 1612/68 or an employed person within the meaning of Article 2 in conjunction with Article 1 of Regulation (EEC) No 1408/71?

(2) Is child-raising allowance granted under the Gesetz über die Gewährung von Erziehungsgeld und Erziehungsurlaub (Law on the Grant of Child-raising Allowance and Parental Leave, "the BErzGG") a family benefit within the meaning of Article 4(1)(h) of Regulation No 1408/71, to which Spanish nationals living in Germany are entitled in the same way as German nationals under Article 3(1) of Regulation No 1408/71?

(3) Is child-raising allowance payable under the BErzGG a social advantage within the meaning of Article 7(2) of Regulation No 1612/68?

(4) Is it compatible with the law of the European Union for the BErzGG to require possession of a formal residence permit for the grant of child-raising allowance to nationals of a Member State, even though they are permitted to reside in Germany?'

20 It is appropriate to answer the second and third questions first, then the first question and, finally, the fourth question.

The second and third questions

21 By its second and third questions the national court is asking essentially whether a benefit such as the child-raising allowance provided for by the BErzGG, which is automatically granted to persons fulfilling certain objective criteria, without any individual and discretionary assessment of personal needs, and which is intended to meet family expenses, falls within the scope of Community law as a family benefit within the meaning of Article 4(1)(h) of Regulation No 1408/71 or as a social advantage within the meaning of Article 7(2) of Regulation No 1612/68.

22 In its judgment of 10 October 1996 in Joined Cases C-245/94 and C-312/94 *Hoever and Zachow* [1996] ECR I-4895 the Court has already held that a benefit such as the child-raising allowance provided for by the BErzGG, which is automatically granted to persons fulfilling certain objective criteria, without any individual and discretionary assessment of personal needs, and which is intended to meet family expenses, must be treated as a family benefit within the meaning of Article 4(1)(h) of Regulation No 1408/71.

23 The German Government submits that the Court should reconsider that interpretation and in its written observations refers to the observations which it submitted in the abovementioned case and, at the hearing, to the observations which it submitted to the Court in Case C-16/96 *Mille-Wilsmann*. Following delivery of the judgment in *Hoever and Zachow* the Bundessozialgericht annulled its order for reference and Case C-16/96 was removed from the register by order of 14 April 1997.

24 Since the German Government has not further explained the aspects of the judgment in *Hoever and Zachow* which, in its view, ought to be revised, nor the reasons which might justify such a revision, it must be repeated that a benefit such as the child-raising allowance provided for by the BErzGG, which is automatically granted to persons fulfilling certain objective criteria, without any individual and discretionary assessment of personal needs, and which is intended to meet family expenses, constitutes a family benefit within the meaning of Article 4(1)(h) of Regulation No 1408/71.

25 As far as the concept of social advantage, referred to in Article 7(2) of Regulation No 1612/68, is concerned, this term means, according to consistent case-law, all the 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 whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community (Case 249/83 *Hoeckx* [1985] ECR 973, paragraph 20).

26 The child-raising allowance in question here is an advantage granted *inter alia* to workers who work part-time. It is therefore a social advantage within the meaning of Article 7(2) of Regulation No 1612/68.

27 It must be added that, since Regulation No 1612/68 is of general application regarding the free movement of workers, Article 7(2) thereof may be applied to social advantages which at the same time fall specifically within the scope of Regulation No 1408/71 (Case C-111/91 *Commission* v *Luxembourg* [1993] ECR I-817, paragraph 21).

28 The answer to be given to the second and third questions is therefore that a benefit such as the child-raising allowance provided for by the BErzGG, which is automatically granted to persons fulfilling certain objective criteria, without any individual and discretionary assessment of personal needs, and which is intended to meet family expenses, falls within the scope *ratione materiae* of Community law as a family benefit within the meaning of Article 4(1)(h) of Regulation No 1408/71 and as a social advantage within the meaning of Article 7(2) of Regulation No 1612/68.

The first question

29 By its first question the national court is asking essentially whether a national of one Member State who resides in another Member State, where he is employed and subsequently receives social assistance, has the status of worker within the meaning of Regulation No 1612/68 or of employed person within the meaning of Regulation No 1408/71.

