2. The concept of wage-earners or assimilated workers within the meaning of Regulation No 3 of the Council of the EEC covers those persons who, originally compulsorily affiliated to a social security system as 'workers', have subsequently, as such and in consideration of a possible resumption of their activity as workers, been admitted as beneficiaries of a voluntary insurance scheme under national law governed by principles analogous to those of the compulsory insurance.

3. In order to ascertain whether a person not currently a worker is nevertheless covered by the concept of 'wage-earner or assimilated worker', it is for the national court to appraise whether, in each instance, the opportunity to belong to the social security system has been given to the person concerned on the conditions and for the reasons set out in 2.

4. 'Wage earners or assimilated workers' in the situation envisaged by Article 19 (1) of Regulation No 3 of the Council of the EEC benefit from the rights conferred by that provision, whatever may be the reason for their temporary residence abroad.
This Article precludes any rule of national law from subjecting the grant of the benefits in question, in the case of such temporary residence, to conditions more onerous than those which would be applied if the person concerned had fallen ill while in the territory of the State to which the insurer belongs.

In Case 75/63

Reference to the Court under Article 177 of the EEC Treaty by the Centrale Raad van Beroep, the Netherlands court of last instance in social security matters, for a preliminary ruling in the action pending before that court between

MRS M. K. H. UNGER, THE WIFE OF R. HOEKSTRA, both residing at Woustraat 5, III Amsterdam, assisted by W. de Valk, Utrecht,

appellant,

and

BESTUUR DER BEDRIJFSVERENIGING VOOR DETAILHANDEL EN AMBACHTEN of Nijenoord 1 a, Utrecht, represented by its Legal Adviser, R. H. Van der Meer, Utrecht,

respondent,

on the following questions:

'How should this Treaty and the measures adopted in implementation thereof, especially the above Regulation (that is, Regulation No 3 of the Council concerning social security for migrant workers; Official Journal of 16 December 1958, pp. 561 et seq.), and in particular the said provision (that is, Article 19 (1) of Regulation No 3) be interpreted? And in particular

whether the concept of wage-earner or assimilated worker is defined by the legislation of the Member States or whether it has a supranational meaning? If so, what is that meaning, because a definition of the term is necessary to decide whether the said Article 19 (1) prevents the non-payment of the sickness expenses of persons who, according to the findings of the Netherlands court, are in the particular situation in which the applicant has been found to be?'

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 — Background and subject-matter of the dispute

The Netherlands court gives the following information:

By reason of her contract of employment with G. Vermeulen in Amsterdam, the appellant was compulsorily insured against illness in accordance with the relevant law (Ziektewet — Health Insurance Law). The Ziektewet forms part of the legislative provisions in the sphere of social security which, in respect of the Netherlands, are listed in Annex B to EEC Regulation No 3, to which Article 3 (1) of the Regulation refers. When this compulsory insurance expired, the appellant was afforded by the defendant as from 15 January 1962 the advantages of voluntary insurance provided for by that law. This provision was adopted on the basis of Article 64 (1) of the Ziektewet, which is worded as follows:

'By virtue of the provisions of this chapter or of provisions adopted or to be adopted under it, vocational associations are obliged, when the compulsory insurance contract of persons for whom they were until then responsible expires, to afford these persons, at their request, the advantages of an insurance continued on a voluntary basis. However, this obligation only exists when the persons in question carry on or will carry on in the future a trade or calling or an independent occupation or when it is reasonable to suppose that they will accept a new contract of employment should the opportunity arise.'

In the appellant's case, it was reasonable to suppose that after the birth of her child, which was expected in May 1962, she would accept a new contract of employment as soon as the opportunity

arose.
Then, for family reasons or, in any event, for reasons quite unconnected with the appellant's said intention to accept a new contract of employment or to carry on a trade or calling or an independent occupation, she was visiting her parents in Münster on 25 February 1962 where she fell ill and was unable to carry on any professional activity. Her state of health required immediate medical treatment. On 18 March 1962 she returned to the Netherlands where, in accordance with the Ziektewet, she claimed insurance payments in respect of her inability to work. By a decision of 18 April 1962, the respondent refused payment of the medical expenses incurred while the appellant had been in Germany, that is to say, from 25 February 1962 to 18 March 1962.
The Raad van Beroep (the social security court of first instance) of Amsterdam dismissed the appellant's claim at first instance as being without foundation. The appellant appealed against this decision to the Centrale Raad.
The respondent based its decision on Article 11 (2) (a) of the Regulation on the payment of sickness expenses: this provides that voluntarily insured persons have the right of payment of medical expenses incurred during temporary residence abroad only if that temporary residence abroad was authorized for the purpose of convalescence, in accordance with the conditions laid down in the provisions concerning supervision.
In the present case, no such authorization was given. For her part, the appellant states that the abovementioned provision does not apply in her case, basing her argument on Article 19 (1) of the abovementioned Regulation No 3.

