JUDGMENT OF THE COURT
7 MAY 1969[1]

Caisse Régionale de Sécurité Sociale du Nord de la France v Achille Torrekens[2]
(Reference for a preliminary ruling by the Cour de Cassation of France)

Case 28/68

Summary

1. *Procedure — Questions referred for preliminary ruling — Jurisdiction of the Court — Limits*
   (EEC Treaty, Article 177)

2. *Social security for migrant workers — Old-age and death pensions — Aggregation — Application of legislation mentioned in Annex B to Regulation No 3 including non-contributory schemes*
   (Regulation No 3, Article 27, Annex B)

3. *Social security for migrant workers — Regulation No 3 of the Council concerning social security for migrant workers — Conventions referred to in Article 6(2)(e) and in Annex D — Scope of Regulation No 3 — Interpretation of the said conventions*

1. The considerations which may have led the national court to choose the questions referred to the Court for a preliminary ruling as well as the relevance which it attaches to them in the proceedings pending before it cannot be examined by the Court.
   Article 177, which is based on a clear separation of functions between the national courts or tribunals and the Court of Justice, does not enable the the latter to rule on the application of the provisions of Community law.

2. The system of aggregation provided for by Article 27(1) of Regulation No 3 of the Council of the EEC concerning social security for migrant workers also applies to the legislation mentioned in Annex B, whether it establishes a contributory or non-contributory scheme.

3. It is clear from Article 6(2)(e) that Regulation No 3 is not intended to detract from the provisions of the conventions concluded before it entered into force. The regulation continues to apply to the extent to which these conventions do not impede its application.
   It is for the national court to decide what effect the conventions listed in Annex D have.

In Case 28/68

Reference to the Court under Article 177 of the EEC Treaty by the Cour de Cassation of France (Chambre sociale) for a preliminary ruling in the action pending before that court between

1 — Language of the Case: French.
2 — CMLR.

CAISSE RÉGIONALE DE SÉCURITÉ SOCIALE DU NORD DE LA FRANCE

and

ACHILLE TORREKENS, residing at 42 rue des Marins, Bray-Dunes (Nord),

on the interpretation of certain provisions of Regulation No 3 of the Council of the European Communities of 25 September 1958,

THE COURT

composed of: R. Lecourt, President, A. Trabucchi and J. Mertens de Wilmars, Presidents of Chambers, A. M. Donner, W. Strauß, R. Monaco (Rapporteur) and P. Pescatore, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

Mr Achille Torrekens, a Belgian national resident in France, applied to the Caisse régionale de sécurité sociale du nord de la France in 1962 for the allowance for aged wage-earners (l'allocation aux vieux travailleurs salariés (ATVS)), the payment of which is subject under French law to certain conditions, which include in particular the following:

— *nationality:* the claimant must be a French national;
— *duration of gainful employment in France:* either 15 years after the age of 50 or 25 years.

By its decision on 17 May 1962 the Caisse régionale dismissed the applicant's claim.

It based its decision on the fact that the applicant can only prove that he was employed in France for a period less than the 25 years' employment which must be completed in his case under Articles 614 and 616 of the Code de sécurité sociale (the social security code).

Mr Torrekens appealed against this decision to the Commission de première instance de sécurité sociale de Lille and argued that the years during which he had been employed in Belgium and his service in the Belgian army from 1914 to 1919 must be added to his years of employment in France.

Since pursuant to Article 27(3) of Regulation No 3 of the Council of the EEC the Belgian periods of employment could be *aggregated* with the French periods, the qualifying period of 25 years for the grant of the AVTS had in fact been completed.

By its decision of 13 November 1962 the Commission de première instance up-

held this argument and ordered the Caisse régionale to pay Mr Torrekens the disputed allowance pursuant to the said regulation.

The Caisse régionale appealed against this decision to the Cour d'Appel of Douai. This court in its judgment of 8 October 1963 ordered the parties to apply to the Administrative Commission on Social Security for Migrant Workers set up by Article 43 of Regulation No 3 for an interpretation of Head 3 of this regulation and Annex B thereto.

The Caisse régionale appealed to the Cour de Cassation, which by its judgment of 1 December 1965 annulled the decision of the Cour d'Appel of Douai and referred the dispute to the Cour d'Appel at Amiens.

