schemes to employed persons and their families moving within the Community the authorities, institutions and tribunals of the Member States are bound, notwithstanding any provision of their national laws to a different or contrary effect, to accept all claims or other documents which relate to the implementation of the said regulation and which have been drawn up in an official language of another Member State and they are not allowed in this connexion to make any distinctions on grounds of nationality or residence between the persons concerned.

Kutscher Sørensen Bosco Donner Mertens de Wilmars

Pescatore Lord Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 6 December 1977.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL CAPOTORTI DELIVERED ON 16 NOVEMBER 1977 [1]

Mr President,
Members of the Court,

1. This case arises from a reference for a preliminary ruling by the Arbeidsrechtbank (Labour Tribunal), Antwerp, which seeks an interpretation under Article 177 of the EEC Treaty of Article 84 (4) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, which provides as follows: 'The authorities, institutions and tribunals of one Member State may not reject claims or other documents submitted to them on the grounds that they are written in an official language of another Member State'. The questions submitted by the Belgian court raise the problem of determining the range of persons covered by that provision.

In the proceedings which are pending before the Antwerp tribunal, a Belgian

1 — Translated from the Italian.

citizen is claiming that the national institution in Brussels responsible for employed persons' pensions should award her the old-age pension to which she is entitled under the Belgian insurance scheme. The plaintiff was employed as a worker first in Belgium, from 1937 to 1941 and from 1945 to 1947, in Germany from 1941 to 1945 and, finally, in the period from 1947 to 1975, in France, where she has resided ever since. On 11 October 1974 she submitted to the French organization responsible for investigating the facts of the case an application for the award of her pension, including that relating to the period of employment in Belgium. But the Belgian office responsible for taking a decision concerning the award of the pension requested for this latter period refused the application and this decision was notified to the applicant through the French organization. The plaintiff thereupon contested the decision rejecting the application before the Labour Tribunal, Antwerp, which had jurisdiction owing to the fact that, during the period of her employment in Belgium, the place at which she had been last domiciled was in the district of Antwerp.

Under Article 2 of the Belgian Law of 15 June 1935, concerning the use of languages in courts of law, the proceedings in all cases before the courts and tribunals of the province of Antwerp must be conducted in the Dutch language. By virtue of Article 40 of the Law and of Article 862 of the Code of Procedure, a Belgian court must automatically declare void any document in the case which is drawn up in a language other than that prescribed. In this case the plaintiff had worded her appeal in French and not in Dutch. However the Antwerp court wondered whether a national requirement of the type described should not be overridden by the aforesaid provision of Article 84 (4) of Regulation (EEC) No 1408/71 notwithstanding that the person relying upon it is a national of a State where the rules of procedure require a particular language to be used. The questions from the Belgian court are worded as follows:

'1. Whether the provisions of Article 84 (4) of Regulation (EEC) No 1408/71 take precedence over Article 2 and the first paragraph of Article 40 of the Law of 15 June 1935 on the use of languages in legal proceedings in respect of all persons to whom the regulation applies (Article 2);
2. More particularly whether the provisions of Article 84 (4) of Regulation (EEC) No 1408/71 also apply to claims lodged with a Belgian court by a person of Belgian nationality who is a person to whom the regulation applies (Article 2);
3. Whether in this respect it is in any way relevant for the application of Article 84 (4) of Regulation (EEC) No 1408/71 that the person concerned resides in Belgium or in another Member State at the time of lodging the claim with the Belgian court.'

2. There is, in my opinion, no doubt that the rule in Article 84 (4) referred to is directly applicable in that it prohibits the authorities of the Member States from rejecting a worker's application solely because it is drawn up in the language of another Member State; the counterpart of that prohibition is a subjective right on the part of the individual, whose interests are protected by the rule. It prevails therefore, in favour of those who *ratione personae* are covered by Regulation (EEC) No 1408/71, over any national rule whatsoever to the contrary relating to the use of languages in dealings with the authorities, especially in judicial proceedings.

Article 2 of the regulation, which defines the persons to whom it is to apply, lays down that it 'shall apply to workers 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 ...'

It is clear that the regulation contains no express provision designed to restrict the applicability of Article 84 (4) to particular categories of those persons who fall under the category of workers described in Article 2. In more general terms, it draws no distinctions and lays down no exceptions as regards the Member States against whom workers can assert the rights conferred on them by the regulation. There can be no doubt that, for example, a worker can invoke the provisions relating to the harmonization of national social security laws, which constitute the essential subject-matter of the regulation, even against the State of which he is a national.

