Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

in answer to the question referred to it by the Landessozialgericht Baden-Württemberg by order of that Court dated 26 April 1973, hereby rules:

**The provisions of Regulation No 1408/71 must be interpreted as meaning that the expression 'pension' includes the settlement grant to be paid to a widow in the event of remarriage, but not a death grant.**

Lecourt Donner Sørensen

Monaco Mertens de Wilmars Pescatore Ó Dálaigh

Delivered in open court in Luxembourg on 27 November 1973.

A. Van Houtte — Registrar

R. Lecourt — President

## OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 14 NOVEMBER 1973 [1]

*Mr President,*
*Members of the Court,*

Mrs Vandeweghe, appellant before the Baden-Württemberg Landessozialgericht, claims payment from the German Insurance Association of a death grant and a once-for-all widow's settlement grant provided by the national social legislation in the event of a widow's remarriage. The appellant, who resides in Belgium, is the widow of a Belgian national whose death occurred in 1945 in Germany in circumstances regarded as equivalent to an accident at work. Before her second marriage in 1946 she

1 — Translated from the Italian.

had enjoyed a widow's pension by virtue of German social legislation.

The Supplementary Agreement No 3 between the Federal Republic of Germany and the Kingdom of Belgium of 7 December 1957 to the General Convention on Social Security of the same date between those two States provides for the payment by instalments of specific social benefits relating, *inter alia*, to the compensation of damage due to accidents at work dating back to 1 October 1944.

The court of first instance, having held that this Agreement provides only for the payment of 'pensions' or 'parts thereof', dismissed the claims of the appellant on the ground that the benefits which she claimed are not covered by those terms.

The disagreement between the parties in the case on appeal merely relates to whether the death grant and the lump-sum settlement grant payable to the widow who remarries, dealt with respectively in Articles 589 and 615 of the Reichsversicherungsordnung (RVO) are covered by the provisions of Articles 1 and 2 of the Supplementary Agreement No 3.

Basing itself on Article 177 of the EEC Treaty the Baden-Württemberg Landessozialgericht referred the following preliminary question to the Court:

'Does Article 2 of the Supplementary Agreement No 3 of 7 December 1957 to the General Convention on Social Security between the Federal Republic of Germany and the Kingdom of Belgium, relating to the payment of pensions for the period before the Convention came into force, which governs the payment of pensions or part of pensions, cover also claims to death grant and widow's settlement grant?'

The Court has clearly no jurisdiction to give a ruling on this request as the latter is concerned exclusively with the interpretation of a bilateral international convention concluded outside the Community framework.

But, in the grounds of the order of reference, the national court refers to the terms 'benefits and pensions' contained in Regulation No 3 of the EEC concerning social security for migrant workers and Regulation (EEC) No 1408/71 replacing it, and declares the need for clarification of this matter.

One must therefore examine whether there are sufficient reasons to justify the Court considering, even though it has not been expressly requested to do so, the question of the definition of the scope of the terms 'benefits and pensions' within the meaning of the said Community Regulations so as to determine whether these terms also cover rights of the type contested in the case which gave rise to these preliminary proceedings. As this is a question which is clearly different from that formulated by the national court, in my opinion one would be justified, and indeed only right, in making a preliminary examination of whether the relevance of such a question to the main action cannot be dismissed *prima facie*. The Court has always refrained from making such a decision. However, when it is not simply a matter of a simple alteration of the terms of the preliminary request but the radical substitution of a request which is outside the jurisdiction of this Court by another whose object is completely different, then such an appraisal is necessary; not solely for reasons of prudence and procedural economy, but above all for the logical requirement that the question so raised by this Court should be closely linked to the other question which the national court had considered relevant for its decision, with the result that the solution of one is necessarily dependent on the solution of the other. Only in this way will the decision of the Court not merely do justice to the problems of Community law involved but be capable of binding the national court in respect of the decision which it must pronounce, even without any corresponding precise request.

From a different point of view, an argument to that effect can be drawn by analogy from the very case law of this Court, which has reserved the power not to reply to a request for a preliminary interpretation when the reference which the request makes to the provisions to be interpreted is clearly erroneous (Judgment No 13/68, *Salgoil,* Rec. 1968, p. 612).

The above-mentioned Supplementary Agreement No 3, whose interpretation is under discussion before the national court, is still in force, despite the provisions of Article 6 of Regulation No 1408/71, as appears expressly in Annex II to which Article 7 (2) of the same Regulation refers. According to the General Comments preceding the list of conventions contained in that Annex 'in so far as the provisions contained in this Annex provide for references to the provisions of other conventions, references shall be replaced by references to the corresponding provisions of this Regulation, unless the provisions of the conventions in question are themselves contained in this Annex'. Article 1 of the said Supplementary Agreement No 3 between the Federal Republic of Germany and Belgium refers in particular to Article 1 of the General Convention on Social Security between Belgium and Germany which, under Article 1 (12), defines the terms 'benefits or pensions'. This provision does not appear in the said Annex II to Regulation (EEC) No 1408/71, Article 2 of the Supplementary Agreement No 3, which forms the subject of the request for interpretation referred by the national court, concerns the payment of the benefits mentioned in Article 1 of the same Supplementary Agreement, in other words pensions defined by the Convention referred to above. In accordance with the General Comments preceding the list in Annex II to Regulation No 1408/71, the provisions of the General Convention defining the expressions in question, to which the Supplementary Agreement referred, were replaced by the corresponding provisions of Regulation 1408/71. In order to apply the said Supplementary Agreement it will thus be necessary to base oneself on the terms 'benefits or pensions' as defined by Community rules on social security. There thus exists a logical connection, both close and necessary, between the question of interpretation posed by the German court, which, in my opinion, this Court lacks jurisdiction to consider, and the question whether the benefits claimed by the appellant can be covered by the term 'pensions' within the meaning of the Community rules on social security for workers.

