OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER
delivered on 13 March 1997 *

1. The question which has been referred to the Court by the German Bundessozialgericht (Federal Social Court) in this case may be summarized as follows: is the orphan of a Spanish worker who died in Germany in 1969 as the result of an accident at work entitled to an extension of the period for drawing an orphan's benefit beyond the age of 25 years for a period equal to the period for which he did not receive it by reason of military service in his country of origin, under the same conditions as those under which such entitlement is granted by the Member State providing the benefit to persons who have completed military service under German law?

2. This question has arisen in proceedings before the Bundessozialgericht brought by Mr Mora Romero, plaintiff and respondent on appeal ('the plaintiff'), against the Landesversicherungsanstalt (Regional Insurance Office) Rheinprovinz, the defendant social security institution and appellant ('the defendant').

3. It appears from the national court's summary of the facts in the order for reference that the plaintiff, who was born on 16 February 1965, is a Spanish national residing in Spain. His father died in 1969 as the result of an accident at work while employed in Germany and, as a consequence, the plaintiff received orphan's benefit from the defendant until he was called up for military service on 30 November 1987.

He did not receive orphan's benefit during his one-year period of service in the Spanish army. Payment was resumed on 1 December 1988 because he was again in education and training. By decision of 6 March 1990 the defendant notified the plaintiff that his entitlement to benefit had definitively ended on 1 March 1990 because he had reached the age of 25 years.

4. Under Paragraph 1267(1)(2) of the Reichsversicherungsordnung (National Social Insurance Code, hereinafter 'the RVO'), for a child in education or training, orphan's benefit is not payable after the age of 25 years.

* Original language: Spanish.

Under Paragraph 1267(1)(3), where education or training is interrupted or prolonged by reason of the fulfilment of the child's statutory duty of military or equivalent social service, the orphan's benefit is also to be paid for a period corresponding to the period of such service after the attainment of the age of 25 years.

5. The order for reference adds that for orphans already aged 18 years or over when called up for military service, the orphan's benefit is initially discontinued since there is no education or training taking place but, as a *quid pro quo*, in the event of continued education or training, payment of the benefit goes on after the age of 25 for a period equal to that of military service. This provision has always been interpreted by the national court as applying to military service only in the German army.

6. The plaintiff's administrative complaint against the defendant's decision of 6 March 1990 was followed by an action before the Sozialgericht (Social Court) Düsseldorf, which was unsuccessful. On the plaintiff's appeal, the Landessozialgericht (Regional Social Court) Nordrhein-Westfalen ordered the defendant to pay the plaintiff orphan's benefit for the period from 1 March 1990 to 28 February 1991. In its judgment the Landessozialgericht took the view that, in the light of the prohibition of discrimination in Article 6 of the EC Treaty, Paragraph 1267(1)(3) of the RVO should be interpreted as meaning that compulsory military service under the laws of the other EC Member States must be treated as compulsory military service under German law. As the plaintiff had fulfilled his duty of military service under Spanish law, his education and training had been prolonged as a result of military service within the meaning of Paragraph 1267(1)(3) of the RVO.

7. The defendant appealed on a point of law against that judgment on the ground that, under the case-law of the Bundessozialgericht, foreign military service could be treated as German military service only where the former was performed in lieu of the latter. The abovementioned provision granted compensation from the State to persons who fulfilled the duty of military service imposed by the State and it would be difficult to establish what could be regarded as equivalent service in other States because the duration of compulsory military service differs in each Member State. For those reasons it could not be regarded as an infringement of Article 6 of the EC Treaty if different conditions, depending on whether the claimant had performed military service in Spain or Germany, were laid down for the continued payment of orphan's benefit.

8. In those circumstances, the Bundessozialgericht decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Are Articles, 6, 48 and 51 of the Treaty establishing the European Community and Article 7 of Council Regulation (EEC) No 1612/68 [1] on freedom of movement for workers within the Community to be interpreted as permitting the legislature of a Member State to extend the period for drawing orphan's benefit beyond the age of 25 years only in respect of those persons whose education and training has been prolonged beyond the age of 25 years through fulfilment of the duty of military service in accordance with the laws of that State?'