Nevertheless the question arises whether, in the absence of explicit restrictive clauses, the conclusion I have suggested applies, and is vindicated, as regards each and every one of the provisions of the regulation. There may be room for reasonable doubt concerning a provision such as that in Article 84 (4), the whole purpose of which appears to be to assist workers who, because they move about within the Community, have to deal with authorities of States other than their own, with whose language they are presumably not sufficiently well acquainted. In the present case, the reason for the questions referred to the Court of Justice by the national court lies, as we have seen, in the fact that, although the applicant comes within the category of workers covered by the regulation (the Antwerp tribunal considers that there can be no doubt about this), she is a national of the State to whose authorities she has made an application drawn up in a language other than that prescribed by national law. The question to be considered therefore is whether, although the texts are silent, the provision in Article 84 (4) must be held not to apply as between workers and the authorities of their own State. In view of the fact that the main purpose of Article 84 (4) is to help migrant workers by removing the handicap of language differences, which is liable in practice to make it more expensive and difficult to safeguard their rights as against the authorities of the State to which they have emigrated, the conclusion may be drawn that there is no need to apply the provision when the worker is dealing with the authorities of his own State and is presumably familiar with its language. In other words, an interpretation based on practical criteria would tend to restrict the apparent scope of the Community regulation, at the expense of the worker.

3. However such an interpretation must I think be discarded, for three groups of reasons.

The first point to be made is that, if the main purpose of the provision in question is in fact to make it easier for migrant workers to deal with foreign authorities, this in no way precludes the possibility that, even in dealings between workers and the authorities of their State of origin, it may fulfil other useful purposes in connexion with the needs and circumstances associated with migratory movements within the Community. An example which comes to mind is the situation of a worker who resides in a Member State other than that to which he belongs and to whose authorities he applies, which is the situation of the plaintiff in the main action. He might encounter serious difficulties in drawing up the application in the language laid down by the authority concerned, even though the latter is an agency of his own State, either because, having perhaps been away from his country of origin for a long time, he finds it more natural and convenient to express himself in the language of the country to which he has transferred and where he works (which would be even more likely in the case of the children of a worker in such circumstances) or because he is a national of a multilingual State and may always have had only a nodding acquaintance with the language prescribed in a particular region of his country of origin, while possessing a thorough knowledge of the language of the State in which he resides.

In cases of this kind, the provision in question is undoubtedly a valuable means of safeguarding the rights of migrant workers in their relations with the authorities of the country of origin and thus continues to fulfil its essential purpose, which is to contribute to the effective realization of freedom for workers to move within the Community.

Secondly, it must be borne in mind that the general tendency of the Community system, in particular of its directly applicable rules, is to establish a uniform system for all its citizens. For this reason it must in principle be possible for the rights which the system confers on individuals to be asserted against all the Member States, including the State to which they belong. An application of Community law which varies according to nationality would in certain circumstances be liable to place the foreigner in a privileged position as compared with the national.

We can envisage circumstances similar to those in this case, for example, the case of a French worker who has held the same employment and gone to the same places as the applicant; she could certainly apply in French to the Antwerp court in order to claim her pension rights in connexion with work performed in that part of Belgium. A Belgian citizen would be subject to discrimination as regards Community law if she found herself in a situation which was substantially the same with respect to the circumstances which bring Regulation (EEC) No 1408/71 into operation (that is to say, she has been employed successively in Belgium and in France) and was not able to apply to the Antwerp court in the language which comes most easily to her.

This does not mean that Community law is unconcerned with nationality. On the contrary, it is clear that many Community provisions, among them those of the regulation at issue, make enjoyment of the rights conferred on individuals subject to the possession of the nationality of one of the Member States, that is to say, they have a field of application to individuals which is restricted at least in principle on the basis of nationality. But, in terms of the Community legal order, nationality cannot in my view be allowed to act as a ground for restricting the rights of individuals by excluding or stultifying those rights as against the State to which the person belongs.

Finally, there is a third group of reasons for rejecting the restrictive interpretation of Article 84 (4) to which I referred earlier. We must not lose sight of the fact that, in the interpretation of Community rules designed to secure workers' freedom of movement, the Court has shown what can best be described as a 'social' tendency marked by the choice, in case of doubt, of the most favourable interpretation for the worker. On this basis, which constitutes one of the most firmly established in its case-law, the Court has shown no reluctance to give a wide interpretation to those Community rules which benefit migrant workers, even when the consequence is to place them at an advantage compared with workers who spend the whole of their working life in one State (see the judgment of 10 November 1971 in Case 27/71, *Keller* [1971] ECR 885, especially at p. 891).

