OPINION OF MR ADVOCATE GENERAL MISCHO
delivered on 2 October 1990 *

Mr President,
Members of the Court,

1. The questions submitted by the Tribunal de travail, Brussels, concern proceedings brought by Mr Ibrahim Buhari against the Institut national d'assurances sociales pour travailleurs indépendents (National Social Insurance Institute for Self-employed Persons, hereinafter referred to as 'Inasti') concerning his entitlement to a self-employed person's retirement pension by virtue of his compulsory affiliation to a Belgian social security scheme from 1938 to 1960.

2. Born in Nigeria in 1914, Mr Buhari had British nationality until that country became independent in 1960, 13 years before the United Kingdom's accession to the EEC. Since then Mr Buhari has possessed Nigerian nationality.

3. In 1937 he settled in the Belgian Congo, which has since then become Zaire, and worked as a merchant there until 1986. He continues to reside there, although he is domiciled in Nigeria.

4. In 1986 Mr Buhari applied to Inasti for a self-employed person's retirement pension in respect of his activity in the Belgian Congo until 30 June 1960, the last day before that territory became independent.

5. His application was refused by Inasti on the grounds of his Nigerian nationality and his residence in Zaire.

6. The court making the reference informs us that it is undisputed that Mr Buhari is entitled to a retirement pension in respect of his activity in the former Belgian Congo for the period from 1 January 1938 to 30 June 1956. As regards the period from 1 July 1956 to 30 June 1960, the Tribunal de travail ordered resumption of the proceedings to enable the applicant to produce the evidence necessary to secure recognition of that period for the grant of a pension.

7. As far as actual payment of the pension is concerned, the Tribunal de travail adds that under Belgian legislation

(a) Mr Buhari's pension would be payable in Zaire or Nigeria if he were a Belgian or Community national;

(b) and, with his present nationality, his pension would be payable if he resided in the Kingdom of Belgium or in another Member State of the Community.

* Original language: French.

8. It was in those circumstances that the Tribunal de travail, Brussels, referred three questions to the Court for a preliminary ruling.

Preliminary observation

9. A close examination of the national court's judgment shows that its questions are designed solely to establish whether Community law includes a provision which requires Inasti to 'liquider' a pension, that is to say actually to pay a pension to which a former worker is undeniably entitled, notwithstanding the fact that the potential recipient possesses the nationality of a non-member country and resides in a non-member country. It would therefore be possible for the Court, after finding that that is in essence the purpose of the questions submitted, to confine itself to giving the ruling set forth below.

10. The relevant provision is the first subparagraph of Article 10(1) of 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[1] (hereinafter referred to as 'Regulation No 1408/71'). That article provides as follows:

'Save as otherwise provided in this regulation, invalidity, old-age or survivors' cash benefits, pensions for accidents at work or occupational diseases and death grants acquired under the legislation of one or more Member States shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated.'

It is apparent from the very wording of that provision that it is intended solely to ensure the payment of benefits payable to persons residing in the territory of a Member State other than that in which the institution responsible for payment is situated and not of those residing in non-member countries.

11. Even if he were a national of one of the 12 Member States of the Community, Mr Buhari could not rely on that provision in order to compel Inasti to pay him his pension into an account with a financial establishment located in Zaire or Nigeria. *A fortiori*, being a national of a non-member country, Mr Buhari cannot claim treatment more favourable than that which the Community legislation provides for Community nationals residing in a Member State. No question of discrimination can therefore arise.

12. In those circumstances, it is not even necessary to consider whether Regulation No 1408/71 applies to a person who had the nationality of a present Member State of the Community but lost that nationality before the accession of that State to the Community.

13. However, I should not like to go so far as to suggest that the Court should follow such a course. For my part, I cannot do otherwise than consider the possible applicability of all the various provisions of Community law referred to by the national court.

1 — This regulation was updated by Regulation (EEC) No 2001/83 (OJ 1983 L 230, p. 6) and has been amended since then on several occasions, most recently by Council Regulation (EEC) No 3427/89 of 30 October 1989 (OJ 1989 L 331, p. 1).

