derive from an express provision in the rules in question and cannot be extended to situations other than those expressly envisaged.

In Case 150/79

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Jean Amphoux, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

v

KINGDOM OF BELGIUM, represented by the Minister for Foreign Affairs, whose Agent is Robert Hoebaer, Director of External Trade and Development Cooperation at the Ministry for Foreign Affairs, with an address for service in Luxembourg at the Belgian Embassy, Résidence Champagne, 4 Rue des Girondins,

defendant,

APPLICATION by the Commission to the Court of Justice of the European Communities under the second paragraph of Article 169 of the EEC Treaty for a declaration that the Kingdom of Belgium has failed to fulfil its obligations under Articles 5, 48 and 51 of the Treaty, inasmuch as the Belgian practice is to impose conditions as to nationality or residence on workers who are nationals of Member States and who come within the sphere of application of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416) for the grant of the social security benefits provided for by the Belgian Law of 16 June 1960 (Moniteur Belge of 30 June 1960) placing under the control and guarantee of the Belgian State the institutions administering social security for workers from the Congo and Ruanda-Urundi and providing a guarantee of the benefits provided in favour of such persons prior to 1 July 1960,

THE COURT,

composed of: H. Kutscher, President, A. O'Keeffe and A. Touffait (Presidents of Chambers), J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, G. Bosco, T. Koopmans and O. Due, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure, the conclusions and the submissions and arguments of the parties may be summarized as follows:

I — Facts

1. Prior to the acquisition of independence by the former Belgian Congo and Ruanda-Urundi a colonial social security scheme established independently by the colonial legislature existed in those territories, which were subject to the sovereignty of the Belgian State.

By virtue of the Belgian Law of 16 June 1960, which, in expectation of the probable termination of the scheme by the new States, was adopted shortly before those territories became independent, the Belgian State assumed responsibility for social security benefits provided for prior to 1 July 1960.

The colonial decrees were in fact repealed by the new States and the Belgian Law, the only one guaranteeing social security benefits for former employees in the former Belgian Congo and in Ruanda-Urundi, was amended and supplemented a number of times.

The grant of benefits is subject to conditions of nationality or residence as the case may be, either by virtue of the provisions of the former colonial scheme, or under the Belgian Law of 16 June 1960, Articles 3, 6, 11 and 18 ter of which, it is claimed by the Commission, impose a condition of Belgian nationality (or nationality of a State with which a reciprocal agreement has been made) whilst Article 8 (2) requires, in the absence of the above-mentioned condition, habitual residence in Belgium.

2. One of the colonial decrees in question, namely, the Colonial Decree of

7 August 1952 on insurance against sickness and invalidity, and the Belgian Law of 16 June 1960 have already been the subject-matter of a case before the Court, that is to say, the judgment of 31 March 1977 in Case 87/76, *Bozzone* v *Office de Sécurité Sociale d'Outre-Mer*, [1977] ECR 687, where the Court held that:

"1. Article 2 (1) of Regulation No 1408/71 is to be interpreted as applying to workers who are or have been subject to the insurance scheme instituted by the Decree of 7 August 1952, the continuity of which is guaranteed by the Belgian Law of 16 June 1960.

2. In the absence of express provisions to the contrary, the waiving of residence clauses prescribed by the first subparagraph of Article 10 (1) of Regulation No 1408/71 applies to the situation of a recipient of benefits guaranteed by the legislation of a Member State relating to employment exclusively in a territory which at the time maintained special relations with a Member State, where that recipient, who is a national of a Member State, resides in the territory of a Member State other than that which is responsible for payment of social security benefits in respect of employment in the said territory."

3. According to Article 1 (j) of Regulation No 1408/71:

" 'legislation' means in respect of each Member State statutes, regulations and other provisions and all other implementing measures, present or future, relating to the branches and schemes of social security covered by Article 4 (1) and (2)".

In paragraph 10 of the judgment referred to above, the Court held that:

"This definition is remarkable for its breadth, including as it does all provisions laid down by law, regulation and administrative action by the Member States and must be taken to cover all the national measures applicable in this case."

4. On a number of occasions the Commission drew the attention of the Belgian Government to the consequences of the Court's decision in Case 87/76, *Bozzone*. Finally, by letter of 29 September 1978, the Commission commenced the procedure provided for in Article 169 of the EEC Treaty and invited the Belgian Government to submit its observations concerning the alleged infringement of the Treaty.

