2. Article 10 (1) of Regulation No 3 must be interpreted as meaning that the insurance institution of the competent Member State is not permitted to apply to invalidity benefits the principle of territoriality.

In Case 92/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Third Chamber of the Belgian Cour de Cassation [Court of Cassation] for a preliminary ruling in the action pending before that court between

ANTONIA CARACCIOLO (NÉE CAMERA), residing at 22 Via San Nicola, Arasi, Reggio Calabria, Italy,

appellant in cassation,

and

1. INSTITUT NATIONAL D'ASSURANCE MALADIE-INVALIDITÉ [National Sickness and Invalidity Insurance Institution], whose offices are at 211 Avenue de Tervuren, Brussels,

respondent in cassation,

2. UNION NATIONALE DES MUTUALITÉS SOCIALISTES [National Union of Socialist Mutual Associations] whose offices are at 32-38 Rue Saint-Jean, Brussels,

respondent in cassation,

on the interpretation of Regulation No 3 of the Council of the EEC of 25 September 1958 concerning social security for migrant workers and Regulation No 4 of the Council of the EEC of 3 December 1958 on implementing procedures and supplementary provisions in respect of Regulation No 3,

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, A. Chloros and F. Grévisse, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

Mrs Caracciolo worked in Belgium during 1964 and 1965. On 12 July 1965 she was found to be unfit to continue working and became eligible for primary disablement benefit.

At her request the medical officer of her insurance institution authorized her to stay in Italy from 15 November to 14 December 1965.

When summoned subsequently by her insurance institution to undergo a medical examination on 30 December 1965 she failed to appear and informed that institution that she had been declared fully recovered on 5 January 1966 by the Italian sickness insurance body responsible for such matters under the Belgo-Italian Administrative Arrangement of 1950. At the same time she asked the Belgian insurance institution to send her Form E 37 to enable her to draw sickness benefit in Italy pursuant to Article 22 (3) of Regulation No 4. She has received no allowances since then.

Mrs Caracciolo then challenged the validity of the notification sent to her of the decision terminating payment of the allowances in question and claimed that in any case the notification failed to indicate to her the methods of appeal which were open to her. She also claimed that she was unable to resume work.

On 31 January 1966 she submitted to the Italian sickness insurance institution (the Istituto Nazionale delle Previdenza Sociale) an application for an invalidity pension which was forwarded to the Belgian Institut National d'Assurance Maladie-Invalidité in accordance with Regulations No 3 and No 4.

Subsequently Mrs Caracciolo was found by the Conseil Médical de l'Invalidité [Medical Invalidity Committee] to be incapable of work within the meaning of the Belgian legislation (Article 56 (1) of the Law of 9 August 1963).

Her application of 31 January 1966 for an invalidity pension was, however, rejected by a decision of the Belgian insurance institution of 12 May 1969 on the ground that she had not, in her capacity as an insured person under Belgian law, invoked or exhausted her entitlement to sickness insurance cash benefits.

Mrs Caracciolo's complaint to the Tribunal du Travail [Labour Tribunal], Brussels, seeking to have the above-mentioned decision of the Belgian insurance institution overturned and to be granted an invalidity pension under

the Community regulations was rejected on 7 May 1976, as was her appeal by a judgment of the Cour du Travail [Labour Court], Brussels, of 24 November 1977.

The Cour du Travail decided that since Mrs Caracciolo ceased to be eligible for sickness and invalidity insurance benefits from 6 January 1966 her situation was no longer one of those covered by the Administrative Arrangement of 20 October 1950. The provisions of that instrument which govern in particular the procedure for declaring persons unfit for work remain in force as between Italy and Belgium by virtue of Article 6 (1) and (2) of Regulation No 4. As a result Mrs Caracciolo remained subject solely to Belgian law, according to which the insured person is obliged to notify the medical officer of the Belgian insurance institution of any fresh incapacity for work. After submitting her application to the Italian institution, however, the appellant did not make use of the procedure provided for by Belgian legislation. The Cour du Travail also held that in any case Article 70 (1) of the Law of 9 August 1963 which establishes the principle of territoriality prohibits the grant of sickness benefit:

"Where the claimant is not in fact on Belgian territory at the time when he claims the benefits or if health benefits were provided outside the national territory."

