JUDGMENT OF THE COURT
11 MARCH 1965[1]

'De Sociale Voorzorg' Mutual Insurance Fund v W. H. Bertholet[2]

(reference for a preliminary ruling by the Arrondissementsrechtbank, Maastricht)

Case 31/64

Summary

1. Freedom of movement for persons — Migrant workers — Regulation No. 3 of the Council of the EEC — Persons entitled to benefit — Absence of limitation
(Regulation No 3 of the Council of the EEC, Article 4)

2. Freedom of movement for persons — Migrant workers — Insurance — Benefits payable under the legislation of a Member State for injury suffered in the territory of another State — Right of institutions liable for payment of benefit with regard to a third party accountable for compensation — Application of the relative provisions
(Regulation No 3 of the Council of the EEC, Article 52)

1. It follows from the general wording of Article 4 (1) of Regulation No 3 that the application of this Regulation is limited neither to workers who have been employed in several States nor to workers who are or have been employed in one State while residing or having resided in another.
2. (a) The provisions of the first paragraph of Article 52 of Regulation No 3 of the Council of the EEC concerning social security for migrant workers are applicable even before a bilateral agreement, as referred to in the second paragraph of that Article, has been concluded between the Member States concerned, this paragraph being intended only to allow the States to settle among themselves any possible details concerning the application of the provisions in order to facilitate the adaptation of national law to the Community rules.

(b) These provisions are applicable where a worker who, under the legislation of one Member State, is in receipt of one of the benefits mentioned in Article 2 of Regulation No 3 in respect of an injury sustained in the territory of another Member State is entitled to claim compensation for that injury from a third party in the latter State's territory.

In Case 31/64

Reference to the Court under Article 177 of the EEC Treaty by the Arrondissementsrechtbank, Maastricht (Netherlands), for a preliminary ruling in the action pending before that court between

1 - Language of the Case: Dutch.
2 - CMLR.

'DE SOCIALE VOORZORG' MUTUAL INSURANCE FUND, Brussels,

plaintiff,

and

W. H. BERTHOLET, residing at Spekholzerheide, Parish of Kerkrade (Netherlands),

defendant,

on the interpretation of certain provisions of Regulation No 3 of the Council of the European Economic Community concerning social security for migrant workers (Official Journal of 16 December 1958, pp. 561 et seq.),

THE COURT

composed of: Ch. L. Hammes, President, A. M. Donner and R. Lecourt, Presidents of Chambers, L. Delvaux, A. Trabucchi, W. Strauß (Rapporteur) and R. Monaco, Judges,

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

gives the following

JUDGMENT

Issues of fact and of law

I — Questions submitted to the Court

1. By judgment of 28 May 1964 the Arrondissementsrechtbank, Maastricht, requested the Court to give a preliminary ruling on the following questions:

1. Must the first paragraph of Article 52 of Regulation No 3 concerning social security for migrant workers be regarded as applicable even before the entry into force, between the Member States concerned, of the bilateral agreement provided for in second paragraph of that Article?

2. Must the said first paragraph of Article 52 be regarded as applicable even in a case in which the residence of the worker and the place of his work are situated in the territory of the same Member State, in the present case Eupen and Kessenich, in Belgium, while, geographically, these two places are so situated that the usual route taken by the worker between his residence and his place of work and back crosses the territory of another Member State, in the present instance the Netherlands?

2. The Maastricht court regards the following facts as established:

— on 19 September 1959, a collision took place at Kerkrade (Netherlands) between a lorry driven by Mr Meijers who was employed by the defendant, the proprietor of the lorry, and a scooter which was carrying as a passenger Mr de Ronchi who was injured;

— the liability for this collision being that of Mr Meijers, the defendant is liable for the damage suffered by Mr de Ronchi;

— at the date of the accident Mr de Ronchi was employed by the firm Gerlach & Co. at Antwerp (hereinafter described as 'Gerlach'), which is engaged in transport and which had sent him to the frontier post at Kessenich (Belgium);

— Gerlach had insured the plaintiff against all the risks provided for by the Belgian legislation concerning compensation for damages resulting from accidents at work. Under the contract of insurance the plaintiff paid on behalf of Gerlach to de Ronchi a sum of 85 402 Belgian francs.