The latter court in its judgment of 7 July 1966 upheld the decision of 13 November 1962 made by the Commission de première instance de sécurité sociale de Lille.

The Caisse régionale appealed against this judgment to the Cour de Cassation, which, sitting as a Chambre Sociale (Chamber for social security appeals) decided by a judgment of 24 October 1968 to stay the proceedings and, in conformity with Article 177 of the EEC Treaty, to refer the question of the interpretation of the 'beforementioned measures adopted by the institutions of the Community to the Court of Justice for a preliminary ruling'.

The order for reference for a preliminary ruling was filed at the Court Registry on 23 November 1968.

Written observations were lodged at the Court by the Caisse régionale de sécurité sociale du nord de la France and by the Commission on 3 February 1969, by Mr Torrekens on 5 February 1969 and by the Government of the French Republic on 22 February 1969.

After hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to open the oral procedure without any preparatory inquiry.

The oral submissions of Mr Achille Torrekens, the Commission of the European Communities and the Government of the French Republic were heard during the hearing on 25 March 1969.

The Advocate-General delivered his opinion during the hearing on 25 March 1969.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice

The written and oral observations submitted to the Court may be summarized as follows:

The jurisdiction of the Court

The *Commission* states that the Cour de Cassation has not expressly formulated the question which it wished to put before the Court of Justice. It takes the view, however, that in conformity with the principle repeatedly laid down by the Court the proper course to adopt is not to rely on a formalism incompatible with Article 177 of the Treaty and concludes that, having regard to the grounds of the judgment making the reference, the subject-matter of the disputed question can be defined as follows:

'The interpretation of Articles 1, 2, 3, 27 and 28 of Annexes B and D to Regulation No 3 and also of the Protocol of 17 January 1948 mentioned in Annex D, for the purpose of determining whether the system of aggregation provided for by Article 27 of Regulation No 3 can be applied for the purpose of acquiring the right to a non-contributory allowance of which one of the conditions for its grant fixed under the law of the Member State concerned is the completion of 25 years' gainful employment in this State.'

With regard to the Court's jurisdiction to interpret the Franco-Belgian Protocol it takes the view that the fact that its text is derived from a Convention is un-

important, since it is mentioned in and reproduced by Regulation No 3. Although Annex D does not reproduce all the provisions of this Protocol, the application of which is provided by Article 6(2) of the regulation, they 'form an integral part' of it by virtue of Article 50 thereof.

The *Government of the French Republic* also confirms the general nature of the question raised by the Cour de Cassation, and then points out that the Court of Justice cannot, in delimiting the content of the question referred to it, be drawn into applying rules of law to this particular case or decide as to the interpretation of French national law or the legality of national measures. Its powers, which derive from Article 177 and are defined by its own case-law, in fact enable it to give a preliminary ruling on the interpretation of the Treaty and on the validity and interpretation of acts of the institutions.

It goes on to say, however, that the Franco-Belgian Protocol of 17 January 1948 is one of the texts to be applied in this case. On the one hand it is clear that the Cour de Cassation did not intend to ask the Court to interpret it, so that a ruling on its meaning and scope would be *'ultra petita'*. On the other hand it must not be forgotten that it is a bilateral agreement which pre-dates the Treaty of Rome and is therefore neither a provision of the Treaty nor an act of a Community institution. Nor can this Protocol be regarded as an integral part of Regulation No 3 just because Annex D thereof refers expressly to it, because such an incorporation would conflict with Article 6(2) of this regulation, the object of which is precisely to exclude it from the scope of the regulation. In these circumstances it is clear that the Court of Justice does not have jurisdiction to determine either the scope or the meaning of the provisions of the Franco-Belgian Protocol of 1948. Nor does it have jurisdiction to determine the benefits which would accrue to Mr Torrekens from the application of this Protocol so as to be able to compare them with the benefits which could accrue to him from the application of Regulation No 3.

The French Government also points out that the Court of Justice does not have to interpret Article 177 itself in this case. In the grounds of its judgment the Cour de Cassation in fact states that it is appropriate to suspend its decision until the Court of Justice has given a preliminary ruling on the interpretation of 'the beforementioned acts of the institutions of the Community'. Article 177, however, is a provision of the Treaty and not an act of an institution of the Community. In any event, in so far as Article 177 is concerned, the Court of Justice would only be able to confirm that since the Cour d'Appel did not deliver its judgment as a court of first instance, it could ask for a preliminary ruling but was obliged to do so.

