3. Articles 27 and 28 of Regulation No 3 of the Council of the EEC supplement one another and must therefore be applied simultaneously.
Article 28 of the said Regulation is only applicable in cases concerning the acquisition, maintenance or recovery of the right to benefit as re-referred to in Article 27.
These provisions also apply to legislation which does not make the amount of the benefit dependent upon the length of the insurance period.
These provisions apply only in so far as the Regulations make it possible to secure for the persons concerned benefits at least equal in amount to those which they would receive in each country by virtue of the national legislation applicable to them, considered independently of Regulations Nos 3 and 130 of the Council of the EEC.

4. Where, within the framework of Articles 27 and 28 of Regulation No 3, a widow's pension is granted by virtue of the Netherlands legislation concerning general insurance in favour of widows and orphans, the insurance periods completed by virtue of the Netherlands law on invalidity must be assimilated to the periods completed under the said legislation.

5. The expression 'benefits already paid' appearing in Article 28 (l) (g) of Regulation No 3 includes all benefits paid in accordance with subparagraphs (e) and (f) of the said Article 28 (l), whatever the date of payment.

In Case 100/63

Reference to the Court under Article 177 of the EEC Treaty by the acting president of the Centrale Raad van Beroep (Central Court of Appeal), being the Netherlands court of last instance in social security matters, in pursuance of an order of that court of 30 October 1963 in the action pending before it between

MRS J. KALSBEEK (NÉE J. G. VAN DER VEEN), residing at Overdinkel, Losser (Netherlands),

appellant,

and

BESTUUR DER SOCIALE VERZEKERINGSBANK (Management of the Social Insurance Bank), Amsterdam,

respondent,

and in nine other cases

on the interpretation of certain provisions of Regulation No 3 of the Council of the EEC concerning social security for migrant workers (OJ of 16 December 1958, pp. 561 et seq.),

THE COURT

composed of: A. M. Donner, President, Ch. L. Hammes and A. Trabucchi, Presidents of Chambers, L. Delvaux, R. Rossi, R. Lecourt and W. Strauß (Rapporteur), Judges,

Advocate-General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — In the present cases, the parties are the social insurance authorities and certain widows of insured persons. The acting president of the Netherlands court has supplied in particular the following information:

'A pension was granted to all these widows under the Nederlandse Algemene Weduwen- en Wezenwet (General Widows' and Orphans' Insurance Law), the amount of which however is less than the normal amount, since these widows also benefited from a widow's pension under the German life annuity insurance scheme. The Netherlands authorities mentioned above consider that under Article 28 of Regulation No 3 (hereinafter referred to as "the Regulation") they are permitted, indeed compelled, to calculate the pension as they have done. The widows do not agree that this Article applies to them . . .'

In accordance with the orders referred to above, the acting president requests the Court to give a preliminary ruling on the following questions:

'1. Are Articles 1 (b), 2 (1) (d) and 3 of Regulation No 3 to be interpreted as meaning that the "legislation" referred to therein also includes the Algemene Weduwen- en Wezenwet, although this Law, adopted after the entry into force of the Regulation, was not the subject of a notification in accordance with Article 3 (2)?

2. If the answer to Question 1 is in the affirmative:
Is Article 28 (1) (b) of the Regulation applicable to determine the amount of the widow's pension granted under the Algemene Weduwen- en Wezenwet, although there is no "acquisition, maintenance or recovery of the right to benefit" under Article 27 (1) of the Regulation, and although under the system provided for by the Algemene Weduwen- en Wezenwet the amount of the pension does not depend on the duration of the insurance?

3. If the answer to Question 2 is in the affirmative:
Where a widow's pension is to be granted under the Algemene Weduwen- en Wezenwet, can the insurance periods completed under the Nederlandse Invaliditeitswet (Netherlands Law on invalidity) be considered as insurance periods for the application of Article 28 (1) (b) of the Regulation?

4. Does Article 28 (1) (g) of the Regulation, which refers to "benefits already paid", relate solely to benefits already paid on 1 January 1959, the date of the entry into force of the Regulation?'

II—Procedure

1. The reference from the Netherlands court was received at the Court of Justice on 12 November 1963.

2. In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the following:

— the Council of the EEC,

— the Commission of the EEC,

— by the following parties to the main actions: Mrs Van der Veen-Kalsbeek the Sociale Verzekeringsbank, Mrs Laux-Van Doeland and Mrs Flensburg-Molenaar.