3. It appears from the file that before the Maastricht court the parties relied particularly upon the following submissions and arguments:

The *applicant,* 'De Sociale Voorzorg' Mutual Insurance Fund, states

— that under the Belgian legislation Gerlach was required to pay the above-mentioned amount to Mr de Ronchi, it being understood that, having done so, it was subrogated to the rights of the latter against the person responsible for the accident;

— that on the basis of this legislation the applicant, after paying the said amount on behalf of Gerlach, is subrogated in its turn to the rights in question;

— that in any event the alleged subrogation is laid down by Article 52 of Regulation No 3.

The *defendant,* Mr Bertholet, replies:

— that under Netherlands legislation there is no subrogation;

— that Article 52 is inapplicable in the present case for two reasons: on the one hand, an agreement such as that provided for in the last paragraph of that provision has not been drawn up between Belgium and the Netherlands; on the other hand, Mr de Ronchi is not a migrant worker.

The Maastricht court agrees with the defendant that the said subrogation cannot be inferred from Netherlands law, which is applicable according to the rules of private international law as the *lex loci delicti commissi;* this being so, the first question set out at 1 above must be asked.

As to the second question the Maastricht court considers:

— that in view of the facts set out in this question, Mr de Ronchi cannot be regarded as a migrant worker;

— that for the same reasons the person concerned cannot be regarded as a frontier worker within the meaning of Regulation No 36/63 of 2 April 1963 (Official Journal of 20 April 1963, p. 1314);

— that nevertheless it is necessary to ask whether it is proper to attribute a more general applicability to Article 52, in the sense that the latter may apply to cases such as the present one.

II — Procedure

The Commission of the EEC submitted written observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

The hearing took place on 1 December 1964.

The Advocate-General delivered his opinion on 17 December 1964.

III — Observations of the Commission of the EEC

The observations of the Commission may be summarized as follows:

1. As to the first question

A — *As a preliminary matter,* the Commission points out:

— that in Regulation No 3 Articles 51 and 52 are the only examples of new rules of law made by the Community legislature which rely for their application on classical bilateral conventions to be concluded in the future;

— that it is appropriate to recall that the said Regulation was first drafted as a classical international convention and that the provision in dispute was taken without alteration from the original draft;

— that the working documents are such that it is not possible to ascertain with precision the intention of the authors of the said provision; that it appears nevertheless that the last sentence of the provision is due only to a desire for caution; the draftsmen, not being experts in civil law, feared that the rules of Article 52 were not sufficient in themselves;

— that, however, it is now appropriate to consider whether this anxiety is justified.

B — *In favour of the immediate applicability of Article 52,* the following arguments may be put forward:

(a) In the absence of express provision for immediate applicability, such as exists for other provisions, this Article came into force together with the whole of Regulation No 3. It would thus be difficult to accept that the authors of the Regulation wanted to delay the coming into force of the said Article until the various successive dates on which the bilateral agreements were made. On examining the solutions adopted by the rules of the Member States for putting laws into effect, the Commission considers that the reference to measures taken in implementation could not lead to the suspension of the enforcement of Article 52 unless its putting into operation was impossible until the measures taken in implementation had been promulgated.
Such is not the case, the rule in question being sufficiently clear and complete not to require measures to be taken in implementation of it. This is corroborated by the bilateral agreements which have been concluded between certain Member States since the entry into force of Regulation No 3, and which have added nothing to Article 52; the agreement made between Germany and Luxembourg even declared expressly 'that the first and second sentences of Article 52 . . . shall be fully applicable without the agreement provided for by the third sentence being required'.
(b) Article 85 of Regulation No 4 of the Council of the EEC (Official Journal of 16 December 1958, pp. 597 et seq.), at least in the German version ('Treffen die zuständigen Behörden von Mitgliedstaaten zweiseitige Vereinbarungen zur Anwendung der Artikel 51 und 52 der Verordnung, so . . .'), suggests that in the minds of the authors bilateral agreements are not indispensable.
(c) The precautions taken by the authors of Article 52 might be explained by the fact that this provision was drafted at the same time as Article 51 which does not suffice by itself.

