OPINION OF ADVOCATE GENERAL LENZ

delivered on 21 March 1996 *

A — Introduction

1. The present case concerns the question whether a Member State which gives financial support to enable persons of modest means to bear the expense of a funeral infringes Community law if that assistance is conditional on the funeral taking place in that Member State.

2. In the United Kingdom the authorities have the duty of ensuring that when a person dies, at least a simple funeral or cremation takes place. According to the observations of the United Kingdom, that duty is primarily fulfilled by the fact that the local authorities must make provision for a funeral or cremation if nobody else is prepared to do so. That obligation is supplemented by the possibility of granting financial support to persons who have stated that they are prepared to make provision for a funeral. That benefit is called a 'funeral payment'.

3. The provisions on the conditions of entitlement to a funeral payment are set out in the Social Fund (Maternity and Funeral Expenses) Regulations 1987. [1]

4. The payment is conditional *inter alia* on the claimant taking responsibility for the costs of the funeral. He must also fulfil certain requirements regarding his means which are not relevant in the present case. [2] Above all, however, the benefit is paid only if the funeral takes place in the United Kingdom. [3]

5. The funeral payment amounts — subject to Regulation 8 and Part IV of the 1987 Regulations [4] — to a sum sufficient to cover the 'essential expenses' listed in those Regulations. Those expenses include *inter alia:*

'(a) the cost of any necessary documentation;

* Original language: German.

1 — SI 1987 No 481. Those Regulations were made on the basis of Section 32 of the Social Security Act 1986. According to the United Kingdom, that provision has now been incorporated into Section 138 of the Social Security Contributions and Benefits Act 1992.

2 — The payment is only made, for example, if the claimant is in receipt of income support, family credit, disability working allowance or housing benefit (see Regulation 7(1)(a)(i)).

3 — Regulation 7(1)(c).

4 — Those provisions relate to the taking into account of certain funds available to the claimant for the funeral (for example, assets in excess of a specified sum).

(b) the cost of an ordinary coffin and, in the case of cremation, the cost of an ordinary urn', and

'(f) the cost of any additional expenses arising from a requirement of the religious faith of the deceased, not in excess of £75'. [5]

6. Mr O'Flynn is an Irish national who has lived in the United Kingdom since 1944. He was employed there until his retirement in 1982. In 1988 his son died. Mr O'Flynn was then in receipt of a United Kingdom State retirement pension, an occupational pension and housing benefit.

7. Mr O'Flynn took responsibility for the costs of his son's funeral. A religious service was held in the United Kingdom, but the burial took place in a family grave in Ireland. The chairman's note of the hearing before the Social Security Appeal Tribunal [6] states that Mr O'Flynn said that the main reason for having the burial in Ireland rather than in the United Kingdom was cost.

8. On 1 September 1988 Mr O'Flynn applied for a funeral payment. According to the tribunal making the reference, he was entitled to apply because he was in receipt of one of the qualifying benefits (namely housing benefit). However, payment was refused by an adjudication officer on 15 November 1988, on the ground that the funeral had taken place outside the United Kingdom. Mr O'Flynn appealed against that decision to the Social Security Appeal Tribunal, which by decision of 17 July 1989 upheld the adjudication officer's decision. Mr O'Flynn appealed against that decision to the Social Security Commissioner, who dismissed the appeal on 8 March 1991. Mr O'Flynn further appealed to the Court of Appeal, which on 5 August 1992 quashed the Social Security Commissioner's decision on a point of law and remitted the case to the Social Security Commissioner for rehearing.

9. In the proceedings before the Social Security Commissioner Mr O'Flynn relied on Article 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community. [7] Under that provision, workers from other Member States are to 'enjoy the same social and tax advantages as national workers' in the Member State in

5 — Regulation 7(2).

6 — See point 8 immediately following.

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

which they work. It is common ground between the parties to the main proceedings that the funeral payment in question here is a social advantage within the meaning of that provision.

10. Mr O'Flynn argued in the national proceedings that there was discrimination because of the mere existence of the condition for a funeral payment that the funeral had to take place in the United Kingdom. In the alternative, he submitted that discrimination was established if nationals of another Member State acting reasonably and in the normal course of events were less likely to receive the benefit than nationals of the United Kingdom. He adopted the position that that was the case if nationals even of *one* other Member State were disadvantaged.

