OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 14 December 1995 *

1. The question on which the Court has been asked to give a preliminary ruling in the present case was submitted by the Arbeitsgericht Bielefeld (Labour Court, Bielefeld) and seeks to ascertain whether a national of one Member State, employed in another Member State, is entitled to have payment of the employer's contributions to a supplementary old-age and survivors' pension scheme based on a collective agreement continued during the period when he returned to his country of origin to perform his military service there, in view of the fact that the legislation of the State of employment contains a provision to that effect applicable to workers performing their military service in that State.

2. In the Federal Republic of Germany, Paragraph 1 of the Arbeitsplatzschutzgesetz (Law on employment protection on call-up for military service) provides, in so far as is relevant here, that the employment relationship is to be suspended during the whole period of compulsory military service. Paragraph 14a provides that an existing insurance policy in the supplementary old-age and survivors' pension scheme for employees in the public service is not affected by call-up for military service and that the employer must continue to pay the contributions (employer's and employee's contributions) to that scheme at the level at which they would have been payable if the employment relationship had not been suspended.

3. At the end of the military service the employer must notify the Federal Ministry of Defence of the amount of the contributions paid, in order to obtain reimbursement. It appears from the documents in the case that that provision also applies *mutatis mutandis* to persons performing civilian service in lieu of military service, save that in their case the sums advanced by the employers in respect of contributions are reimbursed by the Ministry for Women and Youth.

4. Under the German Law on military service, all German citizens aged 18 years or over must perform military service, whether or not they are resident in Germany.

5. The plaintiff in the main proceedings, a doctor of Belgian nationality, born in 1958, has been employed in the municipal hospital in Bielefeld since 1984. He is insured with the Ärzteversorgung, an insurance institution for members of the medical profession, in Westfalen-Lippe and is also entitled, under the collective agreement applicable to employees of the Federal Republic and the *Länder* and to employees of municipal authorities and undertakings, to subscribe to the supplementary old-age and survivors' pension scheme of a specific pension fund, namely the Versorgungsanstalt des Bundes und der Länder (Pension Institution of the Federal Republic and the *Länder*) in

* Original language: Spanish.

Karlsruhe. Under the provisions governing that pension fund, the employer pays monthly contributions for the employee.

6. The plaintiff performed his compulsory military service in the Belgian army from 29 March 1993 to 1 March 1994. During that period, the municipality of Bielefeld, the defendant in the main proceedings, did not pay contributions to the pension fund; the suspension began on 28 March 1993, with reinstatement on 2 March 1994.

7. In August 1994, the defendant applied to the competent regional defence administration, in accordance with Paragraph 14a of the Arbeitsplatzschutzgesetz, for reimbursement in respect of the plaintiff's contributions to the supplementary old-age and survivors' pension scheme for the period covered by his military service, amounting to DM 6 121, in case it, the defendant, should have to pay them itself. In October of that year, the defence administration refused the application on the ground that the Arbeitsplatzschutzgesetz applies only to employees who are obliged under German law to perform their military service in the German armed forces, which the plaintiff was not.

8. The plaintiff in the main proceedings seeks a declaration that his employer is required to pay contributions to the pension fund in respect of the supplementary old-age and survivors' pension scheme for the period during which he was performing his military service in the Belgian army.

9. To enable it to deliver judgment in the action brought by Mr de Vos, the Arbeitsgericht Bielefeld submitted the following question to the Court, pursuant to the first paragraph, (a) and (b), and the second paragraph of Article 177 of the EC Treaty:

'Must Article 7(1) and (2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community be interpreted as meaning that a worker who is a national of one Member State and is employed in the territory of another Member State is entitled to have payment of contributions (employer's and employee'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?'

10. Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the

Community [1] was adopted by the Council, as the second recital in the preamble to the regulation explains, to enable the objectives laid down in the Treaty in the field of freedom of movement to be achieved. Article 7(1) and (2), which the Court is asked to interpret in the present case, provides that:

'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.'

11. Regulation (EEC) No 1408/71 of the Council 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 [2] (hereinafter 'Regulation No 1408/71'), provides in Article 1(j) [3] that:

'"legislation" means in respect of each Member State statutes, regulations and other provisions and all other implementing measures, present or future, relating to the branches and schemes of social security covered by Article 4(1) and (2) or those special non-contributory benefits covered by Article 4(2a).