3. The hearing took place on 14 May 1964.

4. At the hearing of 4 June 1964 the Advocate-General delivered his opinion.

III—Summary of the observations submitted in accordance with the second paragraph of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The Council of the EEC submits observations only on the second and third questions asked by the Netherlands court. It points out that Regulation No 3 of the Council was supplemented by Regulation No 130/63/EEC of the Council (OJ of the European Communities of 28 December 1963, pp. 2996 et seq.), which contains, in Article 7, measures to which the Netherlands authorities are to have regard for the purpose of applying Articles 27 and 28 of Regulation No 3. The abovementioned Article 7 also lays down that the amendments for which it provides are to take effect from 1 January 1959. However, when putting this provision into Article 7, the Council did not intend 'to intervene in the disputes which are at present the subject of Case 100/63 and which concern the rights of the persons concerned accrued due before the date of the entry into force of Regulation No 130/63'.

The Commission of the EEC submitted the following observations:

As to the first question:

The answer to this question is in the affirmative.

Article 1(b) of Regulation No 3, read together with Article 2 (1) (d), clearly lays down the rule that that Regulation applies to all laws, regulations and other enforceable provisions 'present *and future*' of each Member State whenever they deal with schemes granting benefits to survivors. Therefore this provision also applies to the Algemene Weduwen- en Wezenwet, and the fact that this Law only came into effect after the entry into force of Regulation No 3 cannot be used as an argument for not applying Regulation No 3 to it.

This conclusion is reached separately and apart from the question whether notice of the new legislation was given. Annex B of the Regulation, which lists the provisions in force concerning social security in Member States as at its entry into force, cannot have anything more than declaratory significance. Thus any legislative provision of domestic law concerning the matters dealt with by the Regulation automatically come within its scope as from its entry into force. The contrary view would be tantamount to giving Member States the power of deciding how far the Regulation should apply.

The Commission alternatively puts forward the view that, by virtue of Article 3 (2) of the Regulation, the Netherlands were not required to give notice of the Algemene Weduwen- en Wezenwet. Such notification is provided for only where the provisions bring about an amendment to Annex B.

This does not apply to the Algemene Weduwen- en Wezenwet, since the subject-matter with which it deals clearly comes within the expression 'legislation respecting insurance against premature death . . .'.

In the event all argument was excluded when the Council of the EEC adopted Regulation No 130/63. Article 7 of that Regulation is based on the supposition

that Regulation No 3 applies to the Algemene Weduwen- en Wezenwet.

Second question:

The answer to this question must also be in the affirmative.

1. Articles 27 and 28 contain in effect two rules which must be distinguished, namely:

(a) Where the legislation of a Member State makes the grant of a pension benefit conditional upon the completion of a minimum insurance period, Article 27 provides that, *for the purposes of calculating this period*, the periods insured under the legislation of other Member States must be taken into account. Therefore this provision has practical effect only where the insured person would not have a right to a pension under the law of the State concerned if aggregation were not applied.

(b) On the other hand Article 28 (1)(b) deals with *the calculation of the amount of benefit due for payment.* It is always applicable when an insured person has been successively or alternately subject to the law of several Member States. The expression 'an insured person covered by Article 27' (Article 28 (1)) refers to the personal circumstances mentioned in Article 27 ('. . . where an insured person has been successively or alternately subject to the legistion of two or more Member States . . .') and not to the substantive implementation of Article 27. Therefore the application of Article 28 (1)(b) (does not depend on a need, should the question arise, to look to Article 27 (1) in order to establish a right to a pension.'

2. It is of course true that the wording of Article 28 was drafted having in mind the existence of national insurance pension schemes based on a system in which the amount of the pension depends on the length of the insurance period. Thus its language is not entirely suited to a scheme such as that prescribed by the Algemene Weduwen- en Wezenwet which is based on insurance against risks and consists of a scheme in which the amount of pension benefit does not depend on the period of affiliation or on the payment of contributions. Nevertheless the rule for sharing the financial burden remains justifiable in a case where one of the types of insurance is that against risks, because it would not be fair for a country which has introduced such an insurance scheme to have to bear the whole financial burden of the pension.