11. The defendant submitted that there was discrimination only if, having regard to all the circumstances including customary and cultural requirements, it was impossible or substantially more difficult in practice for nationals of other Member States to satisfy the condition in question. He adopted the position that there was discrimination only if the condition could be satisfied only by a *substantially* lower proportion of nationals of other Member States than of United Kingdom nationals. The comparison had to be with *all* Member States. Mr O'Flynn could in any event not rely on any discrimination, since his decision to have the funeral in Ireland had been based merely on reasons of cost.

12. The Social Security Commissioner therefore referred the following questions to the Court of Justice for a preliminary ruling:

(1) Is it compatible with the Community principle of non-discrimination on grounds of nationality for the purposes of Article 7 of Regulation No 1612/68 for the United Kingdom to make the payment of Social Fund funeral expenses subject to a territorial condition, namely that the funeral takes place in the United Kingdom?

(2) Does the answer to Question 1 depend upon any of the following considerations:

(a) Is the test to be applied for determining the existence of indirect discrimination on grounds of nationality:

(i) whether nationals of other Member States acting reasonably and in the normal course of events are, by reason of the territorial condition, less likely to receive payments than are United Kingdom nationals (and, if so, must it be

shown that, by reason of the condition, a substantially lower proportion of nationals of other Member States than of United Kingdom nationals is likely to receive payments); or

(ii) whether it is substantially more difficult in practice for nationals of other Member States to satisfy the condition; or

(iii) some other and, if so, what test?

(b) In each case is it sufficient to make a comparison between United Kingdom nationals and nationals of the specific Member State of which the claimant is a national, or is it necessary to make a comparison between United Kingdom nationals and nationals of all other Member States?

(3) Is such a condition capable of amounting to unlawful discrimination on grounds of nationality, and/or is it open to a claimant to rely on such discrimination, in circumstances in which the claimant's failure to satisfy the condition was for reasons unrelated to nationality, i. e. on grounds of cost?

B — Opinion

13. As stated above, the parties to the main proceedings — rightly — agree that the funeral payment at issue here is a social advantage within the meaning of Article 7(2) of Regulation No 1612/68. In dispute, however, is whether the requirement that the funeral must take place in the United Kingdom breaches the prohibition of discrimination on grounds of nationality laid down in that provision. I agree with the Commission that the questions which have been referred may be answered together.

The question of discrimination

14. It is clear that a condition of this type does not constitute overt discrimination, since it applies both to nationals of the United Kingdom and to nationals of other Member States. The Court has consistently held that the principle of equal treatment laid down in Article 7(2) of Regulation No 1612/68 and comparable provisions prohibits, however, 'not only overt discrimination by reason of nationality but also all covert

forms of discrimination which, by the application of other distinguishing criteria, lead in fact to the same result'. [8]

15. The condition in question applies to United Kingdom nationals just as to those of other Member States. As Mr O'Flynn and the Commission have rightly observed, however, there is a danger that that condition may work especially to the disadvantage of nationals of other Member States. Experience shows that many migrant workers who work or have worked in another Member State still feel that they have links with their original country. It is therefore substantially more likely that such migrant workers will decide to have members of their families buried in that country of origin, or arrange to have their own funeral there, than that United Kingdom nationals will choose that option.

16. The United Kingdom has admittedly expressed the supposition that many United Kingdom nationals (and nationals of non-member countries who have settled in the United Kingdom) might also prefer to have their relatives buried in their country of origin, if they were given funds for that. In view of the fact that a not insubstantial proportion of United Kingdom nationals comes originally from other countries, that may very well correspond to the facts. However, that makes no difference to the conclusion I have reached.

The decisive question is in my opinion whether it is more probable for nationals of other Member States than for nationals of the United Kingdom that they or their relatives will be buried in another *Member State*. The question must be answered in the affirmative. In so far as the United Kingdom nationals referred to by the United Kingdom are persons originating from *non-member countries*, it cannot be seen why they should feel the wish to have themselves or their own relatives buried in another Member State. [9] Much the same is probably true for United Kingdom nationals who come originally from another Member State of the Community. The circumstance that those persons have assumed United Kingdom nationality suggests that they now feel linked primarily to that Member State.

17. Since the condition at issue here, namely that a funeral payment can be claimed only if the funeral takes place in the United Kingdom, is thus satisfied more easily by nationals of the United Kingdom than by those of other Member States, this is a case of covert discrimination.

