4. The object of Article 52 is to secure the recognition by each Member State of any right of action pursued by the others in favour of the institution liable for payment of benefit acting against the third party liable, either by means of subrogation or any other legal method.
The provisions of the first paragraph of Article 52 are worded in peremptory terms and are capable of direct application. The sole function of bilateral agreements as referred to in the second paragraph of that article is to provide for their implementation, where necessary, without however rendering the direct effect of the provision in question subordinate to them.

In Case 27/69

Reference to the Court under Article 177 of the EEC Treaty by the Cour supérieure de justice of the Grand Duchy of Luxembourg (Civil Appeals Chamber) for a preliminary ruling in the action pending before that court between

CAISSE DE MALADIE DES CFL 'ENTR'AIDE MÉDICALE', Luxembourg,

and

COMPAGNIE BELGE D'ASSURANCES GÉNÉRALES SUR LA VIE ET CONTRE LES ACCIDENTS, Brussels,

Mrs Marcelle Simon (née Warnotte), widow of Paul Simon, residing in Luxembourg, also being represented,

on the interpretation of Article 52 of Regulation No 3 of the Council of the EEC of 25 September 1958 concerning social security for migrant workers,

THE COURT

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

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

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

On the night of 19 April 1964 Mr Paul Simon, an employee of the Société Nationale des Chemins de fer luxembourgeois (Luxembourg National Railway Company) (CFL), residing in Luxembourg, was killed in a traffic accident in Belgium while in a car driven by Mr Fernand Hein.

In the proceedings for material and non-material damages, brought by the widow of Mr Simon, Mrs Marcelle Simon (née Warnotte), before the tribunal d'arrondissement, Luxembourg, against Mr Hein's insurer, the Compagnie belge d'assurances générales sur la vie et contre les accidents, the following parties appeared:

1. The Caisse de maladie des CFL (CFL Sickness Fund), and
2. The Société nationale des chemins de fer luxembourgeois.

The first party claimed a certain sum to compensate for funeral expenses advanced and the second claimed compensation for its expenses arising from the payment of benefit owed to the widow and orphan of Mr Simon.

By judgment of 11 July 1967 the tribunal d'arrondissement, Luxembourg, found against those two parties, deciding that the law applicable to the case was that of the place where the accident occurred and that Belgian law provided no remedy for the two parties, because the origin of the benefits which they were obliged to provide was not found in the fault of the person responsible for the accident, but in the contractual or statutory provisions of the contract of employment.

In the course of the appeal proceedings instituted against the said judgment by the Caisse de maladie des CFL and the CFL before the Cour supérieure de justice of the Grand Duchy, that court, by a judgment of 20 May 1969, which was received at the Court Registry on 17 June 1969, requested the Court of Justice of the European Communities to give a preliminary ruling on the following questions:

'(1) Is the concept of 'migrant worker', which appears in Article 52 of Regulation No 3 of 25 September 1958 concerning social security for migrant workers, applicable to a wage-earner (in the Grand Duchy), that is: to a wage-earner who has both his place of work and place of permanent residence in the Grand Duchy, but who, in the course of a pleasure trip has been involved in a traffic accident owing to the fault of a third party in the territory of another Member State, in this case in Belgian territory?

(2) Is Article 52 applicable when the person liable for payment of benefit does not institute proceedings before the foreign court but before his national court?

(3) Subparagraph (b) of the first paragraph of Article 52 makes provision for a 'direct claim' in favour of the person liable for payment of benefit; what claim or remedy did the legislature envisage? May this claim be invoked without its having been the subject of a previous bilateral Belgo-Luxembourg agreement, the existing agreement of 16 November 1959 being limited to subparagraph (a) of the first paragraph of Article 52 concerning subrogation?'

Pursuant to the second paragraph of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC the plaintiffs in the main action, the defendant in the main action and the Commission of the European Communities submitted written observations.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to dispense with preparatory inquiries.

The oral observations of the plaintiffs in the main action, the defendant in the main action and the Commission of the European Communities were presented at the hearing on 1 October 1969.

The Advocate-General delivered his reasoned oral opinion on 15 October 1969.

II—Observations submitted pursuant to Article 20 of the Statute

The observations submitted pursuant to Article 20 of the Statute of the Court may be summarized as follows:

The first question

The *plaintiffs in the main action,* the *defendant in the main action* and the *Commission of the European Communities* are agreed in admitting, with particular regard to the case-law of the Court, that the scope of Regulation No 3 should not be limited to migrant workers *stricto sensu* but should be applied to any person entitled to benefit under the social legislation of one Member State and who has sustained an injury in the territory of another Member State no matter how the injury was caused.