The first question

14. The first question is as follows:

'Does the payment by a Member State of a retirement pension (in the present case a self-employed person's pension) on account of an occupation (in the present case as a colonist) previously pursued "in a territory which at the time maintained special relations with that Member State" to a person who at the time was a national of a second State (which in the meantime has become a Member State) and is now a national of a non-member country whose territory at the time maintained special relations with the second State (which in the meantime has become a Member State) fall within the scope of Articles 1 to 4, the first subparagraph of Article 10(1) and Articles 44 to 51 of Council Regulation (EEC) No 1408/71 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 and subsequently Articles 35 to 59 of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71?'

15. Like the Commission, I consider that it is first necessary to decide whether a situation such as that of Mr Buhari falls within the scope of Regulation No 1408/71.

1. *The scope of the regulation*

16. Reference must first be made to Article 2(1) of the regulation, which is worded as follows:

'This regulation shall apply to employed or self-employed persons who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States or who are stateless persons or refugees residing within the territory of one of the Member States . . .'

17. As the Court pointed out in its judgment in *Belbouab*,[2] two conditions must be satisfied for that provision to apply, namely:

(i) a worker must be or have been subject to the legislation of one or more Member States;

(ii) the worker must be a national of one of the Member States.

(a) The concept of 'legislation of a Member State'

18. It is apparent from the national court's judgment that Mr Buhari is entitled to a Belgian self-employed person's retirement pension, by virtue *inter alia* of Royal Decree No 72 of 10 November 1967 on retirement and survivors' pensions for self-employed persons.

19. I share the Commission's view that 'there is no doubt that this Belgian law meets the definition of the term "legislation" contained in Article 1(j) of Regulation No 1408/71, namely the statutes, regulations and other provisions and all other implementing measures relating to the branches and schemes of social security

2 — Case 10/78 [1978] ECR 915.

covered by Article 4(1) and (2). Article 4, which concerns the matters covered by the regulation, expressly refers, in subparagraphs (c) and (d), to the branches of social security to which the Belgian legislation at issue relates'. The legislation in question is likewise not cited amongst the special schemes which are excluded, listed in Annex II, since under the heading 'Belgium' in that annex the words 'Does not apply' appear.

20. Finally, it is inappropriate to raise the objection, which has in the past been raised several times before the Court, that legislation that relates exclusively to periods of activity completed outside the European territory of the Member States cannot be regarded as 'legislation of a Member State' within the meaning of Article 2.

21. In its judgment in Case 87/76 *Bozzone* [1977] ECR 687, which concerned insurance periods completed by a worker of Italian nationality in the former Belgian Congo, the Court held that Article 10 of Regulation No 1408/71, and therefore that regulation as a whole,

'applies to the situation of a recipient of benefits guaranteed by the legislation of a Member State relating to employment exclusively in *a territory which at the time maintained special relations with a Member State* ...' (paragraph 21).

22. In its judgment in Joined Cases 82 and 103/86 *Laborero and Sabato* [1987] ECR 3401, which also related to insurance periods completed by Italian nationals in the Belgian Congo and Zaire, the Court stated that

'As the Court stated in its judgment of 23 October 1986 in Case 300/84 *Van Roosmalen* [1986] ECR 3097, the essential criterion for determining the scope of the term "legislation" is not the place in which the occupation was pursued *but the link which exists between the worker, regardless of the place in which he pursued or is pursuing his occupation,* and the social security scheme in a Member State under which he has completed periods of insurance.

Since the decisive criterion is the affiliation of an insured person to a social security scheme of a Member State, the fact that the insurance periods completed under that scheme were completed in non-member countries is unimportant' (paragraphs 24 and 25).

It must therefore be concluded that Mr Buhari was subject to the legislation of a Member State.

(b) The status of 'national of one of the Member States'

23. Article 2(1) of Regulation No 1408/71 refers secondly to workers 'who are nationals of one of the Member States'. A literal interpretation of that expression might give the impression that that status must in any event exist when the person concerned seeks to derive rights from Regulation No 1408/71. However, at the present time Mr Buhari is a national of a non-member country, Nigeria.