The term excludes provisions of existing or future industrial agreements, whether or not they have been the subject of a decision by the authorities rendering them compulsory or extending their scope. However, in so far as such provisions

(i) serve to put into effect compulsory insurance imposed by the laws and regulations referred to in the preceding subparagraph; or

(ii) set up a scheme administered by the same institution as that which administers the schemes set up by the laws and

1 — OJ, English Special Edition 1968 (II), p. 475.

2 — OJ 1983 L 230, p. 6.

3 — In the version contained in Council Regulation (EEC) No 1247/92 of 30 April 1992 (OJ 1992 L 136, p. 1). In its observations, the Commission quotes a version of this provision as amended by the Act of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and the Adjustments to the Treaties (OJ, English Special Edition 1972 (27 March — L 73) IX, Social Policy, p. 100.

regulations referred to in the preceding subparagraph,

the limitation on the term may at any time be lifted by a declaration of the Member State concerned specifying the schemes of such a kind to which this Regulation applies. Such a declaration shall be notified and published in accordance with the provisions of Article 97.

(...)'.

Article 4, which specifies the matters covered, provides that:

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

(...)

(c) old-age benefits;

(d) survivor's benefits;

(...)'.

Article 13, which sets out the general rules for determining the legislation applicable, provides that:

'1. Subject to Article 14c, persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. That legislation shall be determined in accordance with the provisions of this Title.

2. Subject to Articles 14 to 17:

(...)

(e) a person called up or recalled for service in the armed forces, or for civilian service, of a Member State shall be subject to the legislation of that State. (...) The employed or self-employed person called up or recalled for service in the armed forces or for civilian service shall retain the status of employed or self-employed person;'.

12. Observations have been submitted in these proceedings by the defendant, the German Government, the Swedish Government and the Commission.

13. The municipality, the defendant in the main proceedings, contends that the Arbeitsplatzschutzgesetz, Paragraph 14a of which requires the employer to continue, when the employee is on military service, to pay contributions (employer's and employee's contributions) to the supplementary old-age and survivors' pension scheme for workers in the public service — for which he will subsequently be reimbursed by the Federal authorities — as if the employment relationship were not suspended, applies only to military service performed on the basis of the German Law on military service. As the plaintiff performed his military service in the Belgian army, he is not entitled to have contributions advanced by the employer on his behalf.

14. The defendant further contends that, although the Court ruled in a judgment delivered in 1969 [4] that a worker who is a national of a Member State employed in Germany and who had to interrupt his employment with an undertaking in order to fulfil his military service obligations in the country of which he is a national, is entitled in accordance with the principle of equal treatment to have the period of his military service taken into account in the calculation of his seniority in that undertaking, a right conferred on workers under the same Arbeitsplatzschutzgesetz, that ruling cannot be applied without further ado in the present case.

15. It adds that it is necessary to determine in every case whether Regulation No 1612/68 applies to a specific provision of that law, since that law does not solely impose on the employer obligations vis-à-vis the employee which may be regarded as conditions of employment or work, namely that an employment relationship cannot be deemed to be terminated by absence on account of military service, that the employment relationship must be suspended and the post kept open, and that the period of absence on military service must be taken into account in the calculation of his professional seniority and his seniority in the undertaking. A good example is the provision at issue in this case, according to which the employer is only required to advance contributions for which he will subsequently be reimbursed by the Federal authorities. The defendant concludes that the contributions at issue cannot therefore be regarded as conditions of employment or work, as they are not benefits accruing to the employee as a result of the employment relationship but an advantage granted by the State to those called up for military service.

16. The Swedish Government argues in its observations that the contributions paid, directly or indirectly, when a worker performs his military service must be regarded as compensation for that service and on no account as a condition of employment or work or as a social advantage applicable to workers of other Member States in the same circumstances as a Member State's nationals.