18. The United Kingdom objects, however, that discrimination can be found to exist only if it is impossible or substantially more

8 — Case C-419/92 *Scholz* v *Opera Universitaria di Cagliari* [1994] ECR I-505, paragraph 7.

9 — That does not mean that the application of Community law must lead to those persons being disadvantaged by comparison with nationals of the Member States. As will be shown below, an appropriate structure of the funeral payment system is conceivable which is compatible with Community law and treats all persons affected with complete equality.

difficult for nationals of other Member States to satisfy the condition in question. Whether that is so must, it argues, be examined by both a qualitative and a quantitative assessment: firstly, a substantially higher number of nationals of other Member States than of nationals of the Member State concerned must be affected; secondly, it must be asked whether the failure to satisfy the condition results from the free choice of the person concerned or from a requirement defined with respect to customs and culture. That view and the contrary view put forward by Mr O'Flynn are the basis of Question 2(a)(i).

19. A look at the case-law shows that in some cases concerning the freedom of movement of workers the Court has indeed used forms of words which could permit the conclusion that there is discrimination by reason of nationality only if the relevant provision of a Member State affects substantially more nationals of other Member States than its own nationals. Thus in 1978, in an action by the Commission against Ireland for failure to fulfil Treaty obligations, the Court observed that the provision in question disadvantaged a 'substantial proportion' of the fishing fleets of other Member States, whereas no comparable measure applied to Irish nationals. [10] In its *Stanton* judgment of 1988 the Court found that the Belgian provision at issue disadvantaged self-employed persons who were employed in another Member State. It held, however, that there was no indirect discrimination on grounds of nationality, since 'nothing [had] been submitted to the Court' to show that the persons disadvantaged were 'exclusively or mainly foreign nationals'. Article 6 of the EC Treaty (then still Article 7 of the EEC Treaty) could therefore be 'dismissed from consideration'. [11] The *Spotti* judgment of 1993 concerned German provisions on the activity of foreign-language assistants, which placed them at a disadvantage compared with other academic staff. The Court observed that 'the great majority' of foreign-language assistants '[were] foreign nationals' and the German provisions consequently constituted indirect discrimination on grounds of nationality. [12]

20. Those decisions contrast, however, with a large number of judgments in which the establishment of covert discrimination was not made to depend on such a condition.

21. The 1986 case of *Pinna*, for example, concerned a provision under which French family benefits were paid only for members of the family residing in France. [13] The Court regarded that as covert discrimination, since the problem of members of the family residing outside France arose 'essentially for migrant workers' from other Member

10 — Case 61/77 *Commission* v *Ireland* [1978] ECR 417, paragraph 79.

11 — Case 143/87 *Stanton* v *Inasti* [1988] ECR 3877, paragraph 9; likewise the judgment of the same date in Joined Cases 154/87 and 155/87 *RSVZ* v *Wolf and Others* [1988] ECR 3897, paragraph 9.

12 — Case C-272/92 *Spotti* v *Freistaat Bayern* [1993] ECR I-5185, paragraph 18.

13 — Case 41/84 *Pinna* v *Caisse d'Allocations Familiales de la Savoie* [1986] ECR 1.

States. [14] The Court also used the same approach in such cases as *Roviello*, [15] *Allué* [16] and *Le Manoir*. [17]

22. The *Biehl* case [18] concerned a Luxembourg provision that an overpayment of income tax was not reimbursed if the taxpayer took up residence in Luxembourg or left the country during the relevant year. The Court regarded that as covert discrimination, since there was a risk that the provision in question would 'work in particular against' migrant workers. [19] The Court reached a similar decision in *Bachmann*, [20] which concerned the treatment for tax purposes of insurance contributions.