C — *Against immediate applicability,* it is possible to argue that:

(a) The German and Dutch versions of Article 52 seem to indicate that the rules of that Article *must* be stated:

(b) It does not appear to be open to dispute that at the time when the Article in question was drafted, and in the perspective of its insertion into a classical convention, its authors had the intention of deferring the applicability of Article 51 and 52, and thus of subordinating them to subsequent bilateral agreements;
(c) Four Member States have actually made bilateral agreements and, in so doing, have interpreted Article 52 so as not to make the rule set out in it immediately applicable.

D — *In conclusion,* the Commission is disposed to defend the argument favouring immediate enforceability, for two essential reasons:

(a) It appears hardly desirable that Community provisions should depend for their entry into force upon the goodwill of the States;
(b) It is equally undesirable that provisions of Community law should not be uniformly and simultaneously applicable throughout the Community and that private individuals on whom these provisions confer rights cannot exercise them equally in all the Member States.

2. As to the second question

A — This question does not require a reply unless the Court considers that the answer to the first question is in the affirmative.
B — In the present case it is certain that the worker concerned cannot be regarded as a frontier worker within the meaning of Regulation No 36/63 (cf. Article 23 of that Regulation).
C — It remains to be considered whether the field of application *ratione personae* of Regulation No 3 is limited to migrant workers *stricto sensu,* that is to say, to the worker who has been employed successively in more than one Member State or who works in one Member State whilst originating in another. The Commission considers that such is not the case and that it is proper to reply affirmatively to the second question from the Maastricht court.
(a) Article 4 of the Regulation gives a quite general definition to this field of application ('wage-earners or assimilated workers who are or have been subject to the legislation *of one* or more of the Member States').
(b) The competence conferred by Article 51 of the EEC Treaty upon the Council does not apply only to migrant workers *stricto sensu,* as is shown by the phrase 'such measures . . . as are necessary to provide freedom of movement for workers' and the words 'to this end' appearing in the first paragraph of that Article. On the other hand, the objects stated fit into the wider framework of the abolition of obstacles to freedom of movement for persons (Article 3 (c)). The territorial character of numerous provisions of national legal systems concerning social security appears among these obstacles.
(c) Article 48 (3) (b) of the Treaty, which deals with workers moving in search of employment, proves that the Treaty does not apply only to the migrant worker *stricto sensu.*
(d) The same tendency becomes apparent from the judgment of the Court in Case 75/63 (Hoekstra, née Unger, Rec. 1964, pp. 351 et seq.), where Regulation No 3 was declared applicable to a person who went to another Member State simply to stay with relations.
(e) Article 29 of the Regulation covers cases where the worker is the victim of an industrial accident in the territory of a Member State other than the State in which he is affiliated to an institution. In respect of industrial accidents, the legal systems also cover accidents en route. An accident giving a right to compensation may thus occur outside the territory of the competent State, even if the route to work goes outside its territory.

Grounds of judgment

The Court has been properly requested to give a preliminary ruling under Article 177 of the EEC Treaty by the Arrondissementsrechtbank, Maastricht.

I—On the first question

The Court is requested by the first question to rule whether the first paragraph of Article 52 of Regulation No 3 is applicable before the bilateral agreement referred in the second paragraph of that Article has been concluded between the Member States concerned.

The provisions of the first paragraph of Article 52 are worded in peremptory terms.

Moreover, the said paragraph, in providing that 'any claims by the institution liable for payment of benefit against such third party shall be governed by the following rules', refers only to subparagraphs (a) and (b). The provisions of this paragraph are clear and capable of direct application without difficulty.

In connexion with the foregoing it should be considered whether the second paragraph of Article 52, in providing that 'Implementation of these provisions shall be the subject of bilateral agreements' may result in a derogation from the first paragraph.

It does not appear at all from Article 52 considered in its entirely that it is intended to make the implementation of the rights created by it dependent on the conclusion of the said agreements or at the risk of creating discrimination, of making the date of the implementation of these rights vary at the discretion of each Member State.

Moreover, the rights conferred on the national social security institutions by virtue of the first paragraph of Article 52 constitute a logical and fair counterpart to the extension of the obligations of the said institutions throughout the entire Community as a result of the provisions of Regulation No 3.

The said first paragraph falls to be applied on the same basis and under the same conditions as those provisions.