Besides, it is not correct to say, as do some of the parties to the main actions, that the Algemene Weduwen- en Wezenwet makes no reference to 'insurance periods'. With the definition of this expression in Article 1 (p) of Regulation No 3 in mind, the Commission draws attention to the fact that, according to the Algemene Weduwen- en Wezenwet, the insurance periods are not 'reckoned' for the calculation of the pension but that they are quite certainly 'defined' by that legislation because it 'lays down rules concerning the conditions of membership and the duration of contributions'.

The *pro rata* division of the financial burden between the insurance authorities of the different countries is in accordance with one of the objectives of Regulation No 3, which is to prevent the joint application of different laws to the same periods and the resultant cumulative payment of benefits.

3. Moreover it follows from Article 7 of Regulation No 130/63 that the insurance authorities must unquestionably grant a pension corresponding in amount to the insurance period of the person concerned either in accordance with the Invaliditeitswet (until 1 October 1959) or with the Algemene Weduwen- en Wezenwet (from 1 October 1959). In reality the assimilation to completed 'insurance periods' under the Algemene Weduwen- en Wezenwet

is only meaningful if those periods during which the insured person came under the Algemene Weduwen- en Wezenwet are themselves taken into account 'in order to calculate the amount of the benefit payable' by virtue of the Algemene Weduwen- en Wezenwet.

Third Question:

It follows from Article 7 of Regulation No 130/63 that the answer must unquestionably be in the afirmative.

Fourth Question:

A negative answer to this question is called for.

The review of benefits already paid, for which Article 28 (1) (g) provides, presupposes that subparagraphs (e) and (f) have already been applied, and there is no time-limit on the applicability of those subparagraphs. They start with the assumption that 'at a given date' a person concerned does not satisfy the conditions required by *all* the legislative systems applicable to him, either with aggregation (e) or without aggregation (f). Subparagraph (g) specifies that a review shall take place 'as and when' those conditions are satisfied; when this happens the pension must be calculated in accordance with the basic rule laid down in subparagraph (b).

The appellant Mrs Kalsbeek, widow, née van der Veen, submits the following observations:

It is a fact that, as regards the Netherlands, Annex B to the Regulation mentions 'insurance against premature death, including increases'. The addition of the words 'including increases' and 'the combination of the intent and the wording of the provisions of Netherlands law referred to in Annex B' lead to the supposition that it is a question here only of the Invaliditeitswet and not of the Algemene Weduwen- en Wezenwet. Therefore the Netherlands should have given notice of the amendment to Annex B, which was rendered necessary by the passing of the Algemene Weduwen- en Wezenwet, in accordance with Article 54 (1) of the Regulation. However, so far as the appellant is aware, this notice was not given. For this reason Regulation No 3 cannot apply in this particular case.

Other considerations lead to the same result. The Regulation is supposed to ensure the protection of the worker. Yet to apply it in this case would lead to a restriction of pension rights, which would not be reconcilable with such an intention.

Further, even allowing that the Regulation does apply, its application should not result, in this particular case, in a *pro rata* calculation under Article 28. The pension granted to the appellant under the Algemene Weduwen- en Wezenwet was not granted in accordance with Article 27 of the Regulation because the insurance covered by this Law is in the nature of insurance against risks and because this Law provides that the right to a widow's pension does not depend on defined insurance periods.

Further, allowing that Article 28 applies, there is room for criticism of the method of calculation used by the respondent (the Sociale Verzekeringsbank), that is to say, the aggregation of insurance periods covered on the one hand by the Algemene Weduwen- en Wezenwet, and on the other by the Invaliditeitswet. The insurance dealt with by the Algemene Weduwen- en Wezenwet and that dealt with by the Invaliditeitswet are 'of different orders of magnitude'. In reality a fifty-year insurance period should apply to Netherlands insurance — the ideal insurance period according to the Algemene Weduwen- en Wezenwet — less the insurance period covered by the German insurance scheme. 'The widow's pension itself does not depend on the length of an insurance period. Therefore logic requires that the whole notional period covered by payment of the premium be taken into account'.

The Sociale Veraekeringsbank makes the

following observations:

Questions 1 and 2:
An affirmative answer to these two questions should be given.

Question 3:
Since it was asked, this question has been disposed of by Article 7 of Regulation No 130/63 of the Council of the EEC.