II — Procedure

In accordance with Article 20 of the Statute of the Court of Justice of the European Economic Community, the order of reference was notified to the parties to the action, to the governments of the Member States, to the Commission and to the Council of Ministers of the EEC. The appellant, the Government of the Federal Republic of Germany and the Commission submitted their written observations within the prescribed period; they presented oral argument at the hearing on 28 November 1963.

The Advocate-General delivered his opinion at the hearing on 10 December 1963.

III — Observations of the parties to the proceedings

1. *The admissibility of the reference*

Only the *German Government* submits observations on this point.
The German Government replies in the affirmative to this question despite certain reservations which, according to it, arise from the fact that the questions are irrelevant to the judgment to be given by the Netherlands court.

If the applicant is not to be considered as a 'wage-earner or assimilated worker' within the meaning of Article 4 of Regulation No 3, the application should in any event be admitted pursuant to the Convention between Germany and the Netherlands of 29 March 1951 on social security (Bundesgesetzblatt, 1951, II, p. 222) because, in such a case, this Convention still applies to the applicant pursuant to Article 5 (a) of Regulation No 3. This Convention applies to all persons who come under a social security scheme, even voluntarily.

The Court, it is true, decided in the very first place by its judgment in Case 26/62 (Rec. 1963, pp. 7 et seq.) that the factors which motivated the national court in drawing up its question, together with the significance which the court attaches

to it within the framework of a case presently before it, fall outside the appraisal of the Court of Justice. There are, however, grounds for considering generally whether the Court should, if necessary, draw the attention of the Netherlands court to the fact that it has omitted to include essential points in its considerations.

2. *Questions put by the Netherlands court*

The *appellant* stresses in particular the following arguments:
As opposed to international treaties, Community Regulations do not limit themselves to coordinating the respective national laws but integrate them. Thus Regulation No 3 creates an independent European social law and contains specifically Community concepts. As the text of the Treaty establishing the European Economic Community shows, Article 51 deals with social security as an aspect of the freedom of movement of workers.
These principles have led the appellant to consider that the concept of 'wage-earner' in Article 4 (1) of Regulation No 3 'has its own European meaning determined by the requirements of the freedom of movement of workers' complementing the corresponding concepts of the national systems or, in their absence, taking their place.
The appellant belongs to the said group of persons formerly compulsorily insured, referred to in Article 64 (1) of the Ziektewet. The Raad van Beroep based its finding, in accordance with which the appellant is not 'assimilated' within the meaning of Regulation No 3, on the fact that in deciding the scope of this status the Ziektewet did not employ the 'legal fiction that a voluntarily insured person is considered as a wage-earner or assimilated worker within the meaning of the Ziektewet'; this purely formal point of view is untenable. The appellant was admitted to a scheme of voluntary insurance pursuant to Article 64 because it was to be supposed that once she was no longer incapacitated for work, she would have a new job. Consequently she retained her status as a worker, so that Article 19 (1) of Regulation No 3 applies to her and there are, on the contrary, no grounds for applying Article 11 (2) (a) of the rules of the respondent at present in force.
The argument of the Raad van Beroep, according to which a wage-earner within the meaning of Article 4 (1) of Regulation No 3 is a person who is a worker within the meaning of the corresponding national law, and an 'assimilated worker' is a person who has been assimilated by an authentic interpretation, is no longer accurate. The appellant refers to a series of social laws of the Netherlands which do not contain the criterion of 'wage-earner' and which nevertheless come under that provision in accordance with Annex B to Regulation No 3. This also shows that the concept of a wage-earner appearing in the Regulation has its own meaning.
The *German Government* considers 'that, if Regulation No 3 contains a single criterion of wage-earner or assimilated worker, it refers in large part to the national law on social security to determine its meaning'.
It submits the following observations in particular:
According to Article 4 (1) of Regulation No 3, this Regulation 'shall apply equally[1] to wage-earners or assimilated workers who are . . . subject to the legislation of one or more of the Member States' and who fulfil certain other conditions (nationality etc.). According to Article 1 (b) of the Regulation, taken in conjunction with Articles 2 and 3 of the Regulation and Annex B thereto, the term 'legislation' must be understood as referring to the legislation of the Mem-

1 — Translator's Note: The word 'equally' does not in fact occur in the text of the Regulation.

ber States on social security.