The reason for the existence of the second paragraph lies in the caution of its authors who wished to allow the States to settle among themselves any possible details concerning the application of the provisions in order to facilitate the adaptation of national law to the Community rules.

Accordingly the first question asked by the Arrondissementsrechtbank, Maastricht, must be answered in the affirmative.

II — On the second question

By the second question the Court is requested to rule whether the first paragraph of Article 52 of Regulation No 3 is applicable where a traffic accident causing injury has occurred in the territory of a Member State which the injured worker whose residence and place of employment are both situated in the territory of another Member State must cross.

1. A restriction of the field of application of Article 52 *ratione personae* cannot be construed from the wording of the provision itself.

Indeed, according to the wording of that provision, it is only necessary for the person concerned to be 'in receipt of benefit under the legislation of one Member State, in respect of an injury sustained in the territory of another Member State' and to be 'entitled to claim compensation for that injury from a third party in the latter State's territory'.

There is no reason to restrict the application of Article 52.

By virtue of Article 4 (1), Regulation No 3 is applicable to 'wage-earners or assimilated workers who are or have been subject to the legislation of one or more of the Member States and are nationals of a Member State or are stateless persons or refugees permanently resident in the territory of a Member State, as also to the members of their families and their survivors'.

The general wording of this provision shows that the application of the Regulation is limited neither to workers who have been employed in several States nor to workers who are or have been employed in one State while residing or having resided in another.

The foregoing reasoning is confirmed by a series of specific provisions of Regulation No 3; in particular, Article 19 (1) which, as the Court has held previously, is applicable to workers who, for whatever reason, are temporarily resident in the territory of another Member State.

2. It should still be considered whether Article 52 is not inapplicable *ratione materiae,* for the reason that accidents occurring in the circumstances described by the Arrondissementsrechtbank, Maastricht, are not industrial accidents.

Article 52 applies where the injured party has received 'benefit' under the legislation of a Member State.

Article 1 (s) of Regulation No 3 gives a general definition of the term 'benefits'.

Article 2 (1) refers to a series of specific benefits, governed by national legislation, to which the Regulation applies should the occasion arise.

In these circumstances Article 52 must be regarded as being applicable, since under the legislation of a Member State the person in question has received benefit in accordance with one of the headings listed in Article 2 (1) mentioned above.

Consequently the second question asked by the Arrondissementsrechtbank, Maastricht, must be answered in the affirmative.

III — Costs

The costs incurred by the Commission of the EEC, which submitted its observations to the Court, are not recoverable and as these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Arrondissementsrechtbank, Maastricht, 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 and of the applicant;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to Regulation No 3 of the Council of the EEC concerning social security for migrant workers (Official Journal of 16 December 1958, pp. 561 et seq.);
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

in answer to the questions referred to it by the Arrondissementsrechtbank, Maastricht, by judgment of 28 May 1964, hereby rules:

1. **The provisions of the first paragraph of Article 52 of Regulation No 3 of the Council of the EEC concerning social security for migrant workers (Official Journal of 16 December 1958, pp. 561 et seq.) are applicable even before a bilateral agreement, as referred to in the second paragraph of that Article, has been concluded between the Member States concerned;**

2. **These provisions are applicable where a worker who, under the legislation of one Member State, is in receipt of one of the benefits mentioned in Article 2 of Regulation No 3 in respect of an injury sustained in the territory of another Member State is entitled to claim compensation for that injury from a third party in the latter State's territory;**

and holds:

3. **It is for the Arrondissementsrechtbank, Maastricht, to decide upon the costs of the present proceedings.**

Hammes Donner Lecourt

Delvaux Trabucchi Strauß Monaco

Delivered in open court in Luxembourg on 11 March 1965.

A. Van Houtte
Registrar

Ch. L. Hammes
President

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 17 DECEMBER 1964[1]

Mr President,
Members of the Court,

Despite the fact that the two cases 31/64 and 33/64 have not been joined, I ask leave to deliver an opinion common to both. Both cases were referred by Netherlands courts pursuant to Article 177 of the Treaty of Rome, and both cases raise as a main issue the question of the meaning and scope of Article 52 of Regulation No 3 of the Council concerning social security for migrant workers, as regards the right

1 – Translated from the French.