The Cour de Cassation, hearing the appeal, and before ruling on the two main claims before it, namely that (i) Article 10 (1) of Regulation No 3 precludes application of the principle of territoriality, and (ii) the Belgo-Italian Administrative Arrangement ceased to apply by virtue of Article 83 of Regulation No 4, referred the following three questions to the Court of Justice for a preliminary ruling:

"1. Where a worker in receipt of sickness and invalidity insurance benefits in cash in a Member State of the European Community, who has been authorized to stay in another Member State in order to receive treatment there, has remained in that other State after the expiry of the prescribed period and on conditions which are irregular under the legislation of the State of origin and under an administrative arrangement concluded between the two States which has remained applicable under Regulations Nos 3 and 4 concerning social security for migrant workers, must Article 83 of Regulation No 4 be interpreted to mean that that provision determines not only the date on which a declaration or an appeal shall be deemed to have been made to the authority, institution or agency competent to take cognizance thereof but also the validity of the claim when it is addressed to an authority, institution or agency of a Member State other than that of the State whose authority, institution or agency is competent to take cognizance thereof?

2. If the answer to that first question is in the affirmative, must that provision be interpreted to mean that a claim which is submitted in the circumstances which have just been related must be considered valid

although under the legislation of the State of the competent authority the claimant's residence in the other State was irregular?

3. Likewise, do the provisions of Article 10 (1) of Regulation No 3 concerning social security for migrant workers preclude the application by the insurance institution of the Member State of origin of the principle of the territoriality of benefits laid down by national legislation, in this case by Article 70 (1) of the Belgian Law of 9 August 1963?"

The order of 6 April 1981 referring the matter to the Court of Justice was lodged at the Court Registry on 16 April 1981.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on 29 June 1981 by the appellant in cassation, Mrs Caracciolo, represented by A. Bayart, Advocate at the Belgian Cour de Cassation; on 3 July 1981 by the Institut National d'Assurance Maladie-Invalidité, represented by A. Houtekier, likewise Advocate at the Cour de Cassation; and on 24 June 1981 by the Commission of the European Communities, represented by Jean Amphoux, acting as Agent, and G. Vandersanden, of the Brussels Bar.

By order of the Court of 26 October 1981 the case was assigned to the Second Chamber.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Second Chamber) decided to open the oral procedure without any preparatory enquiry.

II — Written observations submitted to the Court pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

1. The appellant in the main action, Mrs Caracciolo, maintains that on a literal interpretation of Article 83 of Regulation No 4 and the judgment of the Court of Justice in Case 108/75 *(Balsamo* v *INAMI)*, the first question must be answered in the affirmative.

As to the second question, the appellant observes that Article 83 of Regulation No 4 makes no exception for cases where the insured person is residing under irregular conditions in a Member State other than the State of the competent authority. Hence if the irregular absence is not for fraudulent motives and is simply the result of a lack of acquaintance with all the provisions applicable, as is the case here, it would be contrary to the spirit of the Community regulations on social security for migrant workers if the person concerned were deprived of the benefit of Article 83 of that regulation.

For the third question it is also suggested that the reply be in the affirmative, by analogy with the argument set out in relation to the reply to be given to the second question.

2. The Institut National d'Assurance Maladie-Invalidité, the respondent in the main action, sets out in its written observations an analysis of Article 83 of Regulation No 4 and Article 10 (1) of Regulation No 3.

The Belgian institution contends that Article 83 is not concerned with the question whether the application is in due form but solely with the date to be taken into consideration as the date of

submission of claims. The reply to the first question should therefore be in the negative.