Question 4:
Having regard to the terms of Article 28 (1) (g) of Regulation No 3 'the conditions referred to in this subparagraph can clearly only be taken as being fulfilled on 1 January 1959'. Subparagraph (g) deals with benefits which were fixed at 1 January 1959 or after that date.
The appellants Laux-van Doelend and Flensburg-Molenaar submitted the following observations:

First Question:

The appellants leave a decision on this to the discretion of the Court.

Second Question:

Article 28 of Regulation No 3 only applies in cases of the acquisition, maintenance or recovery of the right to benefit covered by Article 27. Any other interpretation would result in putting a worker who has been employed successively or alternately in two or more Member States at a disadvantage compared with one who has worked successively or alternately in Holland and in another country which is not a Member State. In the latter case the widow of the worker receives the whole pension payable by virtue of the Algemene Weduwen- en Wezenwet in addition to the pension to which she has a right in the other country, whereas the opposite argument would lead to the widow of a worker not receiving the whole pension either by virtue of the Algemene Weduwen- en Wezenwet, or by virtue of the legislation of another Member State.

On the other hand, this argument would involve advantages only for the worker who has been continuously employed in Member States but who has not acquired the right to an independent pension in one or more of these States. It is precisely in this case that a benefit can be obtained by the application of Article 28.
Article 28 is intended to prevent 'the loss of insurance periods'. However this does not apply when there exists the right to an independent pension in the Member States in which the worker was employed. In such a case no aggregation is necessary.
Moreover Article 28 is inapplicable also by reason of the fact that the Algemene Weduwen- en Wezenwet does not constitute an insurance scheme based on periods of affiliation.

Third Question:

There is no rule of law according to which the periods of affiliation within the meaning of the Invaliditeitswet should be classed as such within the meaning of the Algemene Weduwen- en Wezenwet.
The Netherlands court has not formulated the question correctly. It mentions 'periods of affiliation according to the Netherlands Law on invalidity pensions'. In doing so the court forgets that this law distinguishes between *premium periods* and *insurance periods*. The insurance remains in force even if, for certain periods, contributions are not paid; the amount of the contributions paid only affects *the amount of benefits*.
Therefore the question ought to have been framed as follows:

> 'Where a widow's pension is to be granted under the Algemene Weduwen- en Wezenwet, may the insurance periods completed under the Nederlandse Invaliditeitswet be taken as *premium periods* for the purpose of applying Article 28 (1) (b) of the Regulation?'

The answer to this question also should be in the negative. The insurance scheme laid down by the Invaliditeitswet makes allowance for the possibility of continuing to make contributions on a voluntary basis. Therefore it would be contrary to the legal principles of an insurance scheme coming under the Algemene Weduwen- en Wezenwet (such a scheme consists of insurance against risks and provides the same benefits for every member) for the continued payment of contributions also to have an effect on the amount of the pension payable under the Algemene Weduwen- en Wezenwet.

Grounds of judgment

The Court has received a request for interpretation under Article 177 of the EEC Treaty, made to it by the Centrale Raad van Beroep (Central Court of Appeal). This request is in essence directed to finding whether certain provisions of a Community regulation are applicable to a given Netherlands law, namely, the 'Algemene Weduwen- en Wezenwet' (AWW) (General Widows' and Orphans' Insurance Law). By the said Article 177 the Court, when giving a preliminary ruling, is entitled only to pronounce on the interpretation of the Treaty and of acts of the institutions of the Community, but can neither apply them to a particular case nor give judgment by means of this Article on the propriety of a measure of a domestic character. It is only subject to this proviso that the Court can accept the questions submitted to it in this case.

I—The first question

By this question, the Central Raad van Beroep asks the Court to state whether Articles 1 (b), 2 (1) (d) and 3 of regulation No 3 are to be interpreted 'as meaning that the "legislation" referred to therein also includes the "Algemene Weduwen- en Wezenwet (AWW)" although that Law, adopted after the entry into force of the Regulation, was not the subject of a notification in accordance with Article 3 (2)'.

(1) It follows from the information supplied by the Centrale Raad van Beroep that the AWW provides for insurance against premature death with benefits to survivors. It is therefore necessary to consider whether the Netherlands legislation having such an objective comes within the framework of the above mentioned provisions.