It therefore comes to the conclusion that Regulation No 3 is the only Community text which the Cour de Cassation intended to ask the Court to interpret. However, since this reference, which was drawn up in very wide terms, refers to this regulation as a whole and the Court cannot interpret the entire text in one preliminary ruling, the Court of Justice must declare that it has no jurisdiction and ask the court making the reference to state which provisions should be interpreted or determine itself the provisions whose interpretation may be relevant for the solution of the case.

If the Court decided to adopt the second alternative, it could come to the conclusion that it is bound to interpret Article 6 in conjunction with Annex D on the one hand and Articles 1, 2, 3, 27 and 28 as well as Annex B on the other hand.

The substance of the case

A — The *Caisse régionale de sécurité sociale* describes first of all in its observations the essential features of the AVTS

particularly in comparison with 'social insurance' benefits.

— The *allowance for aged wage-earners* is a benefit of a *fixed* amount, the payment of which is subject to the condition that the recipient has *inadequate means* and in certain circumstances can be recovered on death. It can only be paid to persons who are *not* entitled to a social insurance pension or to a pension under a special retirement pension scheme and is only granted to French nationals and to persons entitled thereto by virtue of an international convention. It is granted to persons who in certain circumstances and *on French territory* have been or are deemed to have been gainfully employed within the meaning of social security legislation. In addition years of employment after 31 December 1944 can only be taken into account (if they were already taken into account under social insurance legislation) provided that 'social insurance' contributions had been paid by employer and employee.

— On the other hand *social insurance* is a 'general' system of social welfare for wage-earners, which includes provisions for the *payment of contributions* and the grant of various kinds of benefits. The pension paid is a benefit, the amount of which is *proportionate* to the duration of the contribution periods and the amount of remuneration upon which contributions have been paid during the years preceding its payment; in the case of insured persons over 65 years of age it is made up to the amount of the AVTS, if it is lower. It is *not* subject to *a means test or to a condition prohibiting a plurality of benefits* and cannot be recovered from the deceased's estate. It is also granted for foreigners resident in France. Since 1949 the minimum annual qualifying remuneration has been the same for a pension and for the AVTS, contributions having to be paid in principle in both cases.

After this explanation the Caisse régionale examines the relationship between Regulation No 3 and the AVTS.

(a) It states that this regulation—which declares in Article 2 that it applies to old-age benefits—refers *inter alia* in Annex B thereof (so far as France is concerned) to the allowance for aged wage-earners. As a result Articles 1, 8, 43, 45, 46 and 47 of Regulation No 3 apply to the AVTS.

But apart from that the regulation in question does not in its opinion include any provisions implying that *aggregation* is to be applied to the AVTS. The reference to aggregation in the 'recitals' of the regulation is not to be regarded as a provision for this purpose, as this reference is intended to call attention to one of the objectives of the text of another authority which is to be reproduced elsewhere 'with the necessary modifications' —whereas:

— In the whole of Head 1 'General Provisions' aggregation is only provided for in one provision, Article 9, relating to the application of the conditions laid down in paragraph (2) to a particular insurance scheme without being in any way connected with the question of acquiring a right to benefits;
— Provision is made for aggregation in Articles 9, 16, 27, 32, 33, and 39 not in order to confirm this principle but to establish a new principle.

On the other hand there can be no question of Articles 27 and 28 applying to the AVTS, since:

— These articles provide for aggregation of 'insurance periods', that is to say, such periods as are defined and taken into account as such under the laws relating to a *contributory* scheme under which they have been completed. This is the meaning attributed to them in Article 1 which contrasts the expression 'insurance periods' with the expression 'periods of employment' used in Article 39 with reference to benefits (family allowances) which are not regarded as being within the scope of a scheme of social insurance. However, the AVTS is *not*

based on a system of contributions: this is the reason why it has been included in Annex E referred to in Article 10(2) of Regulation No 3 relating to contributions which are not paid abroad. The object of the laws which laid down the conditions for the grant of the AVTS, defined as a benefit supplementary to a social insurance pension, is not the future protection of persons who continued to be employed after their entry into force and they do not therefore create a 'scheme' of social welfare. Therefore the periods which those laws take into account are not 'insurance periods' but 'periods of employment'.