23. The judgment in the *Paraschi* case [21] appears to me to be of particular interest in this connection. That case concerned the payment of an invalidity pension under German law. Under the German provisions a claimant was entitled to that benefit only if he had paid a specified number of monthly contributions within the last 60 calendar months before the occurrence of the invalidity. That period could be extended under certain circumstances, for instance in the event of sickness or unemployment. Those conditions were, however, framed in such a way that they could be satisfied by workers in Germany but not — or not in all cases — by workers who had returned to their country of origin after working in Germany. The Court held that there could be covert discrimination if the national legislature defined the conditions for the acquisition or retention of the right to benefits 'in such a way that they [could] in fact be fulfilled only by nationals of the Member State concerned' or if it defined the conditions for loss or suspension of the right in such a way that they could in fact 'be more easily satisfied by nationals of other Member States'. [22] The Court similarly held in *Commission* v *Luxembourg*, decided in 1993, that there was covert discrimination because the condition in question in that case could be satisfied more easily by a Luxembourg national than by nationals of other Member States. [23]

24. It follows clearly from those decisions, in my opinion, that there is already covert discrimination if a rule of national law makes the payment of a benefit subject to a condition which can be more easily or more probably satisfied by nationals of that State than by nationals of other Member States. As Advocate General Van Gerven has already rightly stated in his Opinion in *Kraus*, the number of nationals of other Member States who are disadvantaged by such a rule has no bearing. It is sufficient that the rule is 'such

14 — Ibid., paragraph 24.

15 — Case 20/85 *Roviello* v *Landesversicherungsanstalt Schwaben* [1988] ECR 2805, paragraph 15.

16 — Case 33/88 *Allué and Another* v *Università degli Studi di Venezia* [1989] ECR 1591, paragraph 12.

17 — Case C-27/91 *URSSAF* v *Le Manoir* [1991] ECR I-5531, paragraph 11.

18 — Case C-175/88 *Biehl* [1990] ECR I-1779.

19 — Ibid., paragraph 14.

20 — Case C-204/90 *Bachmann* v *Belgium* [1992] ECR I-249, paragraph 9.

21 — Case C-349/87 *Paraschi* v *Landesversicherungsanstalt Württemberg* [1991] ECR I-4501.

22 — Ibid., paragraph 23. The Court here cited its judgment in Case 1/78 *Kenny* v *Insurance Officer* [1978] ECR 1489, in which it had already taken the same view (paragraph 17).

23 — Case C-111/91 *Commission* v *Luxembourg* [1993] ECR I-817, paragraph 10.

as to produce discriminatory effects for nationals, however few or many, of other Member States'. [24]

25. Moreover, the judgments cited earlier which give the impression that the Court took a different view in those cases can altogether be reconciled with this approach. In *Stanton* the Court found that the provision in question infringed Articles 48 and 52 of the EC Treaty. [25] The prohibition of discrimination on grounds of nationality laid down in Article 6 of the EC Treaty (Article 7 of the EEC Treaty) was therefore not relevant in that case. In *Spotti* and *Commission* v *Ireland* the Court, in referring to the circumstance that it was predominantly nationals of other Member States who were affected by the provision in question, probably intended merely to express that each of those cases was a clear case of covert discrimination. That interpretation is supported in particular by the fact that in the latter judgment the Court first found that even covert discrimination was prohibited and then went on to say that that 'certainly' applied if the provision in question affected a 'substantial proportion' of the fishing fleets of other Member States. [26] It can therefore not be concluded from those decisions that there is covert discrimination only if a substantially larger number of nationals of other Member States are disadvantaged.

26. The Commission has moreover quite rightly observed that the Court has already held, with respect to the prohibition of discrimination based on nationality in Article 48(2) of the EC Treaty, that all 'discrimination is prohibited' even if it constitutes 'only an obstacle of secondary importance' as regards equality. [27] Furthermore, only such a broad interpretation can do justice to the fundamental importance of the prohibition of discrimination based on nationality in the system of Community law.

27. The United Kingdom also relies in this connection on the Court's case-law on the prohibition of indirect or covert discrimination between men and women. The Court has indeed consistently held in this field that a provision infringes the prohibition of discrimination on grounds of sex only if it affects substantially more women than men (or substantially more men than women). [28] As Mr O'Flynn rightly objects, however, that case-law cannot be applied to the field concerned in this case. With respect to the equal treatment of men and women, many situations are conceivable where it is altogether doubtful whether a particular provision disadvantages women or men. Discrimination on grounds of sex can therefore only sensibly be spoken of in such circumstances if the provision in question affects substantially more women than men or substantially

24 — Opinion in Case C-19/92 *Kraus* [1993] ECR I-1674, point 7, footnote 10.

25 — *Stanton* v *Inasti*, cited in note 11, paragraph 14.

26 — *Commission* v *Ireland*, cited in note 10, paragraph 79.

27 — Case 167/73 *Commission* v *France* [1974] ECR 359, paragraph 46.