Having received no definite reply to that approach, the Commission, on 2 March 1979, issued a reasoned opinion under the first subparagraph of Article 169 of the Treaty and invited the Kingdom of Belgium to adopt the appropriate measures within one month.

No response whatsoever was made to the notification of that opinion.

II — Procedure

1. In an application lodged on 27 September 1979 the Commission referred to the Court the alleged failures of the Kingdom of Belgium to fulfil its obligations, in accordance with the second paragraph of Article 169 of the Treaty.

2. The written procedure followed the normal course.

3. On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure. At the same time it requested the Commission to produce the texts of the decrees and of the Belgian Law in question. In addition the Commission and the Belgian Government were asked to reply to some supplementary questions, which they did within the prescribed period.

III — Conclusions of the parties

1. The Commission claims that the Court should:

Declare that the Kingdom of Belgium has failed to fulfil its obligations under Articles 5, 48 and 51 of the Treaty and under the Community rules;

Order the Kingdom of Belgium to pay the costs.

2. The Government of the Kingdom of Belgium contends that the Court should:

Declare the Commission's application unfounded;

Order the Commission to pay the costs.

IV — Submissions and arguments of the parties

1. Relying principally on the judgment in Case 87/76, *Bozzone*, the *Commission* claims in its *application* that Regulation No 1408/71 and the interpretation which was given to it by the Court apply in respect of all the other insurance schemes the continuity of which is ensured by the Belgian Law of 16 June 1960 and, in particular, that Article 3 (1) and Article 10 (1) of the regulation, which establish the principle of equal treatment and the rule of waiver of residence clauses, affect all such schemes.

In the Commission's view, for the social security benefits in question no condition regarding nationality or residence may therefore be imposed on workers who are nationals of the Member States.

The Commission is of the opinion that, as may be seen from the numerous complaints received by the Commission, the current situation of those who may qualify for benefits under the schemes in question is precisely that conditions regarding nationality and residence are being applied by the Belgian authorities in contravention of the right to free movement within the Community.

2. The *Belgian Government* emphasizes, first, that the Law of 16 June 1960 represents a gesture of goodwill by the Belgian State, that it is of an exceptional nature and that it must be interpreted restrictively.

It explains that the Law is based on the independent colonial legislation and merely guarantees benefits under the colonial system. The restrictive conditions concerning residence or nationality which were to be found in that legislation have simply been retained and may not be repealed by the Law providing the guarantee.

It adds that the independence of the colonial system may be seen, even today, in the absence of any obligation to aggregate periods completed in the former Belgian Congo with those completed in Belgium. No such aggregation is envisaged even in the case of Belgian workers. Moreover, the principles of administration are different. Thus, as regards pensions, the rule is individual capitalization under the colonial scheme and collective capitalization in Belgium.

Since Articles 48 to 51 of the Treaty do not apply to the free movement of workers of the Member States in the former Belgian Congo it follows that the expression "legislation of one or more Member States," which appears in Article 2 (1) of Regulation No 1408/71, cannot be interpreted as including legislation which provides certain advantages related exclusively to employment pursued in former overseas territories which, as far as the free movement of workers is concerned, had no connexion whatsoever with Community territory. That is true even where the undertakings had their headquarters in Community territory.

There mere fact that a list of the territories was not annexed to Regulation No 1408/71 as was done in the case of the old Regulation No 3 of the Council of 16 December 1958 on social security for migrant workers (Journal Officiel 1958 p. 561) where an annex provided for the exclusion of the African territories under Belgian sovereignty, is not sufficient to extend the territorial scope of the Community regulation.

In any case, it is permissible not to apply Article 10 of Regulation No 1408/71, as appears, by analogy, from Annex V C 1 (b) to that regulation, and although Belgium did not seek the inclusion of the Law of 16 June 1960 in Annex V, as the Federal Republic of Germany did for the German law concerning certain risks assumed outside the territory of the Federal Republic, the reason for that was precisely that the Belgian State was convinced that the benefits in question fell outside the sphere of application of Regulation No 1408/71.

Lastly, the Belgian Government contends that it would be unreasonable for social legislation which has been formally excluded from the sphere of application of the Treaty during the whole of the period for which the workers were actually subject thereto to be subsequently included in that sphere of application, thereby occasioning a considerable increase in costs and probably, in the result, a reduction in benefits.