24. In the operative part of its judgment in *Belbouab, supra,* the Court declared, however, that

'Article 2(1) and Article 94(2) of Regulation No 1408/71, read in conjunction with one another, are to be interpreted as guaranteeing that all insurance periods and all periods of employment or residence completed under the legislation of a Member State before the entry into force of that regulation shall be taken into consideration for the purpose of determining entitlement to benefits in accordance with its provisions, *subject to the condition that the migrant worker was a national of one of the Member States when the periods were completed*'. [3]

25. It is true that Article 94 concerns only employed persons, but Regulation No 1408/71 includes a similar provision which covers the situation of self-employed persons, namely Article 95(2), whose present version, which has been applicable since 1 January 1986, is as follows:

'All insurance periods and, where appropriate, all periods of employment, of self-employment or of residence completed under the legislation of a Member State before 1 July 1982 or before the date of implementation of this regulation in the territory of that Member State shall be taken into consideration for the determination of rights acquired under this regulation'. [4]

26. In its written observations, the Commission concluded from all those factors that 'it may therefore be considered that the person concerned, a British subject when he completed the periods in question, is covered by the regulations'. At the hearing, however, the Commission vacillated considerably on this point.

27. For my part, although convinced that it would be unequitable for Mr Buhari to be deprived of his pension, I do not believe that he was a migrant worker who was a national of one of the Member States when he completed the insurance periods in question. In my opinion, his situation cannot be assimilated to that of Mr Belbouab.

28. Let us briefly recall the facts which led to the judgment in *Belbouab*, and compare them with those of the present case. Mr Belbouab was born in 1924 in Algeria, which was at that time a French territory. He worked in French mines from 29 March 1947 to 17 November 1950 and then from 6 June 1951 to 4 October 1960. In 1960 he established his residence in the Federal Republic of Germany to avoid possible political difficulties. He worked there from 26 May 1961 as a miner. In 1974, he applied for the pension granted by German legislation to miners who have attained the age of 50. Mr Belbouab possessed French nationality until Algeria became independent on 1 July 1962, He therefore possessed the nationality of a Member State after its entry into the Community, which in that case coincided with the establishment of the Community, and after he emigrated to Germany.

29. Mr Buhari, on the other hand, lost his British nationality in 1960, that is to say 13 years before the United Kingdom acceded to the Community.

3 — Emphasis added.

4 — Council Regulation (EEC) No 1305/89 of 11 May 1989 amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulations (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 1989 L 131, p. 1).

30. I consider therefore that the principle of legal certainty, on which the Court mainly relied in *Belbouab*, precludes the attribution to Mr Buhari of the status of 'national of one of the Member States'. In *Belbouab*, the Court declared that the second condition imposed by Article 2(1) must be interpreted so as to

'satisfy the principle of legal certainty, one of the requirements of which is that any factual situation should normally, in the absence of any contrary provision, be examined in the light of the legal rules existing at the time when the situation obtained'.

However, at no time during the period when Mr Buhari worked and paid his contributions under Belgian legislation was the United Kingdom a member of the Community. Mr Buhari thus never had the status of national of one of the Member States, merely that of a national of a non-member country.

31. The second observation called for is as follows. The judgment in *Belbouab* was delivered in the particular context of the aggregation of insurance periods completed in two different Member States. Accordingly, it was logical to take account of the nationality of the person concerned in the period when he completed insurance periods in France. At that time, Mr Belbouab was a French national and therefore an EEC national, whose situation was already covered by Community law. As regards the periods prior to the entry into force of Regulation No 1408/71, in particular those which antedated the establishment of the EEC, he was entitled to rely on Article 94 of that regulation.

32. Mr Buhari, on the other hand, was, as far as we know, subject to the legislation of only one Member State, Belgium. The fact that he moved from Nigeria to the Belgian Congo had no practical impact on the extent of his pension rights. Regulation No 1408/71 did not start to play a role in Mr Buhari's life until the problem arose of the 'exportation' of his pension from Belgium to Zaire.

33. In circumstances like those of the main proceedings, it would hardly be possible, therefore, to rely, in support of a broad interpretation of the term 'national of one of the Member States', on the fact that

'the provisions of Regulation No 1408/71, adopted to implement Article 51 of the Treaty, must be interpreted in the light of the objective of that article, which is to contribute to the establishment of the greatest possible freedom of movement for migrant workers'

or that

'the aim of Articles 48 and 51 would not be attained if, as a consequence of their exercise of the right to freedom of movement, workers were to lose the advantages in the field of social security guaranteed to them by the laws of a single Member State'.[5]

The issue in the present case is not really that of freedom of movement for migrant workers. It was not the Treaty that enabled

5 — See in particular the judgment in Case 43/86 *Bestuur van de Sociale Verzekeringsbank* v *De Rijke* [1987] ECR 3611.