9. Article 6(1) of the EC Treaty provides as follows:

'Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on the grounds of nationality shall be prohibited.' [2]

10. Article 48 of the EC Treaty lays down the principle of equal treatment in relation to the freedom of movement for workers:

'1. [...]

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

3. [...]'

11. Article 51 of the EC Treaty, which gives the Council the task of adopting the necessary measures in the field of social security to provide freedom of movement for workers, is worded 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

1 — 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 — This formed Article 7 of the EEC Treaty before the entry into force of the Treaty on European Union.

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 several countries;

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

12. Article 7 of Regulation No 1612/68 provides as follows:

'1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.

3. [...]'

13. Article 2 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 [3] ('Regulation No 1408/71'), provides as follows with regard to the persons covered by the Regulation:

'1. This Regulation shall 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 or who are stateless persons or refugees residing within the territory of one of the Member States, as also to the members of their families and their survivors.

2. In addition, this Regulation shall apply to the survivors of employed or self-employed persons who have been subject to the legislation of one or more Member States, irrespective of the nationality of such employed or self-employed persons, where their survivors are nationals of one of the Member States, or stateless persons or refugees residing within the territory of one of the Member States.

3. [...]'

3 — OJ 1983 L 230, p. 6.

14. Under Article 3 of the same Regulation:

'1. 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.

2. [...]'

15. The matters covered by Regulation No 1408/71 are set out in Article 4, which provides as follows:

'1. This Regulation shall apply to all legislation concerning the following branches of social security:

[...]

d) survivors' benefits;

[...]'

16. Under Article 5 of Regulation No 1408/71, which provides that the Member States are to specify the legislation and schemes referred to in Article 4(1) and (2), in declarations to be notified to the President of the Council and published in the *Official Journal of the European Communities*, the Federal Republic of Germany lodged a declaration indicating that the benefits granted under the RVO constitute orphan's allowances or pensions within the meaning of Article 78 of the Regulation, which regulates orphans' benefits. [4]

17. In examining the question, the national court states that the problem of interpretation which arises is essentially concerned with the inferences to be drawn from the prohibition of discrimination in Article 6 of the EC Treaty. The national court observes that there is much to be said for the defendant's view that the principle of freedom of movement does not require an extension of the third sentence of Paragraph 1267(1) of the RVO to cover military service in the armies of other Member States.

Freedom of movement for migrant workers would be prejudiced by that provision only

4 — Updated declarations of the Member states provided for in Article 5 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1980 C 139, p. 1). Germany made certain amendments to its declaration at a later date (OJ 1983 C 351, p. 1).

if the exercise of that freedom by the insured person or his children were to lead to disadvantages in relation to orphan's benefit, which does not appear to be the case since it has not been shown that such disadvantages exist.

Furthermore, according to the national court, the German social security system is not merely a contributory system, based on mutuality, to cover the risks of working life since it is also used as a means of compensating for periods of sacrifice. In a system of that kind, therefore, it appears justifiable to regard orphan's benefit, when it is extended beyond the age of 25 years for persons who perform military service, not as a social security benefit, but as a compensatory payment which is intended by the German legislature to make up for the adverse effects suffered by conscripts as a result of having to fulfil their statutory obligation of military service or equivalent social service and which is merely provided through the social security system.

18. The plaintiff, the French Government, the Kingdom of Spain and the Commission submitted written observations within the time-limit laid down by Article 20 of the EC Statute of the Court of Justice, and also oral observations at the hearing.

19. The plaintiff contends that if Paragraph 1267(1)(3) of the RVO had to be construed as meaning military service in Germany only, there would be discrimination against nationals of other Member States as, under German law, only German nationals can perform military service in that Member State. In the plaintiff's opinion, there is no possible justification for that difference in treatment.

He proposes that the question from the Bundessozialgericht should be answered in the negative.

