On those grounds,

THE COURT,

in answer to the question referred to it by the Landessozialgericht Baden-Württemberg by order of 19 May 1978, hereby rules:

Consideration of the provisions of Article 50 of Regulation No 3 in conjunction with Annex GIA thereto and of Article 89 of Regulation No 1408/71 in conjunction with Annex VC 1 (b) thereto has disclosed no factor of such a kind as to affect the validity of those provisions.

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 22 February 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 24 JANUARY 1979

My Lords,

The Council, the Commission and the German Government are at one in submitting that this case is indistinguishable in principle from Case 79/76 *Fossi* v *Bundesknappschaft* [1977] ECR 667. I agree. The Court in that case held that the benefits there in question were not "social security" benefits within the meaning of Article 51 of the Treaty or of the Regulations made thereunder, because of the circumstances mentioned in paragraph 7 of the Judgment. In view

of their importance, I mention them again although that paragraph was read to us a moment ago. They are: "that the competent insurance institutions to which the persons referred to in the provision in question had been affiliated no longer exist or are situated outside the territory of the Federal Republic of Germany ... that the purpose of the German legislation in question is to alleviate certain situations which arose out of events connected with the National Socialist régime and the Second World War and, finally, that the payment of benefits in question to nationals is of a discretionary nature where such nationals are residing abroad". Precisely the same is true of the benefits in question in the present case. As was emphasized to us on behalf of the German Government, the same three elements are present here too.

In the *Fossi* case the Court regarded the reservations contained in Annex GIA of Regulation No 3 and Annex VC 1 (b) of Regulation No 1408/71 as confirming its conclusion (albeit that in the published text of the Judgment the latter Annex is anachronistically referred to as Annex VB 1 (b). Nothing has been said in the present case to convince me that that was wrong.

It has been argued on behalf of the Italian Government that this case is distinguishable from the *Fossi* case. It seems to me however, with all respect to the Italian Government, that its argument to that effect is based on a number of misapprehensions.

Of those, the first, and perhaps the least important, is that the original text of Annex GIA of Regulation No 3 remained operative until the entry into force of Regulation No 1408/71. That is not so. The original text was modified by Council Regulation No 130/63/EEC of 18 December 1963, in such a way as to make it abundantly clear that it was intended to apply in circumstances such as those of this case.

Secondly the Italian Government says that Annex VC 1 (b) of Regulation No 1408/71 itself describes the benefits to which it refers as "social security" benefits. In fact however Annex VC 1 (b) refers to those benefits quite neutrally as "benefits" simpliciter, without any adjectival phrase or other wording denoting whether the authors of the Regulation regarded them as social security benefits or as some other kind of benefit. In any case it would be strange if a provision designed to exclude the application of the Regulation in particular circumstances fell to be interpreted as widening its scope.

Thirdly the Italian Government submits that the Judgment of the Court in the *Fossi* case was concerned only with the interpretation of Article 8 of Regulation No 3 and of Article 3 (1) of Regulation No 1408/71. That is true in the sense that the interpretation of those Articles was the ultimate issue in the case. But it is also true that the Court reached the decision that it did on that issue on the ground that the benefits there in question could not be classified as social security benefits.

Fourthly the Italian Government points out that in the *Fossi* case the particular kind of benefit in question was an invalidity pension whereas here it is a benefit in respect of an accident at work.

That is undoubtedly so, but, having regard to the grounds on which the decision of the Court in the *Fossi* case rested, that distinction cannot be relevant.

Lastly, the Italian Government relies on the Judgments of this Court in the "Algerian cases", particularly Case 112/75 *Sécurité Sociale de Nancy* v *Hirardin* [1976] ECR 553, and in Case 87/76 *Bozzone* v *Office de Sécurité Sociale d'Outre-Mer* [1977] ECR 687. In none of those cases, however, was it disputed that the benefit there in question was a social security benefit. So none of them is really in point here.

In the result I am of the opinion that Your Lordships should rule that consideration of the question referred to the Court by the Landessozialgericht of Baden-Württemberg has disclosed no factor of such a kind as to affect the validity of any of the provisions therein referred to.