— Article 27 refers to the concept 'insured person'. This expression has been used on purpose: in the recitals and in the 'General Provisions' the regulation refers to 'wage-earners' or to 'persons'. However as is clear from the preceding considerations the laws relating to the AVTS do not apply to insured persons and do not refer to 'an insurable risk arising'.

(b) The Caisse régionale goes on to say that, on the contrary, Regulation No 3 excludes by implication aggregation for the purposes of the AVTS. On this point it must not be forgotten that by virtue of Articles 6(2)(e) and 10(2)— supplemented by Annexes D and E— when this allowance is granted under this regulation to persons who are not French it is subject to two important limitations arising out of the application of international agreements or protocols signed by France; it can only be granted if a minimum period of residence in France has been completed at the date of the claim and it cannot be paid outside France.

The effect of these restrictions is to limit considerably the free movement of persons which the EEC Treaty intends to establish by progressive stages. However, since 'aggregation' appears to be essential for the more effective guarantee of this freedom, it can be inferred from the preservation of these restrictions that it was not the intention of the authors of the regulation to extend the principle of aggregation to the AVTS. The Caisse régionale summarizes its position by asserting that the system of aggregation does not apply to the AVTS because:

— it is not one of the objects of the provisions of Regulation No 3 relating to this system;

— its grant or payment is subject to conditions opposed to the free movement of workers, a freedom which the system of aggregation is designed to guarantee.

B — The *Commission of the European Communities* also begins by describing the essential features of the AVTS. It stresses that this allowance:

— is a benefit of a *fixed amount;*

— is subject to certain conditions relating to age, means, nationality, residence and the duration of gainful employment in France;

— is a *non-contributory* benefit in the sense that its grant is not directly related to social insurance contributions paid by the claimant or his employer.

It goes on to say, however, that it must be borne in mind:

— that the AVTS is not financed by government or local authority funds but by social security funds which are provided solely by contributions;

— that, although the AVTS is linked to periods of gainful employment and not insurance periods, nevertheless social security contributions must have been paid in respect of some of the years of gainful employment.

Having expressed these views the Commission examines the three principal questions which in its view are raised by the reference to the Court.

(a) Whether Regulation No 3 applies to the AVTS

It submits that Regulation No 3 undoubtedly applies to the AVTS as it is

'an old-age benefit' within the meaning of Article 2(1)(c) and is expressly mentioned so far as France is concerned in Annexes B and E. Whether this allowance is contributory or not is unimportant so far as this question is concerned in view of what is said in Article 2(2). The distinction between contributory and non-contributory schemes of social security is moreover rather artificial, in particular in the case of legal systems which provide more than one source of funds and in which the relationship between contributions and benefits become less clearly defined. This is the reason why Regulation No 3 abandoned this distinction (on this point it is useful to examine the various draft European social security conventions prepared for the ECSC).

(b) Whether Article 27 of Regulation No 3 relating to 'aggregation' applies to the AVTS

The Commission first of all draws attention to one particular problem concerning the application of Article 27 of the regulation. The fact that insurance periods or periods of employment have been completed in another Member State is not sufficient for this article to be applied: it is also necessary to know whether these periods—as the regulation requires—have been 'completed in accordance with the laws of this State'.

It explains that the examination of this problem is not only of importance in order to determine whether the qualifying periods under the laws of the Member State for acquiring the right to benefit have been completed but also for the determination by proportional calculation of the amount to be paid to the claimant and gives for this purpose specific details which also apply to Mr Torrekens' case.

The Commission then proceeds to examine the problem of the application of Article 27 (1) of Regulation No 3 to the AVTS. In its view the fact that this article provides for aggregation of '*insurance* periods or assimilated periods', whereas the AVTS is conditional on the completion of a certain number of periods of *employment*, is not relevant to its interpretation. In fact in this regulation the expression 'insurance periods includes periods of contribution or employment' (Article 1(p)) and 'the expression assimilated periods means periods treated as insurance periods, or, where applicable, as periods or *employment* . . .' (Article 1(r)).

