JUDGMENT OF THE COURT
5 JULY 1967[1]

Teresa Pace (née Guerra)
v Institut National d'Assurance Maladie-Invalidité
(Reference for a preliminary ruling by the Belgian Conseil d'État)

Case 6/67

Summary

Free movement of persons — Migrant workers — Insurance — Languages — Authorities of Member States within the meaning of Article 45 (4) of Regulation No 3 — National courts to be included therein

The courts of a Member State having jurisdiction in social security matters are included amongst the authorities within the meaning of Article 45 (4) of Regulation No 3, which 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.

In Case 6/67

Reference to the Court of Justice under Article 177 of the EEC Treaty by IIIrd Chamber, Section d'Administration, of the Belgian Conseil d'État for a preliminary ruling in the action pending before that court between

TERESA PACE (NÉE GUERRA), widow of Pietro Pace, residing at Cascina Mortaio, Leno, Brescia (Italy),

plaintiff,

and

INSTITUT NATIONAL D'ASSURANCE MALADIE-INVALIDITÉ, 211 avenue de Tervueren, Brussels 15.

defendant,

THE COURT

composed of: A. Trabucchi, President of Chamber, President, R. Monaco, President of Chamber, A. M. Donner (Rapporteur), R. Lecourt and W. Strauß, Judges,

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

1 — Language of the Case: French.

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

By an application lodged on 13 January 1967, the *plaintiff* instituted proceedings before the Belgian Conseil d'État against the decision of the Commission d'Appel en Matière d'Assurance Obligatoire contre le Maladie et l'Invalidité (the Compulsory Health Insurance Appeals Committee) which, on 17 November 1966, had rejected her claim for a pension.

The said application was drawn up in Italian.

According to Article 26 (3) of the Belgian Law of 23 December 1964, as amended by the Law of 15 April 1958, concerning the establishment of a Conseil d'État, 'individuals may draw up their documents and declarations in the language of their choice', but this choice was restricted to one of the three languages in use in Belgium, French, Dutch and German.

Nevertheless Article 45 (4) of Regulation No 3 of the Council of the EEC provides that:

'The institutions and authorities of one Member State shall not reject claims, or other documents submitted to them, on the grounds that they are written in an official language of another Member State.'

In view of the fact that the said Regulation is binding on Belgium, under Articles 189 and 191 of the Treaty of Rome, the IIIrd Chamber of the Conseil d'État decided by an order of 27 January 1967 to submit the following preliminary question to the Court of Justice of the European Communities:

'Is the Conseil d'État to be considered as one of the institutions and authorities referred to in Article 45 of Regulation No 3?'

The request for a preliminary ruling addressed to the Court by the IIIrd Chamber was received at the Court Registry on 8 February 1967.

The written observations provided for by Article 20 of the Statute of the Court were submitted on:

— 31 March 1967 by the defendant,
— 12 April 1967 by the Belgian Government,
— 14 April 1967 by the Commission of the EEC.

At the hearing on 1 June 1967 the Commission of the EEC referred to its written statement.

The Advocate-General delivered his reasoned oral opinion at the hearing on 13 June 1967.

II — Observations submitted under Article 20 of the Statute of the Court

The observations may be summarized as follows:

The *defendant* in the main action considers that an affirmative answer must be given to the question put.

Under the terms of Article 1 of Regulation No 3 the expression 'competent authority' shall mean in respect of each Member State the Minister, Ministers or other equivalent authority responsible for social security schemes; consequently this expression must be understood to refer to the executive authority in charge of the social security scheme; since in legal theory the Conseil d'État forms part of the executive, it must be considered to be included in the expression 'authorities'.

The defendant in the main action also draws attention to Article 43 (b) of

Regulation No 3, which requires the Administrative Commission to carry out all translations relating to the implementation of that Regulation at the request of the competent authorities and agencies of a Member State, and in particular translations of claims submitted by persons who may be entitled to benefit under the Regulation.

The *Belgian Government* is of the same opinion because, as the actual provisions of Regulation No 3 do not provide an express answer to the question put, the solution to the problem posed must be sought elsewhere.

(a) On 11 January 1966 the Commission of the EEC submitted to the Council a proposal for the regulation intended to replace Regulation No 3 then in force; Article 67 of the draft which would replace the present Article 45 (4) provides that: 'The authorities, institutions and *courts* of one Member State shall 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 Government wonders whether there is any point in maintaining now that the Conseil d'État may only have applications brought before it in one of the three languages used in Belgium, although this argument will be precluded in the near future.

(b) Regulation No 3 was substituted for Treaty provisions which already provided that migrant workers might use their own language in court proceedings.