Mr Buhari to move from Nigeria to the Belgian Congo. Moreover, neither before 1960, when he was a British citizen, nor subsequently, when he had become a citizen of Nigeria, did he have any right to settle in the territory of the Community (the Lomé Convention contains no provision to that effect).

34. Finally, Mr Buhari's situation is not, in my opinion, comparable to that of a British national who completed insurance periods in the Belgian Congo at the same time as Mr Buhari and retained his British nationality. Such a person would have become a Community national in 1973, just as the citizens of the founder States, including Mr Belbouab, did in 1958. In particular, he would have been entitled to rely on the transitional provisions of Articles 94 or 95 of Regulation No 1408/71, which allowed account to be taken of insurance periods completed prior to accession, for the purpose of aggregation of the periods completed in the Belgian Congo and those completed subsequently in the United Kingdom or in another Member State.

35. Mr Buhari, on the other hand, never changed from the status of 'British citizen' to that of 'British citizen and Community national'. If he had subsequently gone to work in the United Kingdom or Belgium he would not, because of his Nigerian nationality, have qualified for aggregation of his insurance periods under Community law.

36. For the rights acquired by people in circumstances like those of Mr Buhari to have been safeguarded by Community law, a special provision for their benefit would have had to be included in the Act of Accession of the United Kingdom.

37. Since, to the best of my knowledge, there was no such provision, that category of person is not among those covered by Regulation No 1408/71. Accordingly, it is unnecessary to examine the applicability of the other articles of Regulation No 1408/71 cited by the national court. However, in case the Court does not share my interpretation of Article 2(1), I should nevertheless like to consider those other articles.

38. However, my observations concerning Article 3 are more suited to the context of the second question which, like that article, is concerned with the principle of non-discrimination. As regards Article 10, on which I expressed my views at the beginning of this Opinion, I must revert to it briefly in the context of Article 51 of the Treaty. In relation to the first question, I need only say a few words concerning Articles 44 to 51 of Regulation No 1408/71 and Articles 35 to 59 of Council Regulation No 574/72 laying down the procedure for implementing Regulation No 1408/71.[6]

2. The possible applicability of Chapter 3 of Regulation No 1408/71 and of the corresponding chapter of Regulation No 574/72

39. Articles 44 to 51 make up Chapter 3 of Regulation No 1408/71, entitled 'Old age and death (pensions)'.

40. Article 44(1) provides that

6 — OJ, English Special Edition 1972 (I), p. 159, codified by Council Regulation No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 86).

'the rights to benefits of an employed or self-employed person who has been subject to the legislation of *two or more Member States*, or of his survivors, shall be determined in accordance with the provisions of *this chapter*'.

It is thus clear that Articles 44 to 51 of Regulation No 1408/71 are not relevant to the present case, since Mr Buhari was subject to the legislation of only one Member State, Belgium.

41. That applies also to Articles 35 to 59 of Regulation No 574/72 which lay down the procedure for implementing the abovementioned provisions of Regulation No 1408/71.

42. In view of the foregoing, I propose that the Court give the following answer to the first question:

'The situation of a recipient of social benefits guaranteed by the legislation of a Member State, in respect of an activity as a self-employed person pursued in a territory which at the time maintained special relations with a Member State, does not fall within the scope of Regulation No 1408/71 or Regulation No 574/72 where, during the period in question, the recipient was a national of a State which was not yet a member of the Community.'

