OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 28 NOVEMBER 1972[1]

Mr President,
Member of the Court,

The plaintiff in the proceedings in the national court which have given rise to the question referred for a preliminary ruling to be considered today is a Dutchman and is resident in the Netherlands. He was employed in the Federal Republic of Germany as a metal-worker at the M. Rosskamp undertaking, the defendant in the main action, approximately 20 kilometres from his place of residence, and he consequently had to be regarded as a frontier worker within the meaning of Community social security law. On 26 February 1971 he suffered an industrial accident which reduced his earning capacity by 60%. Since 25 October 1971 he has received on this ground an accident pension under the German statutory accident insurance scheme. The Rosskamp undertaking gave Mr Marsman notice in a letter of 19 November 1971 that the contract of employment would be terminated on 3 December 1971 on the ground that the undertaking was obliged owing to important work for which delivery dates were fixed to take on a replacement for him.

Mr Marsman appealed to the competent German Arbeitsgericht (Labour Court) against this. In accordance with advice given to this effect by the trade insurance association (Berufsgenoßenschaft) the plaintiff considers that he enjoys the special protection against dismissal laid down in the German Schwerbeschädigtengesetz (Law on Seriously Disabled Persons) of 16 June 1953, that is to say that, in accordance with Article 14 thereof, dismissal is only permissible with the consent of the Head Welfare Office. Since this was not obtained his dismissal is void. The defendant, in accordance with a letter from the Arbeitsamt Coesfeld of 10 September 1972, invoked against this the abovementioned Schwerbeschädigtengesetz, Paragraph 1 of which provides that, even if non-Germans have acquired the status of severely disabled persons as a result of an industrial accident and have become entitled to benefit under the statutory accident insurance scheme, the special provisions affording protection against dismissal do not apply if, as in the case of the plaintiff, they are not resident in the territory of the Federal Republic or in West Berlin.

Since the Arbeitsgericht before which the matter was brought nevertheless has doubts as to whether the abovementioned provision of the Schwerbeschädigtengesetz is compatible with Article 48 of the EEC Treaty and Article 7 of Regulation No 1612/68 of 15 October 1968 (OJ English Special Edition 1968 (II), p. 475) on freedom of movement for workers within the Community, which was adopted on the basis of Article 49 of the EEC Treaty, it stayed the proceedings by an order of 15 May 1972 and referred the following legal question for a preliminary ruling:

'Must Article 48 of the EEC Treaty and Article 7 of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ English Special Edition 1968 (II), p. 475) be interpreted as meaning that those provisions also refer to the special protection for certain categories of persons against dismissal, in the present case the protection for seriously disabled persons against dismissal introduced by Paragraph 14 of the Schwerbeschädigtengesetz of 16 June 1953 (Bundesgesetzblatt I, p. 389), so that in the Federal Republic of Germany such protection is also accorded to nationals of the Member States of the EEC who have suffered a reduction of more than 50% in their earning capacity as a result of an industrial accident and who have become entitled *vis-à-vis* the German statutory accident insurance

1 — Translated from the German.

scheme to a corresponding pension *without*, however, living in the territory of the Federal Republic of Germany or in West Berlin (Paragraph 1(3) of the Schwerbeschädigtengesetz)?'

I shall now consider how this question should be answered.

In this respect I find myself in a rather rare but agreeable situation, that the parties to the proceedings (the plaintiff in the main action, the Government of the Federal Republic of Germany, the Government of the Italian Republic and the Commission of the European Communities) all propose the same answer, namely that the special protection against dismissal under the Schwerbeschädigtengesetz is covered by the provisions of Article 48 of the EEC Treaty and Article 7 of Regulation No 1612/68 and therefore discrimination against workers from other Member States in this sphere is not permissible.

In my opinion it may easily be shown that it is in fact necessary to concur in this view unreservedly.

As the Court is aware, Article 48 of the EEC Treaty provides as follows:

'Freedom of movement for workers shall be secured within the Community by the end of the transitional period at the latest. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Members States as regards employment, remuneration and other conditions of work and employment ...'

The very wording of this provision suggests that protection against dismissal, in whatever form it occurs, is also covered by the expression 'as regards employment ... and other conditions of work and employment'. This is made even clearer if one adopts the view of the Italian Government that Article 48 of the Treaty must be *broadly* interpreted. It has in fact been established since the judgment in Case 15/69 ([1969] ECR 363) at the latest that this view is justified. In that judgment it was indeed found that this provision (Article 48) is 'subject to no reservations other than the restriction set out in paragraph (3) concerning public policy, public security and public health'. It is further emphasized that 'the Community rules relating to matters of 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'.

If after that there could still have remained any doubts that the interpretation which has been set out was correct they would have been conclusively removed by the provision laid down in Article 7 of Regulation No 1612 rendering it specific. In fact, that reads as follows: '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. He shall enjoy the same social and tax advantages as national workers.' This is therefore an express reference to *the law with regard to dismissal*. Furthermore this reference is of a general nature so that there is certainly no reason to have regard only to the basic provisions on dismissal and to consider that the special protection against dismissal is not covered by this provision.

Since it is moreover established that the special protection against dismissal under Schwerbeschädigtengesetz applies to *German* workers regardless of their place of residence the requirement as to residence, as laid down in the Schwerbeschädigtengesetz with regard to workers from other Member States, would in fact entail discrimination within the meaning of the abovementioned Community provisions. Accordingly the provision of the Schwerbeschädigtengesetz quoted by the court making the reference (which provision furthermore dates from 1953 and consequently could not then take into account the requirements of Community law) is, as the Federal Government itself has admitted, no longer applicable in view of the precedence of directly applicable Community law. As we heard in the oral procedure, after the Federal Government

has decided on an appropriate amendment to the Schwerbeschädigtengesetz there will shortly be a formal adjustment of the German legal position thereby ensuring that the principles of Community law will in future prevail without encountering difficulties in the application of the Schwerbeschädigtengesetz.

To summarize, the following reply may therefore be given to the question referred by the Arbeitsgericht Rheine:

The principle of equality of treatment for nationals of Member States contained in Article 48 of the EEC Treaty and Article 7 of Regulation No 1612/68 of the Council of 15 October 1968 also relates to provisions under national law which, for social reasons, make subject to more specific and stringent conditions the dismissal of a worker whose earning capacity has been restricted as a result of an industrial accident.