The institution claims further that Mrs Caracciolo's situation is not covered by any provision in the Community regulations owing to the fact that the transfer of her residence to Italy was irregular. It notes that Mrs Caracciolo did not start working again after the Italian institution decided that she was fit for work and therefore she must have ceased to be qualified as an insured person under Belgian legislation while, moreover, she has not become an insured person under the Italian provisions. It also notes that in addition to this she at no time notified her insurance office of any fresh incapacity for work. Consequently in the opinion of the Belgian institution the effect which the appellant seeks to attribute to Article 83 of Regulation No 4 is in conflict with the other provisions in the Community regulations.

As to the scope of Article 10 (1) of Regulation No 3 the Belgian institution contends that application of that provision is excluded in matters concerning sickness insurance. The word "pensions" cannot be applied to sickness benefits. When she became unfit for work on 12 July 1965 Mrs Caracciolo was unable to claim benefits under the Belgian sickness insurance scheme. In January 1966 she was paid primary disablement benefit and, in the view of the Belgian insurance institution, she ought to have made a fresh claim for payment of such allowances in respect of any further incapacity for work occurring after the decision terminating the original incapacity. The Belgian institution therefore suggests that the reply to the third question should be in the negative.

3. In its introductory remarks the Commission concludes that Mrs Caracciolo's residence in Italy was irregular inasmuch as her stay there was not authorized by her Belgian insurance institution. In the Commission's view the crux of the question is therefore whether a claim for payment of sickness benefit in cash, or an appeal against a decision refusing such a claim, is admissible in the circumstances of the present case.

As to the interpretation of Article 83 of Regulation No 4 the Commission observes that that article lays down a rule the purpose of which is to facilitate from the administrative standpoint claims made by migrant workers. Its effects cannot extend beyond establishing the regularity of claims or complaints, inasmuch as submitting them to an institution in another Member State is considered equivalent to submitting them to the competent authority.

The Commission considers that the reply to be given to the first two questions calls for an interpretation of Article 19 (2) and (3) of Regulation No 3 because the Administrative Arrangement between Belgium and Italy, on the basis of which the first two questions were formulated, appears in Annex 6 to Regulation No 4 and is therefore to be substituted solely for the rules for implementing Article 19 of that regulation.

The Commission submits that Article 19 (2) makes continued eligibility for benefits, in kind or in cash, subject to an authorization from the competent institution. By analogy with the Court's ruling in *Pierik* (Case 117/77, judgment of 16 March 1978, [1978] ECR 825), the Commission concludes that the competent authority's power to refuse authorization is restricted by the purpose of the Community regulations itself which is to ensure that a worker may benefit from whatever care his condition requires in any Member State.

Therefore, in the Commission's opinion, it follows that in so far as checks on the beneficiary's incapacity for work may be carried out under the provisions adopted either at Community level or under the bilateral agreement, there is no longer any justification for requiring authorization; this conflicts with the principle laid down in Article 51 (b) of the EEC Treaty. To interpret Article 19 (2) of Regulation No 3 as requiring continued eligibility for cash benefits to be subject to authorization from the competent institution would prejudice the fundamental aim of the Treaty embodied in the social security system, which is to establish the most favourable conditions possible for achieving freedom of movement and employment for workers within the Community.

As to the third question, which concerns the interpretation of Article 10 (1) of Regulation No 3, the Commission is of the opinion that it is not applicable in the present case because the article concerns solely pensions and death benefits, whereas the difficulty raised in the present case concerns entitlement to sickness benefits in cash.

So far as may be relevant, the Commission considers that the purpose of the article in question is to provide protection against any adverse effects which may occur on a transfer of residence from one Member State to another. Hence, where national legislation makes the grant of benefits subject to a condition concerning residence, the fact that the claimant resides in the territory of another Member State cannot be a ground for altering, withdrawing or suspending any benefit.