30 It should be remembered at the outset that, under the BErzGG, the grant of the child-raising allowance is subject, *inter alia*, to the condition that the recipient

must either not be engaged in gainful occupation or not be so engaged on a full-time basis. That condition is likely to restrict the number of persons who can both receive the child-raising allowance and still be categorised as workers under Community law.

31 It must also be pointed out that there is no single definition of worker in Community law: it varies according to the area in which the definition is to be applied. For instance, the definition of worker used in the context of Article 48 of the EC Treaty and Regulation No 1612/68 does not necessarily coincide with the definition applied in relation to Article 51 of the EC Treaty and Regulation No 1408/71.

The status of worker within the meaning of Article 48 of the Treaty and Regulation No 1612/68

32 In the context of Article 48 of the Treaty and Regulation No 1612/68, a person who, for a certain period of time, performs services for and under the direction of another person in return for which he receives remuneration must be considered to be a worker. Once the employment relationship has ended, the person concerned as a rule loses his status of worker, although that status may produce certain effects after the relationship has ended, and a person who is genuinely seeking work must also be classified as a worker (see, in that connection, Case 66/85 *Lawrie-Blum* [1986] ECR 2121, paragraph 17, Case 39/86 *Lair* [1988] ECR 3161, paragraphs 31 to 36, and Case C-292/89 *Antonissen* [1991] ECR I-745, paragraphs 12 and 13).

33 Furthermore, when a worker who is a national of one Member State has been employed in another Member State and remains there after obtaining a retirement pension, his descendants do not retain the right to equal treatment under Article 7 of Regulation No 1612/68 with regard to a social benefit provided for by the legislation of the host Member State if they have reached the age of 21, are no longer dependent on him and do not have the status of workers (Case 316/85 *Lebon* [1987] ECR 2811).

34 In the present case, the referring court has not furnished sufficient information to enable the Court to determine whether, having regard to the foregoing considerations, a person in the position of the appellant in the main proceedings is a worker within the meaning of Article 48 of the Treaty and Regulation No 1612/68, by reason, for example, of the fact that she is seeking employment. It is for the national court to undertake that investigation.

The status of employed or self-employed person within the meaning of Regulation No 1408/71

35 Article 2 of Regulation No 1408/71 provides that it is to apply to employed or self-employed persons 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 members of their families.

36 So a person has the status of employed person within the meaning of Regulation No 1408/71 where he is covered, even if only in respect of a single risk, compulsorily or on an optional basis, by a general or special social security scheme mentioned in Article 1(a) of Regulation No 1408/71, irrespective of the existence of an employment relationship (see, on this point, Case 182/78 *Pierik II* [1979] ECR 1977, paragraphs 4 and 7, and Joined Cases 82/86 and 103/86 *Laborero and Sabato* [1987] ECR 3401, paragraph 17).

37 The Commission therefore takes the view that the appellant must be considered to be an employed person within the meaning of Regulation No 1408/71 simply by virtue of the fact that she was covered by compulsory retirement pension insurance in Germany or that the social welfare body gave her and her children sickness insurance cover and paid the relevant contributions.

38 Similarly, at the hearing, the French Government argued that the appellant in the main proceedings could be considered to be a worker for the purposes of Community social security law because she was — and possibly still is — covered in one way or another by a German retirement pension scheme.

39 However, the German Government points out that, according to Annex I, point I, C ('Germany'), of Regulation No 1408/71, in the context of family benefits, of which the allowance in issue is one, only a person compulsorily insured against unemployment or who, as a result of such insurance, obtains cash benefits under sickness insurance or comparable benefits may be classified as an employed person.

40 At the hearing, the Commission also pointed out that in the Court's judgment of 30 January 1997 in Joined Cases C-4/95 and C-5/95 *Stöber and Piosa Pereira* [1997] ECR I-511 the argument that being insured against only one risk mentioned in Regulation No 1408/71 was sufficient for a person to be classified as an employed person within the meaning of that regulation had been called in question.

41 It is to be noted that, at paragraph 36 of its judgment in *Stöber and Piosa Pereira*, the Court expressed the view that there was nothing to prevent Member States from restricting entitlement to family benefits to persons belonging to a solidarity system constituted by a particular insurance scheme, in that case an old-age insurance scheme for self-employed persons.