Moreover it is difficult to see that there is anything in the principal provisions of Regulation No 3 which would justify—as the Caisse régionale claims they do—the refusal to apply aggregation for the purpose of the acquisition of the right to the AVTS because the principle of aggregation is provided for in Article 51 of the Treaty and its importance has on many occasions been emphasized by the Court.

The Commission goes on to submit that the argument that Article 27 only provides for aggregation of insurance periods in the case of *old-age pensions* and excludes it in the case of *allowances* for aged wage-earners is based on an incorrect interpretation of this regulation, in particular of Head III, Chapter 3. The expression 'Pensions' in the heading of this Chapter is only used to distinguish its objectives from those of Chapter 5 which deals with 'death benefits', that is to say, 'benefits paid once only on death'. This is a standard distinction found in the majority of international conventions for the harmonization of national legislative systems. In addition it must not be forgotten that Chapter 3 only uses the expression 'benefit', an expression which Article 1 of the regulation makes clear is of general application. The Commission concludes its argument by repeating that the fact that the AVTS is a non-contributory scheme has no significance in this case. It calls attention to the arguments put forward elsewhere on this point and stresses in particular that there is nothing in Regulation No 3 to justify

any argument to the contrary. If the provisions of this regulation are followed the only conclusion that can be drawn is that the special features of the AVTS are not such as to exclude aggregation.

The Commission nevertheless raises the question whether the Protocol of 17 January 1948 mentioned in Annex D of this regulation can be an exception to this provision.

(c) Whether the provisions of the Franco-Belgian Protocol on 17 January 1948 mentioned in Annex D of Regulation No 3 contain an exception to Article 27

The Commission points out that the Protocol expressly lays down the special conditions of *residence* for Belgian nationals in order to modify the particular provisions of French law which reserve the grant of the AVTS to French nationals. In order to meet this requirement the Protocol re-establishes the principle of equality of treatment of the two beforementioned categories of workers. The question put by the Cour de Cassation does not relate to the said condition of residence. It has been raised with reference to the aggregation, not of years of residence but of insurance periods, because aggregation is a method whereby a beneficiary retains rights which he is in the course of acquiring which applies independently of his nationality. In fact even a French worker might, in order to fulfil the conditions for acquiring the right to the AVTS, need to have insurance periods completed under Belgian law taken into account, to the extent to which of course, and *this is the subject-matter of the dispute,* aggregation of periods completed in another State applies to this allowance.

The Commission goes on to say that the Caisse régionale answers the question in the negative its argument being that under the Protocol the AVTS is granted to Belgian workers under the provisions laid down for French workers under the law in force, which specifically provides as a condition for acquiring the right to this allowance that the requisite number of years have been completed in France. The Protocol is therefore said to exclude aggregation by referring to this French law which expressly excludes it.

Now such an argument might just hold good in the context of the General Social Security Convention of 17 January 1948 between France and Belgium, of which the Protocol is a continuation, but becomes unacceptable once this Protocol is mentioned in an annex which is an integral part of Regulation No 3 and this regulation on the one hand applies to the AVTS and on the other hand expressly provides for the principle of aggregation.

The Caisse régionale bases its argument on a mistaken understanding of the methods of coordination provided by Regulation No 3 which are based on the application of national laws. As soon as the laws of a specific Member State are applicable the person subject thereto must obviously comply with the conditions which they lay down. But these conditions must also be compatible with the provisions of Regulation No 3 which, by virtue of the precedence of Community law, override any national rule of law which conflicts with it. This is a fundamental principle to be applied in this matter and it is not adversely affected by Chapter 3 which provides for the application of several national laws.

By following the contrary argument the conclusion would be reached that the discriminatory provisions abolished by the regulation would be revived by means of the application of the national law containing these discriminatory provisions. In order to justify an exception to the precedence of Community law it would therefore be sufficient to provide for such an exception in the national law.

Moreover, adds the Commission, if the special nature of the AVTS had justified

an exception to the principle of aggregation, this exception would have been laid down in a provision of the regulation as was done in the case of the benefits enumerated in Article 10(2) and listed in Annex E to the regulation. In addition this exception would need to have been expressly stated, since, according to a rule of construction laid down by the Court, there can be no presumption in favour of restrictions on the principles laid down by the Treaty. However it is clear that for the reasons mentioned above the reference in the Protocol to French law cannot be interpreted as an express derogation from the principle of aggregation provided for in Article 27 of Regulation No 3.