Thus Article 31 of the Convention concerning social security concluded on 30 April 1948 by Belgium and Italy provided that persons entitled thereunder may apply to the agencies, authorities and courts of the contracting countries in one of the official languages of either of those countries.

Although Article 31 does not appear in Annex D to Regulation No 3, it may be considered that, since it made no reservation in the course of the drafting of Regulation No 3, Belgium thought that this Regulation did not constitute a retreat by comparison with the Convention of 30 April 1948 and that the spirit at least, if not the letter, of the latter was retained.

The *Commission of the EEC* bases its affirmative reply principally on the *ratio legis* of the Treaty and of the Regulations.

The question put is clearly whether courts are referred to by the expressions employed in Article 45 of the Regulation; it merely seeks the interpretation of the term 'authorities', since the term 'institution' is defined in Article 1 (e) of Regulation No 3 in such a way as to exclude its application to courts.

The Commission takes the view that a literal interpretation of the expression 'authorities' does not preclude an affirmative response; it puts forward the following arguments:

(a) Regulation No 3 does not expressly define the term 'authorities' and the definition of the term 'competent authority' given by Article 1 (d) of Regulation No 3 is not decisive in resolving whether or not the term 'authorities' is applicable to courts.

(b) Literally interpreted, the terms 'autorités', 'Behörden', 'autorità and 'autoriteiten' do not have identical scope in all the Community languages.

(c) The nature of the documents referred to by Article 45 (4) (claims) does not exclude the interpretation that 'authorities' include courts.

(d) Article 47 of Regulation No 3, which clearly refers to courts as well as to administrative authorities, speaks of 'an authority, institution or other agency of that State'. It is not impossible to find a certain difference between Articles 45 and 47 and to consider that courts are included having regard to the fact that in Article 47 the expression 'other agency' has been added to authorities and institutions; although this

argument does have some force, it must indeed be recognized that the expression in question is one which is rarely used to describe courts.

(e) The preparatory studies do not make it possible to conclude with certainty that the authors of the European Convention drawn up under the aegis of the ECSC intended to include courts in the scope of the provisions which were to become Article 45 (4).

It appears to emerge from the case-law of the Court that with regard to the interpretation of Regulations Nos 3 and 4 the literal meaning of the provisions is less important than an endeavour to arrive at an interpretation which conforms with the objectives of the Treaty (judgment in Case No 4/66, *Labots (née Hagenbeek)*); the decisive argument in favour of an affirmative reply to the question put to the Court must therefore be based on the fact that the clause concerning the use of the languages of the contracting parties, even in relationships between individuals and the courts, has become the accepted style in international conventions on social security.

Most of the bilateral Conventions concluded between the Member States contained such a clause which was worded as follows: 'Communications dealing with social security submitted under the present Convention to agencies, authorities and courts of one of the contracting parties shall be drawn up in one of the official languages of one or other of the contracting parties'.

Community regulations replaced the said Conventions under Article 5 (a) of Regulation No 3; Article 6 (2) of the said Regulation allowed the Member States to continue to apply the provisions of conventions previously concluded by registering them in Annex D to that Regulation. None of the clauses on the use of languages was registered in the Annex.

It is difficult to imagine that the Member States concerned intended to withdraw from the migrant workers the enjoyment of a right which had previously been available to them; such an intention would be contrary to the recitals which the Governments of the Member States included in the European Convention.

An interpretation based on the silence of the provisions would also be contrary to the views of the Court on the interpretation of Regulations Nos 3 and 4: 'In case of doubt, Articles 48 to 51 of the Treaty and measures taken in implementation thereof must be construed so as to avoid placing migrant workers in an unfavourable position, particularly with regard to social security' (judgment in Case 92/63, *Nonnenmacher*).

The Commission moreover notes that the conventions concluded by Member States with third countries often contain the clause on the use of languages. Community workers must not be placed in an unfavourable position in comparison with the advantages conferred in Community countries on migrant workers from third countries.

Grounds of judgment

When an application drawn up in Italian was brought before it, the Conseil d'État of the Kingdom of Belgium, considering that, according to the relevant rules of national law, only applications written in one of the Kingdom's three official languages are admissible, referred to the Court a preliminary question whether it is to be considered as one of the 'institutions and authorities',

which under Article 45 (4) of Regulation No 3, concerning social security for migrant workers, adopted by the Council of the EEC on 25 September 1958, are precluded from rejecting claims, or other documents submitted to them, on the grounds that they are written in an official language of another Member State. The question therefore turns essentially on whether courts must be included amongst the 'institutions and authorities' within the meaning of the said Article 45.