20. The French Government considers that most of the Community-law provisions which the Court is asked to interpret are not directly applicable to the facts set out in the order for reference, and it suggests that the Court should confine its examination to the question whether the German authorities' refusal to continue paying the orphan's benefit to the plaintiff from March 1990 to February 1991 amounts to discrimination on grounds of nationality, contrary to Article 3(1) of Regulation No 1408/71.

The French Government draws attention to the paradox inherent in the fact that the defendant treats military service in the army of another Member State as equivalent to military service in Germany in order to suspend the orphan's benefit temporarily, but refuses to do so for the purpose of prolong-

ing the benefit beyond the age of 25 years for a period equal to the duration of the suspension. As German nationals alone are subject to the national service obligations laid down by German law, that refusal constitutes discrimination on grounds of nationality.

It adds that, as the provisions of Regulation No 1408/71 are applicable to the facts described by the national court and enable a reply to be given to its question, it is unnecessary to examine Regulation No 1612/68 in order to reach the same conclusion. It proposes that the reply to the question submitted should be that the prohibition of discrimination laid down in Regulation No 1408/71 with regard to the right to social security benefits requires the legislature of a Member State to continue to pay the orphan's benefit to persons above the age of 25 years who have had to continue their education and training beyond that age as a result of being called up for military service in the Member State of which they are nationals.

21. The Kingdom of Spain observes, first, that the national court's interpretation is untenable in the light of Articles 6, 48 and 51 of the Treaty, Article 7 of Regulation No 1612/68 and, in particular, the provisions of Regulation No 1408/71.

It considers that any attempt to describe the extended payment of orphan's benefit as financial compensation for military service must be rejected, since the legislator's intention was to give those who perform military service access to education and training for the same period as those who do not have an obligation of military service. From that point of view, an orphan who does military service in Germany suffers the same adverse effects as one who performs it in another Member State because the education or training of both is deferred by reason of conscription. The Kingdom of Spain adds that if the benefit were in the nature of compensation, as stated by the national court, it would be granted to all persons performing military service in Germany and not only to orphans, who represent only a small proportion.

For those reasons the Kingdom of Spain concludes that orphan's benefit is a social security benefit which, if granted only to persons conscripted in Germany, would constitute discrimination on grounds of nationality against nationals of other Member States who are subject to the German social security system, and it proposes that the question from the national court should be answered in the negative.

22. The Commission begins by observing that the plaintiff has never been a 'member of a worker's family' for the purposes of Community law because his father, who must be

presumed to have been a Spanish national, died in 1969, long before Spain acceded to the Community, and the Act of Accession of Spain [5] contains no provision treating the employment of a Spaniard before his country's accession to the Community as employment of a national of a Member State in accordance with the Community law on freedom of movement for workers. For all those reasons the Commission concludes that Regulation No 1612/68 is not applicable to this case.

In the Commission's view, the question from the national court must be answered in the light of the provisions of Regulation No 1408/71 which, under Article 94 thereof, are applicable even though the contingency giving rise to the right materialized prior to the date when the freedom of movement took effect. Furthermore, the plaintiff is one of the persons covered by the Regulation because he is the survivor of an employed person and the orphan's benefit he received in Germany must be regarded as a benefit within the scope *ratione materiae* of the Regulation.

The Commission adds that Article 3(1) of Regulation No 1408/71 lays down the principle of equal treatment in the application of the Regulation. However, persons benefiting from the extended right to orphan's benefit after reaching the age of 25 years, by reason of conscription, are normally orphans of German nationality. The provision in question merely provides for extending, beyond the age of 25, the entitlement to orphan's benefit for the period during which payment was suspended: it does not constitute a new right, but merely defers an existing right. Moreover, when suspending the payment of orphan's benefit by reason of conscription, the German institution makes no distinction according to whether military service is performed under national law or the law of another Member State, whereas a distinction is made when extending the benefit beyond the age limit.

The Commission also proposes that the question be answered in the negative.

23. I shall first mention the Community legislation on which the decision in the present case depends, as in my opinion most of the Community provisions which the Bundessozialgericht asks to be construed are not applicable to the facts set out in the order for reference.

5 — OJ 1985 L 302, p. 23.