17. The German Government states that the Arbeitsplatzschutzgesetz was adopted in

4 — Case 15/69 *Südmilch* v *Ugliola* [1969] ECR 363.

order to fulfil the obligation of assistance and protection incumbent on the State as employer during the period when its nationals are performing their military service, an obligation based on the relationship between the Federal Republic of Germany and its soldiers arising from the fact that they are part of its armed forces. Anyone called up for military service must be insured during that period and the relevant contributions must be paid by the Federal authorities, either directly, or indirectly by reimbursing the person concerned, for example in the case of self-employed persons. That applies to the contributions in the present case, which are initially advanced by the employer but ultimately charged to the Federal authorities. For that reason, only persons required under German law to perform military service enjoy those rights.

18. The German Government adds that this is not contrary to the principle of equal treatment to which the host Member State is subject under Article 7(1) and (2) of Regulation 1612/68 and which it must accord to workers who are nationals of other Member States in respect of conditions of employment and work and social and tax advantages.

19. With regard to conditions of employment and work, it contends, first, that the obligation on the employer to advance contributions cannot be regarded as part of remuneration, since it is not payment which the employee receives from the employer as a result of the employment relationship and the obligation to pay the contributions rests ultimately with the Federal Ministry of Defence, and, second, that the case-law of the Court, embodied in the judgment in *Ugliola*, [5] is not applicable, since the employer's obligation is closely bound up with that of the Federal Ministry of Defence. If these two obligations could be separated, that is to say if the employer's obligation was not accompanied by the right to reimbursement, it would lead to indirect discrimination against workers who are nationals of other Member States, since employers would be reluctant to recruit foreigners who had not yet performed their military service in their country of origin.

20. The German Government submits that the employer's obligation to advance contributions has nothing to do with the fact that the beneficiary is a worker or that he is entitled to enjoy freedom of movement but is based on the fulfilment of military obligations, that is to say an obligation under public law which is not within the scope of Regulation No 1612/68, and it claims that, in the words of Advocate General Gand in his Opinion in *Ugliola*, [6] the Arbeitsplatzschutzgesetz includes measures of a widely differing nature, some of which are connected with the problems of national

5 — Cited in note 4 above.
6 — Cited above, ECR p. 374.

defence, while others do indeed concern questions of employment, these being the only ones to fall within the scope of Regulation No 1612/68. Consequently, the above-mentioned legal obligation cannot be regarded as a 'social advantage' either, within the meaning of Article 7(2) of that regulation, in the light of the Court's ruling that a benefit cannot be considered as a social advantage if the main reason for it is the services which those in receipt of the benefit have rendered in wartime to their own country and the hardships suffered. [7]

21. The Commission takes the view that Regulation No 1408/71 does not apply in the present case, which is concerned with supplementary old-age and survivors' insurance to which the worker is entitled under a collective agreement and, under Article 1(j), provisions of industrial agreements are not regarded as 'legislation' for the purposes of the regulation. There is therefore, in its opinion, no need to consider either the possible implications of applying Article 13(2)(e) or whether both regulations may be applicable in parallel.

22. The Commission then considers whether the national provisions at issue are part of conditions of employment or work for the purposes of Article 7(1) of Regulation No 1612/68 or social advantages for the purposes of Article 7(2). On the basis of the judgment in *Ugliola*, [8] it contends, first, that a law which protects a worker from any disadvantages occasioned by his performance of military service falls within the context of conditions of employment. And, second, in the light of the Court's ruling that for the purposes of Article 7(2) of Regulation No 1612/68 social advantages should be interpreted as meaning all advantages which 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, it concludes that the advantage granted to German workers, namely reimbursement of the employer by the Federal authorities in respect of contributions paid when they were on military service, does not fulfil that requirement, since the provision at issue is essentially linked to the performance of military service and not to their status as workers or residents.

23. Having regard to the objective of Article 7 of Regulation No 1612/68, which is to secure equal treatment for workers who are nationals of Member States in respect of any provisions of collective agreements or legislation governing their situation and, in particular, their economic rights, the Commission considers that the provision of national law at issue, which applies in principle only to German workers who perform their military service in the German army, should also apply to workers of other Member States in

7 — Judgment in Case 207/78 *Ministère Public* v *Even* [1979] ECR 2019.

8 — Cited in note 4 above.

the same circumstances, since, otherwise, it would lead to discrimination on grounds of nationality which, in the Commission's view, could not be justified by the need to preserve the integrity of the rules.