The Commission concludes its observations as follows:

"The reply to the questions which have been put by the Court of Cassation depends solely in fact on the interpretation of Article 19 (2) and (6) of Regulation No 3. Those provisions guarantee continuance of the right to receive sickness benefits in cash for workers who are in the territory of a Member State other than the competent State provided that the conditions other than those concerning the presence of the claimant in the territory of the latter Member State are met and that he submits himself to the checks which are provided for in such a case.

The fact that a claimant has extended his stay beyond the period authorized by the competent institution cannot affect the validity of a claim to have his incapacity for work confirmed or a complaint seeking to have a decision declaring him fit for work revoked."

III — Oral procedure

At the sitting on 3 December 1981, oral argument was presented by the following: A. Houtekier, Advocate at the Cour de Cassation, for the Institut National d'Assurance Maladie-Invalidité; and J. Amphoux, acting as Agent, and G. Vandersanden, of the Brussels Bar, for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 28 January 1982.

Decision

1 By an order dated 6 April 1981, which was received at the Court on 16 April 1981, the Belgian Cour de Cassation [Court of Cassation] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Regulation No 3 of the Council of the EEC of 25 September 1958 concerning social security for migrant workers (Journal Officiel 1958, p. 561) and Regulation No 4 of the Council of the EEC of 3 December 1958 on implementing procedures and supplementary provisions in respect of Regulation No 3 (Journal Officiel 1958, p. 597). Those questions arose in the course of an appeal in cassation against a judgment of the Cour du Travail [Labour Court], Brussels, upholding the decision of the Tribunal du Travail [Labour Tribunal], Brussels, rejecting Mrs Caracciolo's claim for payment of an invalidity pension by the Institut National d'Assurance Maladie-Invalidité [National Sickness and Invalidity Insurance Institution] (hereinafter referred to as "the Belgian institution").

2 On 12 July 1965 Mrs Caracciolo, the appellant in cassation, was declared to be unfit for work in Belgium. On 9 November 1965, the medical officer of her insurance institution, the Union Nationale des Mutualités Socialistes [National Union of Socialist Mutual Associations] authorized her to stay in Italy for one month from 15 November to 14 December 1965. Not having returned to Belgium when that authorization expired, she failed to attend the medical examination ordered on 30 December 1965 by the medical officer of her insurance institution. As a result of an examination carried out on 5 January 1966 by the Istituto Nazionale della Previdenza Sociale [Italian National Social Welfare Institution] (hereinafter referred to as "the Italian institution"), which was competent by virtue of the Belgo-Italian Administrative Arrangement of 20 October 1950, she was declared fit to resume work and payment of her allowance was terminated on the same date. On 31 January 1966 she submitted an application for an invalidity pension to the Belgian institution through the intermediary of the Italian institution, in accordance with Regulations Nos 3 and 4. However, Mrs Caracciolo did not challenge the decision discontinuing payment of her allowance and did not claim that her incapacity for work was uninterrupted. On 26 November 1966 her invalidity was recognized in Italy. However, her application for an invalidity pension was rejected on 31 May 1968 by a decision of the Belgian institution, to which it had been sent, on the ground that the appellant had remained in Italy without the prior authorization of its consultant physician. That rejection was confirmed on 12 May 1969 on the fresh ground that the appellant had not, in her capacity as a person insured

under Belgian law, claimed or exhausted her entitlement to sickness insurance cash benefits, as provided for by the Belgian law of 9 August 1963.