24. With regard to Article 6 of the Treaty, which prohibits all discrimination on grounds of nationality, the Court has consistently held that it applies independently only to situations governed by Community law in respect of which the Treaty lays down no specific prohibition of discrimination. [6]

However, in the context of freedom of movement for workers, the principle of non-discrimination has been applied and been given concrete expression by Article 48 of the Treaty and, in the matter of social security, Article 3 of Regulation No 1408/71, adopted by the Council pursuant to its obligation under Article 51 of the Treaty itself to establish freedom of movement for workers, contains the same principle. [7]

In the present case, therefore, it is unnecessary to refer to Article 6 of the Treaty.

25. With regard to Article 48 of the Treaty and Article 7 of Regulation No 1612/68, I conclude from the account of the facts in the order from the national court that the plaintiff does not fulfil the requirements for being considered a 'worker' within the meaning of Community law since he is a Spanish national, he resided in Spain, where he completed his studies, and it does not appear that he had previously been to another Member State to take up employment; nor does he fulfil the requirements for being considered a 'member of a worker's family' within the meaning of Community law, as his father died before Spain acceded to the Community.

In that connection the Court held, in the *Tsiotras* judgment, [8] that a national of a Member State cannot rely on the provisions concerning freedom of movement for workers if, at or after the date of his country's accession to the Community, he was not employed in the host Member State.

For those reasons he cannot claim the rights conferred on workers and members of their families by Article 48 of the Treaty and Regulation No 1612/68.

26. However, the plaintiff receives orphan's benefit from Germany because his father, who was a Spanish national, was insured under the social security scheme of that

6 — See Case C-419/92 *Scholz* [1994] ECR I-505, paragraph 6, and Case C-193/94 *Skanavi and Others* [1996] ECR I-929, paragraph 20.

7 — See Case 1/78 *Kenny* [1978] ECR 1489, paragraphs 9 to 11.

8 — Case C-171/91 [1993] ECR I-2925.

Member State at the date of his death in 1969. This is a case covered and provided for by Regulation No 1408/71, as I shall proceed to show.

First, Article 2(2) provides that the Regulation applies to the survivors of employed persons who have been subject to the legislation of one or more Member States, irrespective of the nationality of such employed persons, where their survivors are nationals of one of the Member States. That is the provision on the basis of which the Regulation is applicable to the plaintiff.

Secondly, his family situation falls within the definition in Article 1(g), according to which 'survivor' means any person defined or recognized as such by the legislation under which the benefits are granted. Mr Mora Romero, who receives orphan's benefit under the German social security legislation, falls into that category.

Finally, there is no doubt that the orphan's benefit which he receives in Germany falls within the scope *ratione materiae* of the Regulation. Survivors' benefits appear on the list in Article 4(1). Furthermore, in the declaration referred to in Article 5, Germany stated that the orphan's pensions and allowances provided for by the RVO were included in the benefits referred to in Article 78 of the Regulation. And the RVO is the law under which the orphan's benefit was granted to the plaintiff. In that connection, the Court has held that the fact that a Member State has mentioned certain legislative provisions or regulations in the declaration notified and published pursuant to Article 5 of Regulation No 1408/71 means that the benefits governed by those provisions are social security benefits within the meaning of that regulation. [9]

27. Having shown that Mr Mora Romero is one of the persons covered by Regulation No 1408/71, that he must be regarded as a 'survivor' for the purposes of the Regulation and that the orphan's benefit which he receives from the competent institution in Germany falls within the scope *ratione materiae* of the Regulation, it remains for me to consider whether the conditions are fulfilled for him to be able to rely on Article 3(1).

28. Under Article 3(1), subject to the special provisions of the Regulation, persons who reside in the territory of one of the Member States and are covered by the Regulation are subject to the same obligations and enjoy the

9 — See Case 237/78 *Toia* [1979] ECR 2645, paragraph 8, and Case C-251/89 *Athanasopoulos and Others* [1991] ECR I-2797, paragraph 28.

same benefits under the legislation of any Member State as the nationals of that State.