The second question

The *plaintiffs in the main action* observe that Article 1 of the bilateral agreement between Belgium and the Grand Duchy concerning the application of Article 52 of Regulation No 3 decides that:

> 'The person liable for payment of benefit shall be substituted for the injured person or his dependants in claims against the third party, under the conditions provided for by the legislation applicable to the first party.'

The plaintiffs are consequently correct in bringing the matter before the Luxembourg court. This is, moreover, in accordance with the general scheme and the object of Article 52 which is intended to safeguard the interests of wage-earners in receipt of benefit, irrespective of whether the act giving rise to compensation occurred on national or foreign territory.

The *defendant in the main action,* on the other hand, observes that the right accorded to the widow both by Belgian and Luxembourg legislation to institute proceedings against the third party presumed responsible so as to obtain compensation for the damage suffered by the death of her husband does not *ipso facto* imply the right of the institution paying her the benefits also to act in its own name against the third party presumed liable. Even if Luxembourg law gave CFL a direct claim in this matter, this right would not necessarily be recognized in Belgium in the absence of a bilateral agreement in this connexion.

According to the *Commission of the European Communities* the doubt reflected by the question put by the national court arises from the wording of Article 52 which only mentions applications made in the territory of a Member State other than that of the institution liable for payment of the benefits. This is the commonest instance but the rule has a general scope and it should also be applied to cases where proceedings are commenced before a national court. In order to avoid any ambiguity in this sphere the Commission is at present contemplating a proposal to the Council

for the amendment of Article 52 by cancelling the words 'in the latter State's territory' where they occur in that article.

The reply to this question must be in the affirmative in view also of the judgment of the Court of Justice of 9 December 1965 in Case No 44/65 on the scope of Article 52 in connexion with the subrogation to the rights of the beneficiary of the institution liable for payment of benefit in any claims he may have against the third party liable.

The third question

The *plaintiffs in the main action* observe that the term 'substituted' appearing in the bilateral Belgo-Luxembourg agreement is less stringent than the term 'subrogated' in Article 52. The view may therefore be taken that since the authors of this agreement do not speak of a direct claim and employ the word 'substituted' instead of 'subrogated', they did not envisage a restriction of Article 52 which, moreover, is contrary to the meaning and object of this provision and of the body of Community case-law which has given a wide interpretation to Article 52. Finally, and above all, this fails to recognize that Regulation No 3, which formed the basis for drafting the said agreement, prevails over it.

The *defendant in the main action,* on the other hand, observes that the bilateral Belgo-Luexmbourg agreement is limited to subparagraph (a) of the first paragraph of Article 52 (legal subrogation) and does not extend to subparagraph (b) thereof (direct claim). This restriction is clear from the preliminary studies in connexion with the Law of 11 January 1961. The reason for leaving out subparagraph (b) of the first paragraph of Article 52 is to be explained by the fact that both the existence and the extent of direct claims against third parties which may be asserted by institutions liable for payment of benefit are far from being uniformly established not only from one Member State to another but even between one national court and another. Moreover, the interpretation of the agreement in question is solely a matter of national law.

In any event, in the absence of a bilateral Belgo-Luxembourg agreement relating expressly to the direct claims referred to by subparagraph (b) of the first paragraph of Article 52, these claims, which are rejected by Belgium, cannot be imposed upon it. Nor can they be relied upon by the Luxembourg courts called upon to apply Belgian law.

The *Commission of the European Communities* observes that the rule contained in Article 52 involves reference to the law of the State to which the social security institution liable for payment of benefit belongs. Subparagraphs (a) and (b) state that each Member State shall recognize either the subrogation or the direct claim of the institution liable for payment of benefit. In fact in this connexion the legal systems of the Member States provide for either one or other of those two possibilities. The question whether the direct claim may be invoked without its having been included in a previous bilateral Belgo-Luxembourg agreement has already been settled, in the opinion of the Commission, by the judgments of the Court in Cases 31/64 and 33/64 according to which 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.

The Court's interpretation relates to the first paragraph as a whole. It may therefore be deduced from this that it refers to direct claims as well as to subrogation.

Grounds of judgment

1 By a judgment of 20 May 1969, which was received at the Court Registry on 17 June 1969, the Cour supérieure de justice of the Grand Duchy of Luxembourg, sitting in judgment on an appeal, put to the Court of Justice three questions under Article 177 of the Treaty establishing the EEC, requesting the interpretation of Article 52 of Regulation No 3 of the Council of the EEC of 25 September 1958 concerning social security for migrant workers.

The first question

2 In its first question the national court asks whether the concept of 'migrant worker' referred to in Article 52 of that regulation is applicable to a wage-earner who has both his place of work and place of permanent residence in the Grand Duchy, but who, as a result of private travel unconnected with his work as a wage-earner, has been involved in a traffic accident owing to the fault of a third party in the territory of another Member State.