The double definition of 'wage-earner or assimilated worker' thus refers in part to national law. This reference relates primarily to the question who is 'assimilated', since assimilation presupposes a national legislative measure.

'The meaning of that formula must encompass the categories of persons who, in accordance with the law of a Member State, do not perhaps come within the concept of a wage-earner within the meaning of labour law but who are 'assimilated' to wage-earners in accordance with the rules of national law with regard to rights to social security, that is, those who are or were assured. It follows from this that it is not essential to make a distinction between a 'wage-earner' and an 'assimilated worker'. In short, a person who is or was in receipt of social security in a Member State comes within the double definition.'

The same conclusion would be reached, moreover, if another meaning were given to the concept of 'assimilated' (which is unknown in German law) by virtue of the provisions of other Member States, and if it were necessary also to define on this basis the concept of 'wage-earner'. Article 4 of Regulation No 3 also refers to wage-earners to whom these provisions were applicable, who were wage-earners in the past and who were thus assured as, for example, the holders of an allowance for sickness, retirement or unemployment. An interpretation excluding from the Regulation that category of persons primarily benefiting from social security would run contrary to the spirit of that Regulation. In addition Article 9 of the Regulation, which mentions voluntary insurance, indicates this.

In the case in question, this indicates 'that the appellant falls without any doubt within the concept of "wage-earner or assimilated worker" within the meaning of the Regulation', which she was consequently able to invoke. She fulfils the other condition of Article 19 (1) of the Regulation, that of being 'affiliated to an institution in one Member State' by taking voluntary insurance at the end of the contract of employment.

The *Commission of the European Economic Community* observes in particular that:

1. Regulations of the EEC have as their object the creation of a unified law in the Member States; it follows from this that the concepts which they contain are in principle invested with a Community character. This does not however prevent Community law from employing in exceptional circumstances concepts borrowed from national law, especially when it is concerned with adapting the application of national legislation to the rules of Community law.

2. *Ratione personae*, the relevant provisions of the Treaty (Articles 48 to 51) relate to wage-earners.

The principal object of these provisions is to ensure that each Member State guarantees the nationals of other Member States the same treatment as that guaranteed to its own nationals, including the application of the provisions in force relating to social security. On the other hand, it is not the intention of the Treaty to replace national legislation by other rules.

Consequently it is not the object either of the Treaty or of the provisions in implementation thereof to determine by a legislative Community measure who is a 'wage-earner'. On the contrary, in this respect they refer only to national legislation.

However Article 51 of the Treaty is designed to resolve as well as possible in the interests of the workers the questions arising as a consequence of the coexistence of the national legislation of the various States. The provisions adopted in execution of that Article are consequently designed to 'require recognition by the national legislation of each Member State of facts emanating from another legal system to extend the field

of application of such legislation for the needs of certain services throughout the Community, to create, if necessary, new and independent concepts . . .'.

3. However the Treaty does not authorize the Community to create a unified social law for all the Member States. Accordingly, it should not be assumed that there is a specifically Community definition of the legal concept of 'wage-earner'.

With regard to the concept of 'assimilated' to a wage-earner, two points must be clearly distinguished:

(a) National law gives no reply to the question what 'assimilation' is referred to by Regulation No 3 since national law does not recognize 'the legal status of the qualitative equality of other persons with wage-earners'. The answer to the question must accordingly be found by taking account of the objectives of the Regulation. According to the Regulation, there shall be considered as 'assimilated' to wage-earners those 'persons who, in the field of social security, are insured against one or more risks to life within the framework of the national systems organized for the benefit of wage-earners, no matter what legal form or terminology is used by national legislation to ensure that extension, or whether the affiliation is obligatory or voluntary. In particular . . . there shall be considered as assimilated within the meaning of Regulation No 3 those persons who have ceased to be wage-earners but who, by reason of their former status as wage-earners, may remain voluntarily insured against certain risks (in particular sickness and invalidity insurance) within the framework of the rules in force for wage-earners'.

(b) Moreover, the reply to the question whether, in a particular case, a person is 'assimilated' in this sense, depends exclusively on the appropriate national law. Regulation No 3 does not specify to the Member States what categories of self-employed persons must be provided with social insurance, voluntary or obligatory.