3 The judgment of the Tribunal du Travail rejecting Mrs Caracciolo's claim was upheld on appeal by the Cour du Travail, Brussels, on the ground that she had been excluded from the benefit of sickness and invalidity insurance since 6 January 1966 and was therefore no longer in a situation covered by the Belgo-Italian Administrative Arrangement of 20 October 1950, which remained in force by virtue of Article 6 (1) and (2) of Regulation No 4 and governed the procedure for declaring persons unfit for work. As a result, according to the Cour du Travail, the appellant was subject exclusively to Belgian legislation at the time when she submitted her application for an invalidity pension to the Italian institution. Again according to the Cour du Travail and pursuant to the Belgian legislation, her application for an invalidity pension was irregular owing to the fact that she had not informed her insurance institution in Belgium of her fresh incapacity and, in any event, did not qualify for the disablement allowance under Article 70 (1) of the Belgian Law in question, which establishes the principle of territoriality in relation to health benefits.

4 In her appeal in cassation, Mrs Caracciolo claimed in particular that by virtue of Article 83 of Regulation No 4 the application for an invalidity pension which she submitted to the Italian institution and which included a declaration of incapacity was equivalent to a declaration made to the competent Belgian authority and that moreover the principle of territoriality had ceased to be applicable by reason of its incompatibility with the provisions of Article 10 (1) of Regulation No 3.

5 In order to resolve that problem, the Cour de Cassation referred to the Court for a preliminary ruling the following questions:

"1. Where a worker in receipt of sickness and invalidity insurance benefits in cash in a Member State of the European Community, who has been authorized to stay in another Member State in order to receive treatment there, has remained in that other State after the expiry of the prescribed period and on conditions which are irregular under the legislation of the State of origin and under an administrative arrangement concluded between the two States which has remained applicable under Regulations

Nos 3 and 4 concerning social security for migrant workers, must Article 83 of Regulation No 4 be interpreted to mean that that provision determines not only the date on which a declaration or an appeal shall be deemed to have been made to the authority, institution or agency competent to take cognizance thereof but also the validity of the claim when it is addressed to an authority, institution or agency of a Member State other than that of the State whose authority, institution or agency is competent to take cognizance thereof?

2. If the answer to that first question is in the affirmative, must that provision be interpreted to mean that a claim which is submitted in the circumstances which have just been related must be considered valid although under the legislation of the State of the competent authority the claimant's residence in the other State was irregular?

3. Likewise, do the provisions of Article 10 (1) of Regulation No 3 concerning social security for migrant workers preclude the application by the insurance institution of the Member State of origin of the principle of the territoriality of benefits laid down by national legislation, in this case by Article 70 (1) of the Belgian Law of 9 August 1963?"

The first and second questions

6 Article 83 of Regulation No 4, to which the first question submitted by the Cour de Cassation relates, provides that: "The date of submission of claims, declarations or appeals to an authority, institution or agency of another Member State shall be deemed to be the date of submission thereof to the competent authority, institution or agency."

7 It is clear from the wording of that provision that it concerns the submission of claims by migrant workers. Its objective is to simplify the administrative formalities which must be complied with by persons concerned in view of the complexity of the administrative procedures existing in the various Member States and to prevent persons concerned from being deprived of their rights

on purely formal grounds. Thus, by virtue of Article 83 of Regulation No 4, the submission of a claim to an authority, institution or agency of a Member State other than the State called upon to pay the benefit has the same effect as if that claim had been submitted direct to the competent authority of the latter State.

8 On the other hand, that article cannot be regarded as having a scope which, in addition to covering procedural questions, also extends to the substantive rules applicable in the matter.

9 The answer should therefore be that Article 83 of Regulation No 4 must be interpreted as meaning that the submission of a claim to an authority, institution or agency of a Member State other than the Member State called upon to pay the benefit has the same effect as if that claim had been submitted direct to the competent authority of the latter State. Moreover, such an interpretation is in keeping with the scheme of Regulation No 4 which, on that point, seeks simply to avoid the loss of rights by migrant workers owing to mere administrative formalities. It follows that Article 83 of Regulation No 4 does not concern the substantive rules applicable in the matter.

10 The fact that the residence of the person concerned in the State where she submitted her claim was irregular under the legislation of the State of the competent authority in no way affects the terms of the reply which has just been given.