Under Article 2 (1) (d) of Regulation No 3, such Regulation 'shall apply to all legislation governing . . . *survivors' benefits* other than those paid in respect of industrial accidents or occupational diseases'. Annex B, entitled 'Legislation to which the Regulation applies', refers, under subparagraph (e) of the section relating to the Netherlands, to: '*Insurance against premature death,*

including increases'. The Regulation must therefore apply to all Netherlands legislation providing for insurance against premature death with benefits to survivors.

(2) The application of Regulation No 3 to any legislation is not precluded simply because the latter came into force after the said Regulation and was not notified under Article 3 (2) of the Regulation. In fact, Article 1 (b) of the Regulation provides that when the Regulation uses the term 'legislation' it refers to the laws, regulations etc. 'present *and future*' of each Member State. This provision would be deprived of its meaning if it were permissible for any Member State, by refraining from making the abovementioned notification, to decide for itself the extent to which Regulation No 3 should apply. Moreover, under Article 3 (2) of the Regulation, the obligation to provide such notification only arises in cases in which the adoption of new legislation renders an 'amendment' to Annex B necessary. Such is not the case when the new legislation comes under one of the headings used in the said Annex.

It follows from the above considerations that the reply to the first question asked by the Centrale Raad van Beroep is in the affirmative.

II—The second question

The second question of the Centrale Raad van Beroep is whether 'Article 28 (1) (b) of the Regulation is . . . applicable to determine the amount of the widow's pension granted under the AWW although there is no 'acquisition, maintenance or recovery of the right to benefit' under Article 27 (1) of the Regulation, and although under the system provided for by the AWW the amount of the pension does not depend on the duration of the insurance'.

(1) It follows from the wording of Article 28 (1) that the conditions for the application of this Article are subject to those of Article 27.

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. Under Article 51 these regulations 'secure' for migrant workers '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'.

The aim of this provision is to allow the migrant worker to acquire the right to benefit by the aggregation of the periods of work completed by him in

various Member States. It follows from this principle that benefits are to be calculated according to the proportion of all the periods of work. Articles 27 and 28 of Regulation No 3 are in line with this intention. They thus supplement one another, are based on the same principle and must therefore be applied simultaneously.

If Article 28 were to be applied separately from Article 27, the rights of migrant workers might in some cases be reduced. Such workers might find that the calculations made under Article 28 resulted in smaller benefits for them than the total of the benefits to which they would have been entitled by virtue of the legislation of each of the Member States if the said provisions had not been applied.

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. Although, within the framework of Article 100, the States are in a position, by approximating their laws, to bring about fairly radical changes in them, subject to the safeguards found both in the Treaty and in national law, Article 51 on the other hand cannot allow the regulations to fall short of the objectives which it sets, which are intended to favour freedom of movement for workers and which would be incompatible with any reduction in their rights. It follows from these factors therefore that Article 28 (1) (b) is applicable under Article 51 of the Treaty only in cases provided for by Article 27, that is to say, where it is a question of the acquisition, maintenance or recovery of the right to benefit.

(2) The Centrale Raad van Beroep has next raised the question whether Article 28 is applicable to legislation which does not make the amount of the pension dependent on the duration of the insurance.

Since the judgment of the Centrale Raad van Beroep, Regulation No 130/63/EEC of the Council 'amending certain annexes to Regulation No 3 and Regulation No 4' (OJ of 28 December 1963, pp. 2996 et seq.) has been adopted. The purpose of this Regulation is to make good the deficiencies in Regulation No 3. Article 7 amends Annex G to that Regulation relating to Netherlands legislation. It provides that for the application of Articles 27 and 28 of Regulation No 3 the institutions 'shall take into account' the new rules laid down for the future.

Regulation No 130 is to be applied as from its publication. However, Article

7 (2) provides that the amendments made by the said Article to Annex G to Regulation No 3 come into effect as from 1 January 1959. Nevertheless this retroactive effect cannot prejudice in any way the persons whose entitlement to benefit was acquired before the publication of Regulation No 130.

It follows from the above considerations that Article 28 (1) (b) also applies to legislation which does not make the amount of the benefit dependent on the duration of the insurance.