28 — See for example Case 170/84 *Bilka* v *Weber von Hartz* [1986] ECR 1607, paragraph 29; for a more recent judgment see for example Case C-457/93 *Kuratorium für Dialyse und Nierentransplantation* v *Lewark* [1995] ECR I-243, paragraph 28.

more men than women. That will often be provable only by statistical investigation.

In the present case, on the other hand, the situation is quite different. That becomes clear if one tries the experiment of measuring the provision at issue here against those two prohibitions. If one examines whether the condition for making a funeral payment infringes the prohibition of discrimination on grounds of sex, the answer would indeed be anything but obvious. The provision in question is framed in such a way that it completely disregards the sex of the claimant. Discrimination on grounds of sex could thus at most be a possibility if the condition led in practice to substantially more men than women being given that benefit (of which there is of course no indication whatever at first sight). The position is completely different, on the other hand, with respect to the question of a breach of the prohibition of discrimination on grounds of nationality. In that respect the provision in question is precisely not formulated in a neutral way. By linking payment of the benefit to an occurrence taking place on the territory of the United Kingdom, it creates a *territorial* condition which disadvantages nationals of other Member States and thus leads to covert discrimination.

28. In view of those circumstances, the question whether persons in Mr O'Flynn's situation act 'reasonably and in the normal course of events' (as Question 2(a)(i) formulates it) or whether they follow a customary or cultural requirement (as the United Kingdom puts it) need not be gone into. Those aspects are not relevant in the present context.

29. Equally irrelevant is the question whether the condition at issue here, established by the law of the United Kingdom, disadvantages only the nationals of a single other Member State or whether it disadvantages the nationals of all other Member States. It follows from the Court's case-law that there is discrimination on grounds of nationality even if the provision in question of one Member State disadvantages only some nationals of other Member States. The Commission has rightly drawn attention in this connection to the *Roviello* judgment, in which the Court held that the fact that certain other migrant workers actually derived an advantage from the provision concerned could 'neither eliminate nor compensate for' the discrimination which had been found to exist. [29]

30. Finally, with reference to Question 3, it must also be observed that a finding of discrimination does not depend on the particular motives behind the conduct of the migrant worker concerned. On this point too, the Commission has put forward the essential considerations. I can therefore restrict myself to summarising those considerations. As the Commission notes, Advocate General Tesauro observed in his Opinion in *Paraschi* that migrant workers tend

29 — *Roviello*, cited in note 15, paragraph 16.

'for various [obvious] reasons' to return to their countries of origin in the event of illness or unemployment. [30] Neither the Advocate General nor the Court found it necessary to inquire into those reasons, however. If migrant workers decided to hold funerals in their country of origin because they thought it would be cheaper, that would moreover be a legitimate consideration in any case. It may furthermore be added that such conduct would also be in the interest of the party liable for the cost — in this case the United Kingdom. The question whether Mr O'Flynn was guided by reasons of cost when making his decision is therefore irrelevant. [31]

31. Finally, I must also address the United Kingdom's argument that it is not evident that the provision in question has any inhibiting effect on freedom of movement or social integration. That is probably based on the consideration that a migrant worker who, as in the present case, moves from one Member State to another in order to work there is presumably not guided in that decision by whether, in the event of the death of a relative, he will receive a benefit which will enable him to have the funeral take place in his country of origin. In my opinion, however, that is not relevant either. In my Opinion in *Bosman* I explained that the freedom of movement for workers protected by Article 48 — for the implementation of which Regulation No 1612/68 too serves — is not restricted to a prohibition of discrimination on grounds of nationality, but must also be understood as a prohibition of restrictions of freedom of movement. [32] That does not mean, however, that only such cases of discrimination are covered which also restrict freedom of movement. Article 7(2) of Regulation No 1612/68 thus lays down, quite generally, that foreign workers are to enjoy the same social advantages as workers of the Member State concerned.

32. The conclusion is therefore that a national provision such as the present one which makes the granting of a funeral payment conditional on the funeral taking place in the Member State concerned infringes the prohibition of discrimination on grounds of nationality laid down in Article 7(2) of Regulation No 1612/68. Such a provision would be compatible with Community law only if justified by compelling reasons in the general interest. [33]

The question of justification

33. The question of a possible justification for the discriminatory condition at issue has — as the United Kingdom correctly observes

30 — Opinion in Case C-349/87 *Paraschi* [1991] ECR I-4501, point 13. The word 'obvious' is absent from the English text of the Opinion.