42 According to Annex I, point I, C ('Germany'), to which Article 1(a)(ii) of Regulation No 1408/71 refers, only persons compulsorily insured against unemployment or persons who, as a result of such insurance, obtain cash benefits under sickness insurance or comparable benefits can be considered, for the purposes of the grant of family benefits pursuant to Title III, Chapter 7, of Regulation No 1408/71, to be employed persons within the meaning of Article 1(a)(ii) of that regulation (Case C-266/95 *Merino García* [1997] ECR I-3279).

43 As is clear from the wording of that provision, Annex I, point I, C, of Regulation No 1408/71 clarified or narrowed the definition of employed person within the meaning of Article 1(a)(ii) of that regulation solely for the purposes of the grant of family benefits pursuant to Title III, Chapter 7 of the regulation.

44 Since the situation of a person like the appellant in the main proceedings is not covered by any of the provisions of Title III, Chapter 7, the restriction laid down by Annex I, point I, C, cannot be applied to her, so that the question of her status of employed person within the meaning of Regulation No 1408/71 must be determined solely on the basis of Article 1(a)(ii) of that regulation. Such a person will therefore be able to enjoy the rights attaching to that status once it is established that he or she is covered, even if only in respect of a single risk, compulsorily or on an optional basis, by a general or special social security scheme mentioned in Article 1(a) of Regulation No 1408/71.

45 Since the order for reference does not provide sufficient information to enable the Court to take account of all the circumstances which may be relevant in this case, it is for the referring court to determine whether a person such as the appellant in the main proceedings comes within the scope *ratione personae* of Article 48 of the Treaty and of Regulation No 1612/68 or of Regulation No 1408/71.

The fourth question

46 By its fourth question the referring court seeks to ascertain whether Community law precludes a Member State from requiring nationals of other Member States to produce a formal residence permit in order to receive a child-raising allowance.

47 This question is based on the assumption that the appellant in the main proceedings has been authorised to reside in the Member State concerned.

48 Under the BErzGG, in order to be entitled to German child-raising allowance, the claimant, besides meeting the other material conditions for its grant, must be permanently or ordinarily resident in German territory.

49 A national of another Member State who is authorised to reside in German territory and who does reside there meets this condition. In that regard, such a person is in the same position as a German national residing in German territory.

50 However, the BErzGG provides that, unlike German nationals, 'a non-national', including a national of another Member State, must be in possession of a certain type of residence permit in order to receive the benefit in question. It is common ground that a document merely certifying that an application for a residence permit has been made is not sufficient, even though such a certificate warrants that the person concerned is entitled to stay.

51 The referring court points out, moreover, that 'delays in granting [residence permits] for purely technical administrative reasons can materially affect the substance of the rights enjoyed by citizens of the European Union'.

52 Whilst Community law does not prevent a Member State from requiring nationals of other Member States lawfully resident in its territory to carry at all times a document certifying their right of residence, if an identical obligation is imposed upon its own nationals as regards their identity cards (see, to that effect,

Case 321/87 *Commission* v *Belgium* [1989] ECR 997, paragraph 12, and the judgment of 30 April 1998 in Case C-24/97 *Commission* v *Germany* [1998] ECR I-2133, paragraph 13), the same is not necessarily the case where a Member State requires nationals of other Member States, in order to receive a child-raising allowance, to be in possession of a residence permit for the issue of which the administration is responsible.

53 For the purposes of recognition of the right of residence, a residence permit can only have declaratory and probative force (see, to this effect, Case 48/75 *Royer* [1976] ECR 497, paragraph 50). However, the case-file shows that, for the purposes of the grant of the benefit in question, possession of a residence permit is constitutive of the right to the benefit.

54 Consequently, for a Member State to require a national of another Member State who wishes to receive a benefit such as the allowance in question to produce a document which is constitutive of the right to the benefit and which is issued by its own authorities, when its own nationals are not required to produce any document of that kind, amounts to unequal treatment.

55 In the sphere of application of the Treaty and in the absence of any justification, such unequal treatment constitutes discrimination prohibited by Article 6 of the EC Treaty.