In defining the various terms for the purposes of the implementation of the said Regulation, Article 1 thereof defines the terms 'institution' and 'competent institution' but only gives a definition for the term 'competent authority' and does not give one for the expression 'authority'. It is clear from the said definitions that courts cannot be considered as institutions or competent institutions or as competent authorities within the special meaning of the said Regulation. Since the term 'authorities' is not defined in the said Article 1, the content of the expression must be sought in the light of the context in which it is found.

Neither the term 'authorities' nor the corresponding terms used in the provisions of the Regulation in German, Italian or Dutch in principle preclude their application to judicial authorities. It must be considered first and foremost whether the obligation, which falls on the agencies entrusted with the daily application of legislation concerning social security, to admit claims written in the official language of another Member State also properly falls on the authorities entrusted with the judicial review of such application, since, according to the principles of legal protection in all the Member States, this review constitutes a necessary guarantee of administrative action.

Secondly, the bilateral conventions on social security which Regulation No 3 replaced normally included clauses on the use of languages requiring the courts of the contracting states to accept documents drawn up in the official languages of those states. There is nothing to indicate that when the Council and the Member States replaced those conventions by Regulation No 3, they intended to deprive migrant workers of a right previously accorded them.

This interpretation is in no way contradicted by Article 47 which provides that any claim, declaration or appeal which should have been submitted within a specified period to an authority, institution or other agency of that State shall be admissible if it is submitted within the same period to an authority, institution or other corresponding agency of another Member State. This provision also refers to courts, as is illustrated by the reference to appeals, but nothing proves that the said courts must be included amongst the other agencies re-

ferred to by the Article. On the other hand this expression is little used to describe judicial authorities and probably refers to widely different tribunals, so that the courts referred to by Article 47 must be included in the appellation 'authority' used by this provision, thus confirming that it was the intention of Article 45 to refer to courts by this term.

It follows from the foregoing that a proper interpretation of Article 45 (4) must include the competent national courts in social security matters amongst the authorities to which the provision refers.

Costs

The costs incurred by the Commission of the EEC and by the Government of the Kingdom of Belgium which have submitted observations to the Court are not recoverable. As the proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Belgian Conseil d'État, 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 Commission of the EEC;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the EEC, especially Article 177;
Having regard to the Protocol on the Statute of the Court of Justice of the EEC, especially Article 20;
Having regard to Regulation No 3 of the Council of the EEC concerning social security for migrant workers (Official Journal of 16 December 1958, p. 561 et seq.), especially Articles 1, 45 and 47;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the question referred to it for a preliminary ruling by the IIIrd Chamber, Section d'Administration, of the Belgian Conseil d'État, hereby rules:

1. **The courts of a Member State having jurisdiction in social security matters are included amongst the authorities within the meaning of Article 45 of Regulation No 3;**

2. The decision on costs in the present proceedings is a matter for the Belgian Conseil d'État.

Trabucchi Monaco

Donner Lecourt Strauß

Delivered in open court in Luxembourg on 5 July, 1967.

A. Van Houtte
Registrar

A. Trabucchi
President

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 13 JUNE 1967[1]

Mr President,
Members of the Court,

Mr Pace, an Italian, was employed in the Belgian collieries from 1946 to 1953 and subsequently returned to his country of origin where he worked in farming. After his death in 1965, the Commission de Réclamation (the Complaints Committee), and then the Commission d'Appel en Matière d'Assurance Sociale contre la Maladie et l'Invalidité (the Health Insurance Appeals Committee) refused to grant a pension to his widow Mrs Pace (née Guerra), because there was insufficient proof that the death of the person concerned was due to an occupational disease contracted in Belgium.

Mrs Pace, who resided in Brescia, lodged an appeal written in Italian with the Belgian Conseil d'État.

That court considered that, from the point of view of Belgian legislation alone, such an appeal was inadmissible as the Law of 23 December 1946, as amended by the Law of 15 April 1958 governing the use of languages before the Conseil d'État, restricts the choice of individuals to the three languages in use in the country, French, Dutch and German.

But Regulation No 3 of the Council concerning social security for migrant workers, which is binding in Belgium by virtue of Articles 189 and 191 of the Treaty of Rome, includes the following provision in Article 45 (4): 'The institutions and authorities of one Member State shall 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 Conseil d'État, in application of the third paragraph of Article 177 of the Treaty of Rome, refers the interpretation of this provision to you by an order of 27 January 1967. It asks you to give a ruling whether it must be included amongst 'the institutions and authorities' mentioned in Article 45 of Regulation No 3. Since, as the Conseil itself says, it functions in this case as a court, the question raises the more general point of whether the courts of the six Member States are included in the terms employed in Article 45. Of course

1 — Translated from the French.