31 — It must be pointed out that Mr O'Flynn moreover disputes that his decision to have his son buried in Ireland was based on considerations of cost.

32 — Opinion of 20 September 1995 in Case C-415/93 *URBSFA* v *Bosman* [1995] ECR I-4921, point 165 et seq.

33 — Judgment in Case C-106/91 *Ramrath* [1992] ECR I-3375, paragraph 31; see also the judgment in Case C-19/92 *Kraus* [1993] ECR I-1663, paragraph 32.

— not been expressly put by the national tribunal. In Question 1, however, the Court is asked to answer the question whether a condition such as that at issue here infringes the prohibition of discrimination on grounds of nationality. Since there is no such infringement if the discrimination is justified, it appears to me to be necessary also to address this question briefly, in order to enable the national tribunal to reach a proper decision in the case pending before it.

34. In reply to the Court's question on this point, the United Kingdom stated that the restriction of the benefit to cases in which the funeral takes place in the United Kingdom merely reflects the geographical scope of the responsibilities which are the basis of the measure: the purpose is to ensure in the United Kingdom that in the event of a person's death at least a simple funeral can take place.

35. Those considerations cannot justify the disadvantaging of migrant workers which has been established above. Under the existing rules, a claim to a funeral payment is excluded altogether if the funeral does not take place in the United Kingdom. As Mr O'Flynn has quite rightly submitted, the benefit is thus also refused in so far as costs have been incurred in the United Kingdom. The facts of the present case show that in exemplary fashion. As Mr O'Flynn submits, he had to acquire a coffin when his son died. For that purpose he approached an undertaker in the United Kingdom. The costs of the death certificate and the religious service which took place in London were also incurred in the United Kingdom. Mr O'Flynn was unable to obtain any benefit in respect of all those costs, solely because the actual funeral took place in another Member State. But those expenses would also have been incurred if Mr O'Flynn had had his son buried in the United Kingdom. In that case a funeral payment would have been made and those costs would (to the extent provided for by law) have been reimbursed. That shows very clearly that the existing rules cannot be justified by the reasons advanced by the United Kingdom.

36. The United Kingdom argues that to extend funeral payments to cases in which the funeral takes place in another Member State would lead to an unacceptable increase in the cost to the State of providing that benefit. That, in my opinion, is not correct. Had Mr O'Flynn decided to to have the funeral in the United Kingdom, he would have been entitled to the funeral payment. In so far as Mr O'Flynn therefore merely seeks reimbursement of the costs which were incurred and borne in any case in the United Kingdom, there is no additional burden on the United Kingdom. The same would apply if Mr O'Flynn were to claim a funeral payment in the amount of the cost of a simple funeral in the United Kingdom (assuming of course that the costs he had actually incurred had at least reached that sum). [34]

34 — According to the United Kingdom, those costs currently amount to about £1 000 for a burial.

There would be an additional burden only if the United Kingdom had to pay *all* the costs of a funeral in another Member State — thus including all the costs of transport, for instance. Community law does not, however, require the United Kingdom to do so. A provision that the funeral payment to be made was limited to an amount corresponding to the costs which would have been incurred for a funeral in the United Kingdom would eliminate the infringement of Community law without burdening the United Kingdom with additional expense. Such a rule would also reduce or completely eliminate the difficulties which — as the United Kingdom observes — might arise from the verification of costs incurred in other Member States. It should be pointed out, moreover, that the present system already provides for such a ceiling in one aspect: as mentioned above, special expenses which arise from a requirement of the deceased's religious faith are paid for only up to £75. [35]

37. I will mention only in passing that the present system is in any case not altogether consistent. As the United Kingdom has conceded, a funeral payment is made in the case of a person who has lived in Northern Ireland but is buried in Ireland. Even if that special rule can be explained by evident political considerations, it shows that an extension of the social advantage at issue in the present case to cases in which the funeral takes place in another Member State does not appear inconceivable even to the United Kingdom.

C — Conclusion

38. The answer to the questions put by the Social Security Commissioner must therefore be that a national provision such as that at issue which makes a funeral payment conditional on the funeral taking place in the Member State concerned infringes the prohibition of discrimination on grounds of nationality laid down in Article 7(2) of Regulation No 1612/68.

35 — See point 5 above.