In my view, it would ill accord with this tendency, which has on many occasions resulted in widening, to the advantage of migrant workers and members of their families, the literal meaning of Community legislation, if we were now to interpret Article 84 (4) of Regulation (EEC) No 1408/71 without regard to the literal meaning of Article 2, which designates the persons to whom the regulation applies, and, as a result of a narrow concept of the purpose of Article 84 (4), to draw the conclusion that it is not applicable to relationships between migrant workers and the authorities of the State of which they are nationals.

I have no desire to underestimate the delicate nature of the language problem for many States, including more than one member country of the Community. However I do not think there is any real or serious risk of abuse of the Community rule in the sense that, in his dealings with the authorities of his own State, a migrant worker might find it easy to abuse the right accorded to him to employ one of the languages of the Community in place of the language laid down by the law of his own country. A worker who makes an application to a public authority usually has an interest in receiving the reply he has asked for and accordingly will prefer to avoid complications and delays in translation, not to mention unwarranted refusals. It can therefore reasonably be expected that it will only be in a case of real difficulty that the worker will address himself to an administrative or judicial authority in a language other than that employed by the authority in accordance with its own law. It is therefore likely that the application of Article 84 (4) will remain very intermittent as between the States and their nationals. Furthermore, as regards the practical difficulties which may be created for the State authorities by the receipt of applications or documents in foreign languages, it must be borne in mind that Article 81 (b) of Regulation (EEC) No 1408/71 confers on those authorities the right to ask the Administrative Commission provided for under Article 80 *et seq.* to carry out any necessary translations of documents relating to the implementation of the regulation.

In my opinion therefore there is no valid ground, either in theory or in practice, for denying that the rule in question applies in dealings with the State of which the worker is a nationl.

4. Having said this I nevertheless regard it as necessary to ask what the outcome would be of acceptance of the suggestion that the right conferred by Article 84 (4) should be construed more narrowly in order to avoid opening the door to an abuse of it.

I think it is quite out of the question to recognize the national authorities as having the power to deny the right in question in individual cases where, on the basis of a necessarily subjective assessment of the circumstances of each worker, they consider the use of a language other than that prescribed under national legislation to be unwarrented having regard to the objectives of the Community regulation.

The principles of the certainty of Community law and of the uniformity of its application in all the Member States certainly do not allow the national authorities to judge in what way the rule in question should be applied to their fellow-citizens. And an application of Article 84 (4) which differentiates between one case and another cannot be permitted in face of a legislative instrument to which such distinctions are unknown. At the same time it would be a very difficult task to identify objective criteria for a full and exhaustive definition of the concept of abuse in relation to Article 84 (4).

Finally, if the Court did not wish to deny itself the opportunity of restricting the field of application of the provision in question to the extent necessary to prevent abuses, it could *for the moment* content itself with supplying principles of interpretation capable of determining the scope of the provision in relation to situations such as those which exist in this case. In general terms, such situations may be regarded as distinguished by the fact that, at the time when the application is submitted to the authorities of a worker's country of origin, he continues to reside in the territory of the other Member State in which he was last employed. I have already pointed out that, especially in cases of that kind, to hold that Article 84 (4) does not apply may often create

serious problems for the migrant worker. In consequence, in such cases, there can be no doubt that it is in keeping with the 'spirit' of the said provision to recognize that the worker may use the language of the State where he is resident even in dealings with the public authorities of his own country.

5. For the foregoing reasons I suggest that the Court should reply to the questions of interpretation submitted for a preliminary ruling by the Labour Tribunal, Antwerp, under Article 177 of the EEC Treaty by ruling that the provision in Article 84 (4) of Regulation (EEC) No 1408/71 of the Council overrides any national provision to the contrary and confers on all workers and the members of their families who are *ratione personae* covered by the regulation, regardless of nationality or residence, the right to use any one of the official languages of the Member States in the preparation of applications or documents submitted to the relevant authorities.

Alternatively, if the Court were to prefer a reply which is more restricted in scope and limited to situations of which this case is typical, it might content itself with ruling that a worker resident in a Member State into which he has emigrated is entitled to claim the right under Article 84 (4) of the regulation in question to use the language of that State in the drawing up of applications or documents addressed to the authorities of the State of which he is a national.