24. Lastly, the Commission points out that certain aspects of the present case do nevertheless raise the question whether Regulation No 1612/68 may be applicable, for example the fact that the employer is required to advance contributions only when the employment relationship is suspended because the employee is on military service, the fact that such contributions are ultimately chargeable to the Federal Ministry of Defence or the Ministry for Women and Youth, depending on whether the German worker is performing military or civilian service, that is, to the institution benefiting directly from the services of those who have been called up, the fact that matters directly connected with the performance of military service are outside the scope of Community law and the fact that if the provision at issue were to apply to workers performing their military service in another Member State, it would impose a heavy burden on employers, who would be unable to recover the sums they had paid. In conclusion, the Commission claims that, as Community law now stands, unless bilateral agreements on the reimbursement of contributions under an insurance scheme based on a collective agreement exist or are concluded, the question submitted by the national court must be answered in the negative.

25. In order to answer the question submitted by the national court, I shall consider first whether Regulation No 1408/71 is applicable to a worker in the situation of the plaintiff in the main proceedings and then whether the right of German workers employed in the public service to have contributions to a supplementary old-age and survivors' pension scheme based on a collective agreement advanced by their employer on behalf of the Federal authorities when they are on military service falls within the scope of Article 7(1) or (2) of Regulation No 1612/68, in which case it would be applicable to workers of other Member States employed in Germany on the same conditions as to German citizens.

The applicability of Regulation No 1408/71

26. Under Article 13 of Regulation No 1408/71, the persons to whom the regulation applies are to be subject to the legislation of a single Member State only. Article 13(2)(e) provides that a person called up for service in the armed forces, or for civilian service, of a Member State must be subject to the legislation of that State. However, account must also be taken of the definition of the term 'legislation' in Article 1(j) of the regulation, as meaning, in respect of each Member State, statutes, regulations and other provisions and all other implementing measures, present or future, relating to the branches and schemes of social security covered by Article 4(1) and (2) — including old-age and survivor's benefits — or those special non-contributory

benefits covered by Article 4(2a), but excluding provisions of existing or future industrial agreements, whether or not they have been the subject of a decision by the authorities rendering them compulsory or extending their scope. In other words, for the purposes of applying the regulation, legislation in a social security context includes only provisions laid down by law or regulation and excludes the provisions of industrial agreements.

27. It follows that Mr de Vos was subject to Belgian social security legislation during the period when he was performing his military service in Belgium, but only to the branches and schemes governed by law or regulation. As the supplementary old-age and survivors' pension scheme to which he was affiliated in Germany is based on a collective agreement, it cannot be regarded as 'legislation' within the meaning of Regulation No 1408/71. Consequently, I concur with the view expressed by the Commission in its written observations, that Mr de Vos's relations with that scheme are unaffected by the provisions of Regulation No 1408/71, as it was not applicable and the fact that he was called up for military service in his country of origin did not mean that the insurance was automatically suspended, as schemes governed by law or regulation would have been.

The applicability of Article 7(1) and (2) of Regulation No 1612/68

28. Under Article 7(1) of Regulation No 1612/68, 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. It must therefore be considered whether the scheme provided for under the Arbeitsplatzschutzgesetz, namely that the employer's and employee's contributions to the supplementary old-age and survivors' pension scheme based on a collective agreement are advanced by the employer, who may subsequently claim full reimbursement from the Federal authorities, is a condition of employment or work.

29. This is not the first time the Court has been asked to interpret Article 7(1) in connection with the provisions of the Arbeitsplatzschutzgesetz. In its judgment in *Ugliola*, [9] it answered a question submitted by another German court, which sought to ascertain whether the article must be interpreted to mean that a worker who is a national of a Member State and who is employed in another Member State, is entitled to have the period of his military service in his country of origin taken into account in the calculation of the duration of his service with his employer, in accordance with the legislation of the country of employment,

9 — Cited in note 4 above.

when he interrupts his employment to perform his military service obligations.