The third question

11 By its third question the national court seeks to ascertain whether Article 10 (1) of Regulation No 3 precludes the application by the institution of the competent State, from which the benefit is claimed, of the principle of territoriality laid down by the national legislation of that State, that is to say, according to that court, by Article 70 (1) of the Belgian Law of 9 August 1963, which provides:

"Subject only to derogations laid down by the King, the benefits provided for by this Law shall not be granted where the claimant is not in fact on Belgian territory at the time when he claims the benefits or if health benefits were provided outside the national territory . . .".

12 According to Article 10 (1) of Regulation No 3 "Pensions or death benefits payable under the legislation of one or more Member States shall not suffer reduction, modification, suspension ... by reason of the fact that the beneficiary is permanently resident in the territory of a Member State other than that in which the institution liable for payment is situated."

13 Under Article 26 (1) of Regulation No 3 that provision is to apply *mutatis mutandis* to invalidity benefits.

14 As the Court has already stated in its case-law, *inter alia* in its judgment of 7 November 1973 in Case 51/73 *Bestuur der Sociale Verzekeringsbank* v *B. Smieja* [1973] ECR 1213, the aim of the provision contained in Article 10 is to promote the free movement of workers by insulating those concerned from the harmful consequences which might result when they transfer their residence from one Member State to another. It is clear from that principle not only that the person concerned retains the right to receive pensions and benefits acquired under the legislation of one or more Member States even after taking up residence in another Member State, but also that he may not be prevented from acquiring such a right merely because he does not reside in the territory of the State in which the institution responsible for payment is situated.

15 Moreover, it is appropriate to add that so far as sickness benefits are concerned this question is covered by Article 19 (2) of Regulation No 3, which provides for the retention of the right to sickness benefits for wage-earners or assimilated workers who transfer their permanent residence from one Member State to another but which expressly requires "the authorization of the competent institution, which shall take due account of the

reasons for the transfer". It should, however, be pointed out that that provision applies only to sickness benefits and not to invalidity benefits.

16 It follows from the foregoing considerations that Article 10 (1) of Regulation No 3 must be interpreted as meaning that the insurance institution of the State of origin is not permitted to apply to invalidity benefits the principle of territoriality to which the national court refers.

Costs

17 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

18 As these 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 national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Belgian Cour de Cassation by order of 6 April 1981, hereby rules:

1. **Article 83 of Regulation No 4 of the Council of the EEC of 3 December 1958 must be interpreted as meaning that the submission of a claim to an authority, institution or agency of a Member State other than the State called upon to pay the benefit has the same effect as if that claim had been submitted direct to the competent authority of the latter State.**

2. **The fact that the residence of the person concerned in the State where she submitted her claim was irregular under the legislation of**

the competent State in no way alters the fact that the submission of that claim has the same effect as if it had been submitted direct to the competent authority of the State of origin.

3. **Article 10 (1) of Regulation No 3 of the Council of the EEC of 25 September 1958 must be interpreted as meaning that the insurance institution of the State of origin is not permitted to apply to invalidity benefits the principle of territoriality to which the national court refers.**

Due Chloros Grévisse

Delivered in open court in Luxembourg on 10 June 1982.

For the Registrar

H. A. Rühl
Principal Administrator

O. Due
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 28 JANUARY 1982 [1]

Mr President,
Members of the Court,

1. Introduction

Mrs Caracciolo was declared unfit for work in Belgium on 12 July 1965. On 9 November of that year she was authorized by the medical officer of her insurance institution, the Union Nationale des Mutualités Socialistes [National Union of Socialist Mutual Associations], to stay in Italy from 15 November to 14 December. However, she did not return from that stay. After failing to comply with a summons to attend a medical examination in Belgium, she was examined by the competent Italian insurance institution under the terms of

1 — Translated from the Dutch.