56 At the hearing, the German Government, while accepting that the condition imposed by the BErzGG constituted unequal treatment within the meaning of Article 6 of the Treaty, argued that the facts of the case being considered in the main proceedings did not fall within either the scope *ratione materiae* or the scope *ratione personae* of the Treaty so that the appellant in the main proceedings could not rely on Article 6.

57 As regards the scope *ratione materiae* of the Treaty, reference should be made to the replies given to the first, second and third questions, according to which the child-raising allowance in question in the main proceedings indisputably falls within the scope *ratione materiae* of Community law.

58 As regards its scope *ratione personae*, if the referring court were to conclude that, in view of the criteria provided in reply to the first preliminary question, the appellant in the proceedings before it has the status of worker within the meaning of Article 48 of the Treaty and of Regulation No 1612/68 or of employed person within the meaning of Regulation No 1408/71, the unequal treatment in question would be incompatible with Articles 48 and 51 of the Treaty.

59 Should this not be the case, the Commission submits that, in any event, since 1 November 1993 when the Treaty on European Union came into force, the appellant in the main proceedings has a right of residence under Article 8a of the EC Treaty, which provides that: 'Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect'. According to Article 8(1) of the EC Treaty, every person holding the nationality of a Member State is to be a citizen of the Union.

60 It should, however, be pointed out that, in a case such as the present, it is not necessary to examine whether the person concerned can rely on Article 8a of the Treaty in order to obtain recognition of a new right to reside in the territory of the Member State concerned, since it is common ground that she has already been authorised to reside there, although she has been refused issue of a residence permit.

61 As a national of a Member State lawfully residing in the territory of another Member State, the appellant in the main proceedings comes within the scope *ratione personae* of the provisions of the Treaty on European citizenship.

62 Article 8(2) of the Treaty attaches to the status of citizen of the Union the rights and duties laid down by the Treaty, including the right, laid down in Article 6 of the Treaty, not to suffer discrimination on grounds of nationality within the scope of application *ratione materiae* of the Treaty.

63 It follows that a citizen of the European Union, such as the appellant in the main proceedings, lawfully resident in the territory of the host Member State, can rely on Article 6 of the Treaty in all situations which fall within the scope *ratione materiae* of Community law, including the situation where that Member State delays or refuses to grant to that claimant a benefit that is provided to all persons lawfully resident in the territory of that State on the ground that the claimant is not in possession of a document which nationals of that same State are not required to have and the issue of which may be delayed or refused by the authorities of that State.

64 Since the unequal treatment in question thus comes within the scope of the Treaty, it cannot be considered to be justified: it is discrimination directly based on the appellant's nationality and, in any event, nothing to justify such unequal treatment has been put before the Court.

65 The answer to the fourth question must therefore be that Community law precludes a Member State from requiring nationals of other Member States authorised to reside in its territory to produce a formal residence permit issued by the national authorities in order to receive a child-raising allowance, whereas that Member State's own nationals are only required to be permanently or ordinarily resident in that Member State.

Costs

66 The costs incurred by the German, Spanish, French and United Kingdom Governments, and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Bayerisches Landessozialgericht by order of 2 February 1996, hereby rules:

1. **A benefit such as the child-raising allowance provided for by the Bundeserziehungsgeldgesetz, which is automatically granted to persons fulfilling certain objective criteria, without any individual and discretionary assessment of personal needs, and which is intended to meet family expenses, falls within the scope *ratione materiae* of Community law as a family benefit within the meaning of Article 4(1)(h) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983, as amended by Council Regulation (EEC) No 3427/89 of 30 October 1989 and as a social advantage within the meaning of Article 7(2) of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community.**

2. **It is for the referring court to determine whether a person such as the appellant in the main proceedings comes within the scope *ratione personae* of Article 48 of the EC Treaty and of Regulation No 1612/68 or of Regulation No 1408/71.**

3. **Community law precludes a Member State from requiring nationals of other Member States authorised to reside in its territory to produce a formal residence permit issued by the national authorities in order to receive a child-raising allowance, whereas that Member State's own nationals are only required to be permanently or ordinarily resident in that Member State.**

Rodríguez Iglesias Gulmann Ragnemalm Wathelet

Mancini Moitinho de Almeida Kapteyn

Murray Edward Puissochet

Hirsch Jann Sevón

Delivered in open court in Luxembourg on 12 May 1998.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President