The Commission concludes that the effect of the disputed provisions of this regulation is that:

— the periods defined as insurance periods or assimilated periods by the law of a Member State and completed under this law must be taken into account in order to determine the conditions for the period of gainful employment required by the law of another Member State for the grant of a benefit irrespective of: (a) the Member State in which these periods were completed, (b) the nature (contributory, non-contributory or in part contributory) of the scheme under which the benefit is granted and (c) the designation given to this benefit under the national law relating to the scheme in question.

— an exception to the rules enumerated by the principal provisions of Regulation No 3 cannot be inferred from the fact that an implementing provision of this regulation, for the purpose of determining the right of claimants, refers to the provisions of the applicable national law, on the ground that this law contains such an exception.

C — *Mr Torrekens* submits that the argument of the Caisse régionale that the scope of Chapter 3 of Regulation No 3 is limited to old-age pensions and does not therefore extend to the AVTS is contradicted by Annexes A and B of this regulation, which show that the authors of this regulation certainly intended to extend its scope—in the case of France—to 'allowances to aged wage-earners' (Annex B, France (g)).

D — For the *French Government* the problem in question comes down to the interpretation of Article 6 supplemented by Annex D and possibly of Articles 1, 2, 3, 27 and 28 and Annex B of Regulation No 3.

It draws attention to the wording of paragraph (2)(e) of Article 6 and to paragraph 3 of Annex D and concludes that these provisions clearly indicate that the rules for the grant of the AVTS to Belgian nationals who have worked in France are governed by the Franco-Belgian Protocol of 17 January 1948 notwithstanding the provisions of Regulation No 3. It states that it is impossible to apply the provisions of the said Protocol together with those of Regulation No 3 in order to arrive at the opposite argument.

Although in fact Article 6(1) of this regulation seems to assume that the provisions of the conventions or agreements to which it refers can be applied together with those in this regulation, with the object in particular of enabling workers, to whom they are applicable, to obtain benefits from a more favourable scheme than that contained in the regulation, paragraph (2) of this article provides on the other hand that 'the provisions of this regulation notwithstanding, the following provisions shall continue to apply . . .'.

The difference in the wording of these two paragraphs shows precisely that it was the express intention of the authors of the regulation that only the conventions referred to in paragraph (2) are applicable to the matters to which they refer.

The French Government's conclusion is as follows:

— it is the Franco-Belgian Protocol of 17 January 1948 which lays down the rules to be applied for the award to Belgian nationals who have worked in France of the French allowance to aged wage-earners;

— it is therefore unnecessary to interpret any other provision of Regulation No 3.

Grounds of judgment

1 By a judgment of 24 October 1968 which reached the Court Registry on 23 November the French Cour de Cassation (Chambre sociale) made a reference to the Court for a preliminary ruling under Article 177 of the EEC Treaty on the interpretation of various provisions of Regulation No 3.

2 It is clear from the grounds of the judgment that the request for interpretation deals essentially with the question whether Article 27 of the said regulation also applies to non-contributory social security schemes and whether the application of this regulation could be affected by the conventions referred to in Article 6(2)(e) thereof.

The jurisdiction of the Court

3 The Government of the French Republic points out that the Franco-Belgian Protocol of 17 January 1948 relating to the allowance to aged wage-earners is the only text applicable to the case.

4 It states that this follows from Article 6(2)(e) of Regulation No 3, a provision which refers to Annex D to this regulation in which the said Protocol is mentioned in paragraph 4 under the heading 'Belgium-France'.

5 It argues that it is therefore unnecessary to interpret any other provision of Regulation No 3.

6 It is, however, clear from the very wording of the judgment that the Court has not been asked to interpret the Franco-Belgian Protocol of 17 January 1948 which, moreover, it would have no power to do under Article 177.

7 Furthermore, the considerations which may have led the national court to choose the questions put as well as the relevance which it attaches to them in the proceedings pending before it cannot be examined by the Court.

8 Finally Article 177, which is based on a clear separation of functions between national courts or tribunals and the Court of Justice does not enable the latter to rule on the application of the provisions of Community law.