Grounds of judgment

A reference for a preliminary ruling under Article 177 of the EEC Treaty has been duly made to the Court by the Centrale Raad van Beroep.

1. The question put by that court requests the Court of Justice to rule, in the first place, whether the concept of a 'wage-earner or assimilated worker' as used in Article 19 (1) of Regulation No 3 is defined by the legislation of each Member State or by Community law as having a supranational meaning.

Regulation No 3 was adopted in application of Article 51 of the EEC Treaty, under the terms of which the Council 'shall . . . adopt such measures in the field of social security as are necessary to provide freedom of movement for workers', by making arrangements 'to this end' to secure for the persons concerned, among other advantages, '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 reply to the question put thus depends essentially upon the scope, whether Community or otherwise, of the provisions of the Treaty from which the concept of 'wage-earner or assimilated worker' in so far as they affect the field of social security, was drawn by the said Regulation.

Article 51 is included in the Chapter entitled 'Workers' and placed in Title III ('Free movement of persons, services and capital') of Part Two of the Treaty ('Foundations of the Community').

The establishment of as complete a freedom of movement for workers as possible, which thus forms part of the 'foundations' of the Community, therefore constitutes the principal objective of Article 51 and thereby conditions the interpretation of the regulations adopted in implementation of that Article.

Articles 48 to 51 of the Treaty, by the very fact of establishing freedom of movement for 'workers', have given Community scope to this term.

If the definition of this term were a matter within the competence of national law, it would therefore be possible for each Member State to modify the meaning of the concept of 'migrant worker' and to eliminate at will the protection afforded by the Treaty to certain categories of person.

Moreover nothing in Articles 48 to 51 of the Treaty leads to the conclusion that these provisions have left the definition of the term 'worker' to national legislation.

On the contrary, the fact that Article 48 (2) mentions certain elements of the concept of 'workers', such as employment and remuneration, shows that the Treaty attributes a Community meaning to that concept.

Articles 48 to 51 would therefore be deprived of all effect and the above-mentioned objectives of the Treaty would be frustrated if the meaning of such a term could be unilaterally fixed and modified by national law.

The concept of 'workers' in the said Articles does not therefore relate to national law, but to Community law.

The expression 'wage-earner or assimilated worker' used by Regulation No 3 has a meaning only within the framework and the limits of the concept of 'workers' provided for in the Treaty to the application of which this Regulation is limited.

The said expression, which is intended to clarify the concept of 'workers' for the purposes of Regulation No 3, has therefore, like that concept, a Community meaning.

Even if, for the sake of argument, the expression 'wage-earner or assimilated worker' appeared in the legislation of each of the Member States, it could not possibly have a comparable meaning and rôle, so that it is impossible to establish the meaning by reference to similar expressions which may appear in national legislation.

The concept of 'wage-earner or assimilated worker' has thus a Community meaning, referring to all those who, as such and under whatever description, are covered by the different national systems of social security.

2. The Centrale Raad requests the Court, in the second part of its question, and in the event that the expression in dispute should be given a Community meaning, to give a ruling on what that meaning is, because a definition of the term is necessary when deciding whether the aforementioned Article 19 (1) prevents the non-payment of sickness expenses to persons in a situation similar to that in this case.

It follows both from the Treaty and from Regulation No 3, that the protected 'worker' is not exclusively one who is currently employed.

Article 48 (3) of the Treaty also applies to persons likely 'to remain in the territory of a Member State after having been employed in that State . . .'.

Article 4 of Regulation No 3 mentions wage-earners or assimilated workers who are 'or have been' subject to the legislation of one or more of the Member States.

The Treaty and Regulation No 3 thus did not intend to restrict protection only to the worker in employment but tend logically to protect also the worker who, having left his job, is capable of taking another.

When national law offers to individuals who have been deprived of their employment the opportunity to adhere voluntarily to the social security system for wage-earners and such adherence has been proffered and accepted, this measure can be considered in certain circumstances as intending to protect the persons concerned in their capacity as 'workers' within the meaning of the Treaty and to confer on this protection the safeguards of Regulation No 3.

This applies if the abovementioned benefit is granted to the persons concerned on the grounds that they previously possessed the status of 'worker' and that they are capable of re-acquiring that status. Therefore, such persons may be considered as 'wage-earners or assimilated workers' within the meaning of Regulation No 3, there being no provision of this Regulation conflicting with this interpretation.