The second question

43. The second question submitted by the Tribunal de travail, Brussels, is as follows:

'Does the refusal by a Member State to pay a social security benefit (in the present case, a self-employed person's retirement pension on account of a previous occupation as a colonist on the territory of its former colony) to a person residing "in a territory which at the time maintained special relations with that Member State" and domiciled in another territory — which also maintained at the time special relations with a second State (which in the meantime has become a Member State) and which has become a non-member country of which he now has the nationality — on the sole ground of his present nationality and residence constitute "discrimination on grounds of nationality" within the meaning of the first paragraph of Article 7, Article 48(2) and (3)(c) and (d), and Article 50(b) of the Treaty, whether or not it is direct or indirect or based on nationality by application of formally neutral criteria which nevertheless lead to the same result, namely the putting of non-nationals at a disadvantage owing to the existence of a disproportionate obstacle?'

44. The national court thus wishes to know, essentially, whether or not the refusal to pay a pension which is due, under the legislation of a Member State, to a person having the nationality of a non-member country and residing in another non-member country constitutes discrimination prohibited by the EEC Treaty.

45. It should be noted in the first place that the prohibition of all discrimination on grounds of nationality laid down in Article 7 of the Treaty is intended to protect only people having the nationality of a Member State of the Community, not nationals of other countries.

46. Furthermore, as the Court stated in its judgment in Case 1/78 *Kenny* [1978] ECR 1489,

'within the scope of application of Regulation No 1408/71 the first paragraph of Article 7 of the Treaty [has been] implemented by Article 48 of the Treaty and Article 3(1) of that regulation . . .' (paragraph 12, p. 1497).

47. According to Article 48:

'(1) Freedom of movement for workers shall be secured *within the Community* by the end of the transitional period at the latest.

(2) Such freedom of movement shall entail the abolition of any discrimination based on nationality *between workers of the Member States.*'

48. That article is thus concerned only with ensuring free movement within the Community. That issue has not arisen and does not arise in the present case. Moreover, Mr Buhari has never been and is not now an employed person, the only category of person covered by Article 48.

49. As regards self-employed persons, such as merchants (Mr Buhari's occupation), the principle of non-discrimination laid down in Article 7 was implemented by Article 52 of the Treaty, which provides that:

'restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period'.

50. Mr Buhari has not in the past sought to establish himself as a self-employed person in a Member State and does not wish to do so now, so that it is not even necessary to refer to the condition of nationality mentioned in that article.

51. Finally, Article 3 of Regulation No 1408/71 is worded as follows:

'Subject to the special provisions of this regulation, persons residing in the territory of one of the Member States to whom this regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State.'

However, Mr Buhari does not at present reside in the territory of a Member State. Consequently, that provision does not apply to him.

52. The national court also refers to Article 48(3)(c) and (d). However, since Mr Buhari has never been an employed person, those provisions cannot concern him. Moreover, the right to remain in the territory of a Member State (paragraph (d)) can operate only in favour of a person who previously resided lawfully in a Member State. Furthermore, as regards the right to stay in a Member State (paragraph (c)), Mr Buhari made it clear at the hearing that even if he had that right, he would not establish his residence in the territory of the Community

since he could not accustom himself to living conditions in Europe.

53. Finally, the Belgian court refers to Article 50(b) of the Treaty. This must be a clerical error, since that article contains only one sentence, which relates to exchanges of young workers.

54. On the other hand, Article 51(b) provides that the Council is to establish a system facilitating

'payment of benefits to persons resident in the territories of the Member States'.

The Council has complied with that direction by including Article 10(1) in Regulation No 1408/71. The Commission had proposed to the Council a waiver of the residence clause for recipients residing in a non-member country as well. The Council did not accept that proposal but merely prescribed that the benefits payable under the various social security schemes

'shall not be subject to any reduction, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated'.

55. By so doing, the Council certainly did not infringe Article 51(b) of the Treaty since the latter only imposes the requirement that payment of benefits be facilitated for persons residing in the territory of the Member States.

56. I therefore propose the following answer to the second question:

'Neither the principle of non-discrimination laid down in the first paragraph of Article 7 and Articles 48 and 52 of the Treaty and reiterated in Article 3(1) of Regulation No 1408/71, nor the waiver of residence clauses provided for in Article 51(b) of the Treaty and the first subparagraph of Article 10(2) of Regulation No 1408/71 is applicable where the recipient of the benefit does not reside in the territory of a Member State.'