The substance of the case

9 The request for interpretation is directed first to the question whether Article 27 of Regulation No 3 also applies to non-contributory social security schemes.

10 Regulation No 3, made pursuant to Article 51 of the Treaty, must be interpreted in the context and within the bounds of this article and having regard to the fundamental principles which it lays down.

11 Paragraph (a) of the said Article 51, which is repeated in the fourth recital of the preamble to the regulation and in the light of which this regulation must be interpreted, provides that arrangements shall be made in the field of social security to secure for migrant workers 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.

12 Under Article 2(2) of Regulation No 3 the latter applies to 'all general and special social security schemes, whether contributory or non-contributory'.

13 Without making any further distinction Article 3 states that Annex B 'specifies, for each Member State, the social security legislation . . . to which the regulation applies'.

14 Annex B, entitled 'Legislation to which the Regulation applies' mentions in letter (g) of the heading 'France' the legislation relating to 'allowances to aged wage-earners'.

15 The effect of the definitions in Article 1(p) of the regulation cannot be to exclude from the field of application of the regulation non-contributory social security schemes.

16 This provision must in fact be read together with subparagraph (r) of the same article.

17 As this subparagraph gives a wide interpretation of 'assimilated periods' there is no reason why the periods referred to in such a non-contributory social security scheme should not be regarded as assimilated periods within the meaning of Article 27.

18 The system of aggregation provided for in Article 27(1) of Regulation No 3 therefore also applies to the legislation mentioned in Annex D whether it establishes contributory or non-contributory schemes.

[19] Article 6(2)(e) provides, 'the provisions of this regulation notwithstanding', that such other provisions of social security conventions as are listed in Annex D shall continue to apply.

[20] The said article makes it clear that the regulation is not intended to detract from the provisions of these conventions which were concluded before it entered into force.

[21] The regulation therefore continues to apply to the extent to which these conventions do not impede its application.

[22] It is for the national court to decide what effect the conventions listed in Annex D have, after taking into account the impact of Regulation No 3 and in particular Annex B thereof on national regulations.

Costs

[23] The costs incurred by the Government of the French Republic and by the Commission of the EEC which have submitted their observations to the Court are not recoverable.

Since these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the French Cour de Cassation, the decision as to 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 observation of Mr Torrekens, the plaintiff in the main action, the Government of the French Republic and the Commission of the EEC;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 48 to 51 and 177 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 Article 20;
Having regard to the Regulation No 3 of the Council concerning social security for migrant workers, especially Articles 1, 2, 3, 6, 27 and Annexes B and D thereto;
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 judgment of 24 October 1968 of the French Cour de Cassation (Chambre sociale), hereby rules:

The system of aggregation provided for by Article 27(1) of Regulation No 3 of the Council concerning social security for migrant workers also applies to the legislation mentioned in Annex B, whether it establishes a contributory or non-contributory scheme. The said regulation continues to apply to the extent to which the conventions mentioned in Annex D do not impede its application.

Lecourt Trabucchi Mertens de Wilmars

Donner Strauß Monaco Pescatore

Delivered in open court in Luxembourg on 7 May 1969.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 25 MARCH 1969[1]

Mr President,
Members of the Court,

The reference for a preliminary ruling which has to be considered today concerns the law relating to the social security for migrant workers. It arises out of the following facts.

Mr Achille Torrekens, a Belgian national resident in France, worked for a period of 14 years and 8 months in France. In 1962 he applied (presumably because he had reached the age limit) to the Caisse régionale de sécurité sociale du nord de la France for the allowance for aged wage-earners.

The object of this allowance, which was introduced in 1941, is to secure a minimum old-age pension for wage-earners whose working life does not give them a right to social insurance benefits under the scheme established in 1930. At the present time the main provisions of this scheme are set out in the Ordonnance of 2 February 1945. According to that Ordonnance the beneficiary must be a French national (except as otherwise provided in bilateral conventions such as the Franco-Belgian Protocol of 17 January 1948). His total income must not exceed a certain sum and he must have completed 15 years of gainful employment or—in a case such as this—25 years in France. If he satisfies these conditions he receives payment of a fixed sum which bears no relation to the duration of his gainful employment and the amount of his previous wages.

1 — Translated from the German.