It is therefore for the national court, which alone is competent to interpret national law, to appraise whether, in each instance, the opportunity to belong to the social security system has been given to the person concerned because he has previously had the status of 'worker' and whether the affiliation has been maintained in consideration of a possible resumption of that work.

Any 'wage-earner or assimilated worker' in the position described in the afore-mentioned Article 19 (1) may claim the benefits referred to therein.

This provision does not contain any exception to the detriment of the persons concerned, in particular, as regards the ground of temporary residence abroad. It also precludes any national rules from subjecting the grant of the benefits in question, in the event of such residence, to more onerous conditions than those which would be applied if the person had fallen ill while in the territory of the State to which the insurer belongs.

3. The German Goverment raised the question whether, in any event, the German-Dutch Convention on social security of 29 March 1951 (Tractatenblad van het Koninkrijk der Nederlanden, 1951, No 57) should require actions such as that brought by the appellant to be upheld.

The Court is not entitled, within the framework of Article 177 of the EEC Treaty to interpret rules pertaining to national law.

4. The costs incurred by the Commission of the EEC and the German Government are not recoverable.

As these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the national court, the decision on 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 oral observations of the appellant in the main action, of the German Government and of the Commission of the EEC;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 48 to 51, 177 and 189 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, especially Articles 20 and 35;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69 (1);
Having regard to Regulation No 3 of the Council of the EEC concerning social security for migrant workers (Official Journal of the European Communities of 16 December 1958, pp. 561 et seq.), especially Article 19 (1);

THE COURT

in answer to the questions referred to it by the Centrale Raad van Beroep, by letter of the acting President of that court of 12 July 1963, hereby rules:

1. **The concept of 'wage-earner or assimilated worker' employed in Regulation No 3 of the Council of the EEC concerning social security for migrant workers (Official Journal of the European Communities of 16 December 1958, pp. 561 et seq.) has, like the term 'workers' in Articles 48 to 51, a Community meaning.**

2. **(a) This concept covers those persons who, originally compulsorily affiliated to a social security system as 'workers', have subsequently, as such and in consideration of a possible resumption of their activity as workers, been admitted as beneficiaries of a voluntary insurance scheme under national law governed by principles analogous to those of the compulsory insurance;**
(b) It is for the national court to appraise in each case whether this benefit has been granted to the persons concerned in the circumstance set out under (a).

3. **(a) 'Wage-earners or assimilated workers' in the situation envisaged by Article 19 (1) of Regulation No 3 benefit from the rights conferred by that provision, whatever may be the reason for their temporary residence abroad.**
(b) Article 19 (1) precludes any rule of national law from subjecting the grant of the benefits in question, in the case

of such temporary residence, to conditions more onerous than those which would be applied if the person concerned had fallen ill while in the territory of the State to which the insurer belongs.

4. It is for the national court to decide the question of the costs of the present case.

Donner Hammes Trabucchi
Delvaux Rossi Lecourt Strauß

Delivered in open court in Luxembourg on 19 March 1964.

H. J. Eversen
Assistant Registrar
For the Registrar

A. M. Donner
President

OPINION OF MR ADVOCATE-GENERAL LAGRANGE DELIVERED ON 10 DECEMBER 1963[1]

Mr President,
Members of the Court,

Once again a Netherlands court, the Centrale Raad van Beroep, a court of last instance against whose decisions there is no remedy under national law on matters of social security, refers a preliminary question to you under Article 177 of the EEC Treaty. The questions put relate to the interpretation of certain provisions of Regulation No 3 concerning social security for migrant workers, adopted in pursuance of Article 51 of the Treaty.

One procedural peculiarity should be noted. An appeal was made to the Centrale Raad van Beroep by Mrs Unger, who was a recipient of social security benefits, against a judgment by a court of first instance confirming the refusal of the competent agency to pay her sickness insurance benefit. This first judgment, which was carefully enough reasoned, dismissed in particular an argument of the appellant based on Articles 4 and 19 of Regulation No 3. The appeal court, in its judgment of 21 May 1963, limits itself to finding that a question of the interpretation of a Community regulation was raised and that therefore reference should be made to the Court of Justice of the European Communities under Article 177, but it has not put any question to this Court, merely charging its President to pass the file to this Court, and it is the President who, in a letter of 12 July 1963 addressed to the Registrar of the Court, sets out the factual and legal data of the case and formulates the question which, he says, 'the Centrale Raad considers itself obliged to refer to the Court of Justice of the European Communities'.

1 — Translated from the French.