(3) Having regard to all the above, Article 28 (1) (b) is applicable only in so far as its application secures for the persons concerned benefits which amount to at least as much as those which they would receive by virtue of the national legislation applicable to them, considered independently of Regulation No 3.

III—The third question

The third question, which is raised if the answer to the second question is in the affirmative, is whether, 'where a widow's pension is granted under the AWW, the insurance periods completed under the Netherlands law on invalidity can . . . be considered as insurance periods for the application of Article 28 (1) (b) of Regulation No 3'.

Under the clear terms of subparagraph (b) of the abovementioned Article 7 of Regulation No 130, the periods in question not only can but must be assimilated to the periods completed under the Netherlands legislation on general insurance in favour of widows and orphans. However, this interpretation is subject to the condition that such assimilation must not prejudice in any way the persons whose right to benefit has been acquired before the publication of Regulation No 130.

IV—The fourth question

By this question, the Centrale Raad van Beroep requests the Court to state whether Article 28 (1) (g) of Regulation No 3, in using the words 'benefits already paid', relates solely to benefits already paid 'on 1 January 1959, the date of the entry into force of the Regulation'.

The provision deals with 'cases covered by subparagraphs (e) and (f) of this paragraph'. The said subparagraphs (e) and (f) indicate the method to be followed in order to determine the amount of the benefit where the person concerned does not 'at a given date' satisfy the conditions required by all the

legislative systems applicable to him. Subparagraph (g) provides that 'as and when' the said conditions are subsequently satisfied, the 'benefits already paid' shall be reviewed. It follows from these provisions looked at as a whole that 'benefits already paid' must be understood as meaning payments made *in pursuance of subparagraphs (e) and (f)*. Such payments can clearly not come about until after the entry into force of Regulation No 3, including particularly subparagraphs (e) and (f) aforementioned which are permanently applicable, as is shown moreover by the phrase 'at a given date' quoted above. Therefore the provisions of Article 28 are also of permanent application.

V—Costs

The costs incurred by the Council and the Commission of the EEC which have submitted their observations to the Court are not recoverable, and as these proceedings are, in so far as the parties to the main actions are concerned, a step in the actions pending before the Centrale Raad van Beroep, the decision as to costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of the Commission of the EEC;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 48 to 51 and 177 of the Treaty establishing the European Economic Community;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to Regulation No 3 of the Council of the EEC concerning social security for migrant workers (OJ of the European Communities of 16 December 1958, pp. 561 et seq.) and Regulation No 130 of the Council (OJ of 28 December 1963, pp. 2996 et seq.);
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

in answer to the questions referred to it by the Centrale Raad van Beroep by decision of 30 October 1963,

hereby rules:

1. **The expression 'legislation' used in Articles 1 (b), 2 (1) (d) and 3 of Regulation No 3 of the Council of the EEC concerning social security for migrant workers (OJ of the European Communities of 16 December 1958 pp. 561 et seq.) also includes national legislation making provision for insurance against premature death with benefits to survivors, even if such legislation came into force after Regulation No 3, and even if notice thereof was not given.**

2. **(a) Article 28 of the said Regulation only applies in matters relating to the acquisition, maintenance or recovery of the right to benefit, as referred to in Article 27;**

   (b) These provisions apply to legislation which does not make the amount of the benefit dependent upon the length of the insurance period;

   (c) These provisions apply only in so far as the Regulations make it possible to secure for the persons concerned benefits at least equal in amount to those which they would receive in each country by virtue of the national legislation applicable to them, considered independently of Regulations Nos 3 and 130 of the Council of the EEC.

3. **Where, within the framework of Articles 27 and 28 of Regulation No 3, a widow's pension is granted by virtue of the Netherlands legislation concerning general insurance in favour of widows and orphans, the insurance periods completed by virtue of the Netherlands Law on invalidity must be assimilated to the periods completed under the said legislation.**

4. **The expression 'benefits already paid' appearing in Article 28 (1) (g) of Regulation No. 3 includes all benefits paid in accordance with subparagraphs (e) and (f) of the said Article 28 (1), whatever the date of payment.**

5. **The decision as to the costs of these proceedings is a matter for the Centrale Raad van Beroep.**

Donner Hammes Trabucchi
Delvaux Rossi Lecourt Strauß

Delivered in open court in Luxembourg on 15 July 1964.

A Van Houtte
Registrar

A. M. Donner
President