We must therefore, from this angle, deal with the interpretation of those terms.

It has been seen that the benefits claimed by the appellant under Article 2 of the Supplementary Agreement No 3 consist of the lump-sum widow's settlement grant in the event of remarriage and the death grant provided by the German RVO.

According to Article 1 (s) of Regulation No 3 and Article 1 (t) of Regulation No 1408/71 the terms 'benefits or pensions' mean *inter alia* 'lump-sum benefits which may be paid in lieu of pensions'. A lump-sum grant of the kind prescribed by Article 615 of the RVO for the benefit of a widow in the event of remarriage constitutes a 'once-for-all' lump-sum benefit which coincides with the cessation of benefits under the heading widow's pension. Are we here dealing with a lump-sum benefit which may be paid in lieu of a pension according to the above-mentioned Community provisions? In the past this was not the opinion of the Bundessozialgericht, which held in a judgment of 12 November 1969, cited in the Commission's statement, that the widow's settlement grant in the event of remarriage is not in lieu of a pension, but is granted for reasons of social moral feeling, namely to facilitate the widow's remarriage and consequently avoid 'cohabitation by pensioners'; therefore the grant could not be given outside the

national territory. In this judgment the Bundessozialgericht held that the term 'lump-sum benefit which may be paid in lieu of pensions' in Article 1 (s) of Regulation No 3 of the Council covers only benefits intended to replace future benefits of a recurring nature.

More recently, in its judgment of 21 December 1971, the Bundessozialgericht, sitting in plenary session ('Großer Senat'), radically altered its conception of the matter.

The German supreme court pointed out that there is a close connexion between the widow's pension and the lump-sum settlement grant in the event of remarriage: the amount of the latter depends on the level of the former since the grant in the event of remarriage corresponds, in economic terms, to the payment in advance of the equivalent of 5 years of the widow's pension. If the new marriage is dissolved the widow's pension can revive and in that case the grant referred to above must be deducted from the pension itself. The Bundessozialgericht has concluded from this that the grant is also payable abroad, even when such payment is not provided either by Community law or in conventions between States ('Entscheidungen des Bundessozialgerichts', Vol. 33, 1972, p. 290).

For my part, I would point out that the text of the above-cited provisions of Article 1 of the two Community Regulations in question relating to the definition of the terms 'benefits' and 'pensions' under the Community rules does not in reality necessitate a restrictive interpretation of the kind maintained in the first judgment of the Bundessozialgericht in relation to Article 1 (s) of Regulation No 3 and thus, of the corresponding provision of Article 1 (t) of Regulation 1408/71. On the other hand, leaving aside, as we must, the fact that the present case is connected with the rather remote past, when interpreting the Community social rules one must bear in mind, in accordance with the general tendency of the case law of this Court, the need to avoid — as regards the application of the social laws of the individual States — any difference in the treatment of citizens of the Community on grounds of nationality and, to a lesser extent, on grounds of evidence, in accordance with the general principles on the matter contained especially in Articles 8 and 10 of Regulation No 3 and Articles 3 and 10 of Regulation No 1408/71.

Besides that consideration, the close relationship between the widow's pension and the lump-sum widow's settlement grant in the event of remarriage, as found by the plenary session of the Bundessozialgericht, can even have an influence on the Community level by confirming the possibility of including the grant in question in the general cases enumerated in Article 1 (s) of Regulation No 3 and Article 1 (t) of Regulation No 1408/71 which, as has been seen, also covers the lump-sum benefits which may be paid in lieu of pensions.

Death grants are dealt with by different provisions from those relating to benefits or pensions, not only within the scope of Article 1 of the Community Regulations cited above, which lists the various types of social benefits envisaged by the said Regulations (respectively Article 1 (s) and (t) of Regulation No 3 and Article 1 (t) and (v) of Regulation No 1408/71), but also as regards the rules to which death grants and benefits or pensions are subject. One must deduce from this that in Community law death grants cannot be covered by the terms 'pensions or parts thereof'.

I would conclude by proposing that the Court should rule, in respect of the request by the Landessozialgericht, that the lump-sum grant prescribed by Article

615 of the RVO in favour of a widow who remarries falls within the terms of Article 1 (s) of Regulation No 3 and Article 1 (t) of Regulation No 1408/71, whereas the 'death grants' mentioned in Article 1 (t) of Regulation No 3 and Article 1 (v) of Regulation No 1408/71, are outside the terms 'benefits or pensions' used in the abovementioned provision.