In construing that provision, the Court has observed that 'in any event, any derogation from equal treatment based on one of the provisions of the Regulation to which Article 3(1) refers must be objectively justified if the fundamental rule of non-discrimination laid down by Article 3(1) in the field of social security is not to be deprived of meaning'. [10]

29. I note that in the Regulation or, to be precise, Chapter 8 — which regulates benefits for dependent children of pensioners and for orphans — of Title III, which contains the special provisions relating to the various categories of benefits, there is nothing which would exclude the application of Article 3(1) as regards requirements for the grant and payment of an orphan's benefit. I conclude from this that Mr Mora Romero may claim the right to have the benefit paid by the German social security institution which grants it to him, under the same conditions as those for payment to orphans of German nationality.

10 — See Case C-308/93 *Cabanis-Issarte* [1996] ECR I-2097, paragraph 26.

30. The next question is whether the defendant German institution observes the principle of equal treatment when applying the provision in question — Paragraph 1267(1)(3) of the RVO — which provides that, where education or training is interrupted or prolonged by reason of the fulfilment of the child's statutory duty of military or equivalent social service, orphan's benefit will be paid after the age of 25 years, for a period equivalent to the period of service, having regard to the fact that Mr Mora Romero was refused that extension of payment and that the national court observes, in its order for reference, that in its case-law it has always construed the said provision as applying only to military service in the German army.

31. There are three situations where Paragraph 1267(1)(2) and (3) of the RVO apply, depending on whether the recipient of benefits has to perform military service and on the State which imposes that obligation, namely:

— Orphan's benefit is granted to the recipient up to the age of 25 years if he is in education or training, without distinction on grounds of nationality. That will be the case with regard to orphans who are not subject to or are exempt from compulsory military service.

— If the orphan has to interrupt his education or training because of compulsory military service, the defendant German institution suspends the payment of orphan's benefit while he is in the army. For that purpose, service in another Member State is treated as service in the German army.

— If education or training is interrupted or deferred because of compulsory military service, orphan's benefit continues to be paid after the age of 25 for a period equal to the duration of the military service. However, that extension is granted only to orphans conscripted under German law.

32. The Bundessozialgericht makes certain observations in its order concerning the purpose of the abovementioned provision and considers that Paragraph 1267(1)(3) of the RVO forms part of a system of compensation intended by the German legislature to make up for the disadvantages which conscripts suffer as a result of the obligation to perform military service under German law. The national court is of the opinion that the age limit for orphan's benefit applies both to those who, by their own decision, do not pursue their education or training with sufficient promptitude and to those who are prevented from commencing or continuing education or training as a result of misfortune, health limitations, coercive measures or other obligations, and that any payment beyond the age limit is attributable only to compulsory military service.

33. I do not agree with that view because it seems to me that the second sentence of Paragraph 1267(1) cannot be severed from the third in the manner proposed by the national court.

The issue at all times is the right to receive orphan's benefit, which is part of the German social security system. It does not cease to be orphan's benefit because payment is suspended while the recipient performs his military service, because it is resumed on completion of his service, or because entitlement to the benefit is extended beyond the age of 25 for an equivalent period if the recipient continues his education or training. I consider it to be a deferred payment of the same benefit and not a new benefit in the nature of compensation.

34. Moreover, pursuant to Article 4(4) of Regulation No 1408/71, the only areas to which the Regulation does not apply are social and medical assistance, benefit schemes

for victims of war or its consequences, and special schemes for civil servants and persons treated as such.

The orphan's benefit in question, which is granted by the social security system of a Member State, does not form part of any of those schemes, not even if payment is deferred in part until after the age of 25 because of compulsory military service. Therefore I take the view that, even if it were to some extent of a compensatory nature — which I do not accept — it does not thereby cease to be a social security benefit for the purpose of Regulation no 1408/71 and it must be granted to orphans in Mr Mora Romero's situation in the same way as to nationals.

35. In my opinion, the purpose of the second and third sentences of Paragraph 1267(1) of the RVO, which must be construed together, is to ensure, by the payment of benefits which guarantee a certain level of income, that orphans are not, by reason of being orphans, deprived of access to education and training up to a reasonable age, which is set at 25 years. That is convincingly proved by the fact that, if their training is interrupted because they have to fulfil an unavoidable obligation such as, in certain Member States, military service, the payment of orphan's benefit is suspended because they are no longer undergoing training and it is then resumed, if they continue their training, beyond the age of 25 for a period equal to the duration of the suspension.