The third question

57. By its third question, the national court asks:

'Are the wording and spirit of the abovementioned Community provisions compatible with the Belgian rules at present in force in Article 144(2) of the Royal Decree of 22 December 1967 (regulating retirement and survivors' pensions for self-employed persons), as amended by Article 24 of the Royal Decree of 17 July 1972 and Article 64(1) of the Royal Decree of 24 September 1984, or upon their restrictive interpretation given by the defendant?'

58. This question calls for two preliminary observations. The Tribunal de travail doubtlessly wished to ask whether the Belgian rules to which it refers are compatible with Community law, and not vice versa, since Community law takes precedence over national law.

59. Secondly, it must be borne in mind that in proceedings for a preliminary ruling under Article 177, the Court has no jurisdiction to rule on the compatibility of a provision of national law with Community law. The Court may, however, where an incorrectly worded question is submitted to it, identify the issue of Community law in terms which enable it to give a ruling,[7] so that it can

'provide the national court with the criteria enabling it to deal with the action before it, in particular as regards any incompatibility of national provisions with Community rules'.[8]

60. In the present case, the national court would like to know whether the Community law provisions must be interpreted as allowing a Member State to prescribe by legislation that a retirement pension for a self-employed person is 'payable *abroad*' only to recipients

'residing in the territory of a country where an employed person's pension could be paid under a reciprocity agreement'.

61. Like the Commission, I consider that, in so far as the word 'abroad' does not refer to the other Member States of the Community but only non-member countries, a provision of that kind is not incompatible with Community law.

7 — Judgment in Case 823/79 *Carciati* [1980] ECR 2773.

8 — Judgment in Case 38/77 *ENKA* v *Inspecteur der Invoerrechten en Accijnzen* [1977] ECR 2203.

62. In fact, it is apparent from the foregoing observations that, as Community law stands, it does not require the Member States to pay social security benefits to a person residing in a non-member country.

63. Consequently, my reply to the third question is as follows:

'As Community law stands at present, it does not preclude national legislation under which a retirement pension may not be paid to a person residing in a non-member country.'

64. However, it might be considered that the answer to the third question is already embodied in the answer suggested for the second question.

65. Having thus, unfortunately, had to come to the conclusion that Community law is of no help to Mr Buhari, I should nevertheless like to stress my conviction that a refusal to pay the pension to which Mr Buhari is entitled would run wholly counter to the requirements of equity. Like the Commission, I should like to emphasize that no provision of Community law prevents the Tribunal de travail from adopting a broad interpretation of national legislation, having regard in particular to the rules of international law mentioned in the order for reference, or by applying the principle of the protection of legitimate expectations. Indeed, Mr Buhari would be legitimately entitled to expect that the contributions paid by him would give rise to the payment of a pension, otherwise he would, if possible, have subscribed to a private old-age insurance scheme.

66. It is also surprising to find that in the *Bozzone* case cited earlier the Belgian Overseas Social Security Office wished to withhold payment of the plaintiff's pension in Italy, although it would have been willing to pay it if he had continued to reside in Zaire. It is true that in that case another administration and another law were involved; moreover, the person concerned possessed the nationality of a Member State. But it is difficult to see why all people who, regardless of nationality, worked and paid contributions in the former Belgian Congo should not be able to obtain payment of their pensions in Zaire, in so far as the general principle that acquired rights should be respected and the principle of the protection of legitimate expectations manifestly require such payment.

Conclusion

67. The answers which I suggest be given to the questions submitted by the Tribunal de travail, Brussels, may be summarized as follows:

'(1) The situation of a person entitled to social security benefits guaranteed by the legislation of a Member State, in respect of an activity as a self-employed person pursued in a territory which at the time maintained special relations with a Member State, is not covered by Regulations Nos 1408/71 and 574/72 where, during the period in question, the person concerned was a national of a State which was not yet a member of the Community.

(2) Neither the principle of non-discrimination laid down in the first paragraph of Article 7 and Articles 48 and 52 of the Treaty and reiterated in Article 3(1) of Regulation No 1408/71, nor the waiver of residence clauses provided for in Article 51(b) of the Treaty and the first subparagraph of Article 10(2) of Regulation No 1408/71 is applicable where the person entitled to the benefit does not reside in the territory of a Member State.

(3) As Community law stands at present, it does not preclude national legislation under which a retirement pension may not be paid to a person residing in a non-member country.'