30. The Court held that the Community rules on social security are based on the principle that the law of each Member State must ensure that nationals of other Member States employed within its territory receive all the benefits which it grants to its own nationals, that the fulfilment by migrant workers of a military service obligation owed to their own State is liable to affect their conditions of work and employment in another Member State, and that the nature of those consequences remains substantially the same whether the worker is called up by the State in which he is employed or by the Member State of which he is a national. It concluded that a national provision intended to protect a worker who resumes his employment with his former employer from any disadvantages occasioned by his absence on military service, by providing in particular that the period spent in the armed forces must be taken into account in calculating the period of his service with that employer, falls within the context of conditions of employment and must consequently also be applied to the nationals of other Member States employed in the State in question who are subject to military service in their countries of origin.

31. In the present case, the Court has to decide whether another provision of the same German law, which states that the existence of supplementary old-age and survivors' pension insurance for employees in the public service is not to be affected by call-up for military service and introduces the abovementioned arrangements for that purpose, also falls within the context of conditions of employment and work. It is therefore necessary to consider precisely how call-up affects the employment relationship, irrespective of the Member State in which the worker is to perform his military service.

32. In my view, there is no doubt that, when the employment contract is fully operative, the employer's contribution to a supplementary insurance scheme of this kind must be regarded as remuneration, since it is a consideration accorded indirectly by the employer to the employee on account of the employment relationship. However, the employment contract is suspended while the employee is performing military or civilian service and the parties to the contract are consequently released from their reciprocal obligations to perform and to pay remuneration for work. It follows that when employees are called up, the employer's obligation to pay contributions to the supplementary old-age and survivors' pension scheme based on a collective agreement is also suspended until such time as they return to work on completion of their period of military service, whether they are German nationals or nationals of other Member States.

33. Thus in the present case, unlike the *Ugliola* case where the same law required the employer to take account of a period of

military service in calculating an employee's service with that employer, there cannot be said to be any discrimination between German nationals and nationals of other Member States, since the employer pays no contributions for either. His role is merely to cooperate with the Federal authorities by advancing on their behalf, for technical and administrative reasons, both the employer's contributions which he is required to pay when the contract of employment is operative and the employee's contributions which the employee would be required to pay if the employment contract had not been suspended.

34. However, there is also no doubt that, as the Federal authorities assume responsibility for paying those contributions, a German national returning to his post on completion of his military service has continued, unlike nationals of other Member States, to acquire pension rights under the supplementary old-age and survivors' pension scheme. Does this constitute discrimination, prohibited under Community law?

35. To answer this question, it is necessary to consider whether that advantage, accorded to German employees but not to nationals of other Member States employed in Germany, is a social advantage within the meaning of Article 7(2) of Regulation No 1612/68.

36. The Court has defined the concept of social advantage for the purposes of that provision. According to its case-law, '"social advantages" should be interpreted as meaning all advantages which, whether or not linked to a contract of employment, are generally granted to national workers 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'. [10]

37. It must be determined, in the light of that definition, whether the right of German workers employed in the public service to have contributions to a supplementary old-age and survivors' pension scheme paid by the Federal authorities when they are on military or civilian service is granted to them because of their objective status as workers or by virtue of the mere fact of their residence on the national territory — in which case it ought to be granted on the same conditions to nationals of other Member States employed in the public service in Germany for the period during which they are on military service in their country of origin. Or is it granted for some other reason — in which

10 — Case C-310/91 *Schmid* v *Belgian State* [1993] ECR I-3011, paragraph 18.

case there would be no obligation to grant them that right.

38. Over the years, the Court has held that various benefits must be regarded as social advantages for the purposes of Article 7(2) of Regulation No 1612/68 and must consequently be granted to workers who are nationals of other Member States or to members of their families on the same conditions as to nationals of that State. They include, for example, interest-free loans granted on childbirth by a credit institution incorporated under public law to families with a low income with a view to stimulating the birth rate, [11] a social benefit guaranteeing a minimum income for old persons, [12] a social benefit guaranteeing a minimum means of subsistence in a general manner to any person who does not have adequate means and is unable to obtain them, [13] cash benefits for young job-seekers, [14] the possibility for a migrant worker of obtaining permission for his unmarried companion to reside with him where that companion is not a national of the host Member State, [15] assistance granted for maintenance and training with a view to the pursuit of university studies leading to a professional qualification, [16] birth grants and maternity allowances, [17] and allowances for handicapped persons. [18]

39. I consider that, unlike those examples, the German workers' right at issue in the present case is not granted to them because of their objective status as workers or by virtue of the mere fact of their residence on the national territory but is granted by the German Government, as it explains in its written observations, in partial compensation for the consequences of their obligation to perform military or civilian service.