3 Under the terms of Article 4(1) of Regulation No 3, the provisions of that regulation 'shall apply to wage-earners or assimilated workers who are or have been subject to the legislation of one or more of the Member States . . ., as also to the members of their families and their survivors'.

4 The fact that the said provision even refers to persons who come or have come under the legislation of a single Member State shows that, far from referring solely to migrant workers within the strict meaning of the term, the regulation is applicable to any wage-earner or assimilated worker who finds himself in one of the situations involving international elements as provided for in the said regulation, as well as to his survivors.

5 In referring to persons in receipt of benefit under the legislation of one Member State for an injury sustained in the territory of another Member State, Article 52 of Regulation No 3 plainly refers to the persons mentioned by that regulation, more particularly by Article 4 thereof, in so far as these persons have sustained an injury in the circumstances provided for by the said Article 52.

6 To subject the application of that article to the existence of a connexion between the injury and the status of migrant worker would therefore amount to restricting its scope.

7 Consequently the provisions of Article 52 of Regulation No 3 are applicable even when the injury sustained by the worker has no connexion with his professional or trade activity.

The second question

8 In its second question the national court asks whether Article 52 is applicable when the person liable for payment of benefit does not institute proceedings before the foreign court but before his national court.

9 Article 52 makes any rights which the institution liable for payment may have against the third party liable for the injury dependent on the condition that the person who is in receipt of benefit is entitled to claim compensation for that injury from a third party in the territory of the State where the injury was sustained.

10 This condition does not imply that the institution liable for payment of benefit must only enforce the rights which it obtains under Article 52 before the courts of the States where the injury was sustained.

11 In fact Regulation No 3 in no way intended to alter the jurisdiction of the national courts with regard to actions concerning non-contractual liability.

12 Consequently there is nothing in Community law to preclude the application of Article 52 to cases in which the person liable for payment of benefit commences proceedings before his national court.

The third question

13 In its third question the national court refers to the 'direct claim' provided for by subparagraph (b) of the first paragraph of Article 52 in favour of the person liable for payment of benefit and asks what claim or remedy the legislature envisaged.

14 It clarifies its question by asking in addition whether this claim may be asserted without its having been the subject of a previous bilateral agreement between the State in which the institution liable for payment of benefit is situated and the State where the injury was sustained.

15 By the general nature of its terms, the object of Article 52 is to secure the recognition by each Member State of any right of action pursued by the others in favour of the institution liable for payment of benefit against the third party liable, either by means of subrogation or any other legal method.

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

17 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).

18 Those provisions are capable of direct application.

19 In providing in the second paragraph that 'Implementation of these provisions shall be the subject of bilateral agreements', Article 52 in no way makes the effect of the first paragraph dependent on the existence of such agreements.

20 The sole function of such agreements is to provide detailed rules for its implementation, where necessary, without however rendering the direct effect of the provision in question subordinate to them.

21 Consequently the fact that such an agreement has been concluded solely in connexion with the subrogation referred to in subparagraph (a) cannot limit the legislative scope of the part of the provision excluded from the agreement.

Costs

22 The costs incurred by the Commission of the EEC, which has submitted its observations to the Court, are not recoverable.

23 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 Cour supérieure de justice of Luxembourg, 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 plaintiffs in the main action, the defendant in the main action and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulation No 3 of the Council of the EEC of 25 September 1958, especially Article 52;
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 Rules of Procedure of the Court of Justice of the Euorpean Communities,

THE COURT

in answer to the questions referred to it by the Cour supérieure de justice of the Grand Duchy of Luxembourg by order of that court of 20 May 1969, hereby rules:

1. **Article 52 of Regulation No 3 of the Council of the EEC of 25 September 1958 is applicable to a wage-earner or assimilated worker who has both his place of work and place of permanent residence in one Member State but who has had a traffic accident in the territory of another Member State, irrespective of the reasons for his presence in the latter State;**

2. **Article 52 of Regulation No 3 of the Council of the EEC is also applicable where the institution liable for payment of benefit institutes proceedings before its national court;**

3. **The object of Article 52 is to secure the recognition by each Member State of any right of action pursued by the others in favour of the institution liable for payment of benefit against the third party liable either by means of subrogation or any other legal method. This right may be asserted even though it has not been the subject of a bilateral agreement as referred to in the second paragraph of the same article.**

Lecourt Monaco Pescatore

Donner Trabucchi Strauß Mertens de Wilmars

Delivered in open court in Luxembourg on 12 November 1969.

A. Van Houtte
Registrar

R. Lecourt
President