36. In view of that purpose, I am driven to the conclusion that the adverse effect on the education or training of an orphan receiving German orphan's benefit, arising from the fact that such education or training has to be interrupted or deferred for the duration of his compulsory military service, is the same regardless of whether that obligation is imposed by German law, if he is German, or by Spanish law, if he is Spanish.

In practice, however, orphans of German nationality who continue their education or training beyond the age of 25 will be the only ones who can claim the deferred payment of the benefit which they have not received while performing military service.

37. Therefore I am of the opinion that there is discrimination on grounds of nationality, which is prohibited by Article 3(1) of Regu-

lation No 1408/71, where a German social security institution treats military service in a Member State as equivalent to military service in Germany for the purpose of suspending, for the entire duration of such service, the payment of orphan's benefit to recipients undergoing education or training and denies such equivalence for the purpose of extending the payment of the same benefit beyond the age of 25 years for an equivalent period, where the recipient whose education or training has been interrupted or deferred has fulfilled his military service obligations in another Member State.

38. Before concluding, I should just like to add that, in an attempt to support its interpretation as to the compensatory nature of orphan's benefit which is paid after the age of 25, the national court refers, in its order of 8 February 1996, to my Opinion of 14 December 1995 in the *De Vos* case. [11] The Court gave judgment on 14 March 1996. [12] However, neither the facts nor the legal context of that case bear any similarity to the present case.

In the *De Vos* case the Court had to decide whether a national of one Member State who was employed in another Member State was entitled to have payment of the employer's contributions to the supplementary old-age and survivors' pension scheme for workers in the public service continued, at the same level as would have been payable if the employment relationship had not been suspended because of his call-up for military service, where nationals of that State employed in the public service are so entitled by law when performing military service in that State. The reply was in the negative.

39. The facts of that case have not the slightest resemblance to Mr Mora Romero's situation. Mr de Vos was a worker within the meaning of Article 48 of the Treaty, whose contract of employment was suspended for the period of his compulsory military service. The employer's contributions to the supplementary old-age and survivors' pension scheme for workers in the public service formed part of the employee's pay since they were an economic benefit granted by the employer by reason of the employment relationship, which was why its obligation to pay them was also suspended during the employee's military service, and although the employer continued to pay them, together with those which the employee ought to have paid, it did so on behalf of the federal authorities, which later reimbursed it.

The same applies to the legal context. Mr de Vos did not claim any social security benefit within the meaning of Regulation No 1408/71 and, in reply to the question submit-

11 — Case C-315/94, in which judgment was given on 14 March 1996, [1996] ECR I-1417, in particular I-1419.

12 — Cited in footnote 11.

ted by the national court in that case, both the Court in its judgment and I myself took the view that the right which he claimed did not form part of the conditions of employment and work within the meaning of Article 7(1) of Regulation No 1612/68, nor was it a social advantage within the meaning of Article 7(2), since it was not granted to the recipient because of his objective status as a worker or because he resided in Germany, but it had to be classified as an advantage which the German State granted to conscripts as partial compensation for the consequences of the obligation of military service which it imposed on them.

40. It necessarily followed that Community law, as it stood at that time, could not require that right, which was granted by German law to certain categories of national workers, to be extended under the same conditions to workers from other Member States.

Conclusion

41. In view of the foregoing considerations, I propose that the Court reply as follows to the question from the Bundessozialgericht:

Article 3(1) 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, must be interpreted as precluding a Member State, which treats military service in the army of another Member State as equivalent to military service in its own army for the purpose of suspending, for the entire duration of such service, the payment of orphan's benefit to recipients undergoing education or training, from denying such equivalence for the purpose of extending the payment of the same benefit beyond the age limit of 25 years, for an equivalent period, where the recipient whose education or training has been interrupted or deferred has performed his military service in another Member State.