40. The Court has already held, in *Even*, [19] that the right granted under the legislation of a Member State to nationals of that State who have served in the allied forces between 1940 and 1945 and are in receipt of a war service invalidity pension granted by an allied nation for incapacity for work attributable to an act of war, entitling them to draw an employed person's retirement pension during the period of 5 years preceding the normal pension age without the reduction of 5% per year of early retirement, cannot be regarded as a social advantage within the meaning of Article 7(2) of Regulation No 1612/68. The benefit in that case was

11 — Case 65/81 *Reina* v *Landeskreditbank Baden-Württemberg* [1982] ECR 33.

12 — Case 261/83 *Castelli* v *ONPTS* [1984] ECR 3199 and Case 157/84 *Frascogna* v *Caisse des Dépôts et Consignations* [1985] ECR 1739.

13 — Case 249/83 *Hoeckx* v *Openbaar Centrum voor Maatschappelijk Welzijn Kalmthout* [1985] ECR 973 and Case 122/84 *Scrivner* v *Centre Public d'Aide Sociale de Chastre* [1985] ECR 1027.

14 — Case 94/84 *ONEM* v *Deak* [1985] ECR 1873.

15 — Case 59/85 *Netherlands* v *Reed* [1986] ECR 1283.

16 — Case 39/86 *Lair* v *Universität Hannover* [1988] ECR 3161.

17 — Case C-111/91 *Commission* v *Luxembourg* [1993] ECR I-817.

18 — *Schmid*, cited in note 10 above.

19 — Cited in note 7 above.

claimed by a migrant worker who fulfilled all the conditions except that of nationality. The Court held that the main reason for that benefit was the services which those in receipt of the benefit had rendered in wartime to their own country and its essential objective was to give those nationals an advantage by reason of the hardships suffered for that country.

41. As Community law now stands, the question whether or not a person is under an obligation to perform military service is entirely a matter of nationality and as such is outside the scope of Community law. Member States' practice in this connection differs as between those that have an exclusively professional army, in which case none of their nationals are subject to that obligation, and those whose army consists mainly of conscripts, in which case there is a general obligation incumbent on all their nationals to contribute to the defence of their country. A Member State which imposes that general obligation on its nationals and in return, for that reason alone, pays them at a certain rate for their services, for example, or allows them to travel on public transport at concessionary rates or, as in Germany, decides to assume responsibility for paying the employer's and the employee's contributions to a supplementary old-age and survivors' pension scheme based on a collective agreement, is not granting them a social advantage within the meaning of Article 7(2) of Regulation No 1612/68, since the fact that the persons concerned may in some cases have the objective status of workers is less important than the fact that they are performing a compulsory personal service for that State.

42. As I have already said, German nationals are in a very different position, as regards such supplementary old-age and survivors' pensions insurance based on a collective agreement, from the nationals of other Member States returning to work in Germany on completion of their military service. But I would agree with the Commission that, as Community law now stands, that inequality cannot be removed by application of Regulation No 1612/68. The only remedy is to conclude the necessary bilateral agreements, providing that contributions to insurance schemes of this kind must be paid by the State if it requires its nationals to perform military service.

43. I therefore take the view that when, as in the present case, the legislation of a Member State grants a recompense to its nationals for the period during which they are on military service, whereby the employer continues during that period to pay the employer's and the employee's contributions to a supplementary old-age and survivors' pension scheme based on a collective agreement, for which he will subsequently be reimbursed out of the State budget, that recompense does not constitute either a condition of work or employment or a social advantage for the employee during that period; consequently, Community law, as it now stands, does not require that Member State to grant that recompense on the same conditions to an employee who is a national of another Member State and who performs his military service in the State of which he is a national.

Conclusion

44. In the light of the foregoing, I propose that the Court give the following answer to the question submitted by the Arbeitsgericht Bielefeld:

Article 7(1) and (2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community must be interpreted as meaning that a worker who is a national of one Member State and is employed in the territory of another Member State is not entitled to have payment of the employer's and the employee'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, even where nationals of that State employed in the public service are so entitled when performing military service in that State.