3. In its *reply* the *Commission* concedes that the Belgian legislature had full discretion as to whether or not to adopt the Law of 16 June 1960, but it claims that once adopted that Law, just as any other ordinary Belgian law, becomes part of Community law. It observes, moreover, that the Law is not the subject of the special application procedures provided for in the annexes to Regulation No 1408/71, as is the case with the German law referred to above which is included in Annex V C 1 (b), and that the scope of Annex V to Regulation No 1408/71 cannot be extended by analogy to the Belgian Law. In its opinion, the sole fact of having worked outside the Community is not a sufficient reason for excluding the application of the Community rules concerning social security in a Member State. It considers it to be clear that restrictive conditions concerning nationality or residence, on which entitlement to receive a social security benefit depends, obstruct freedom of movement of workers within the Community at the present time.

V — Oral procedure

Oral observations were submitted at the hearing on 4 June 1980 by the Commission, represented by its Legal Adviser, J. Amphoux, acting as Agent, and by the Belgian Government, represented by R. Hoebaer, a Director at the Ministry of Foreign Affairs, acting as Agent.

The Advocate General delivered his opinion at the sitting on 26 June 1980.

Decision

1 By application dated 28 September 1979 the Commission brought an action pursuant to Article 169 of the EEC Treaty seeking a declaration that the Kingdom of Belgium, by imposing conditions of nationality or residence on workers who are nationals of the Member States of the Community and who come within the sphere of application of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416) for the grant of the social security benefits provided for by the Belgian Law of 16 June 1960, has failed to fulfil its obligations under Articles 5, 48 and 51 of the Treaty and under Community rules.

2 The Law of 16 June 1960 "placing under the control and guarantee of the Belgian State the institutions administering social security for workers from the Belgian Congo and Ruanda-Urundi and providing a guarantee by the Belgian State of social security benefits in favour of such persons" (Moniteur Belge, 30 June 1960) was adopted when those territories gained their independence on 1 July 1960 in order to ensure the continuity of the colonial social security scheme, which was based on colonial decrees subsequently repealed by the new independent States. The Law, which refers back to the provisions of the colonial decrees concerning the grant of benefits, including conditions of nationality and of residence, itself contains additional provisions which restrict the guarantee given to beneficiaries who are not of Belgian nationality. The Law was amended a number of times to provide, *inter alia,* extra benefits and to vary them in accordance with fluctuations of the Belgian consumer price-index, and those advantages were granted exclusively to persons entitled to the benefits who were of Belgian nationality or who resided in Belgium.

3 The Belgian Government does not dispute that those conditions concerning nationality and residence are imposed by the Belgian authorities on all persons entitled to such benefits, including nationals of the Member States of the Community. It maintains, however, that the Law of 16 June 1960 is not included in the expression "legislation of one or more Member States" which appears in Article 2 (1) of the regulation and that, even if it were, the non-application of the regulation is permitted, by analogy with the derogation provided for in favour of the Federal Republic of Germany in paragraph C 1 (b) of Annex V to the regulation.

4 In that regard, in giving a preliminary ruling on a question referred to it by the Tribunal du Travail [Labour Tribunal], Brussels, concerning a clause relating to residence contained in one of the colonial decrees, the Court has already held in its judgment of 31 March 1977 in Case 87/76, *Bozzone* v *Office de Sécurité Sociale d'Outre-Mer* [1977] ECR 687, that Article 2 (1) of Regulation No 1408/71 is to be interpreted as applying to workers who are or have been subject to the insurance scheme instituted by the decree in question, the continuity of which is guaranteed by the Belgian Law. In finding that those provisions as a whole constitute "national legislation" within the meaning of the regulation, the Court proceeded upon the definition of that term which is to be found in Article 1 (j) of the regulation and declared that: "This definition is remarkable for its breadth, including as it does all provisions laid down by law, regulation and administrative action by the Member States and must be taken to cover all the national measures applicable in this case." After observing also that no special rules for the implementation of the legislation in question were laid down in the annexes to the regulation, the Court concluded that the waiver of residence clauses prescribed by the first subparagraph of Article 10 (1) of Regulation No 1408/71 is applicable in the circumstances described by the court making the reference.

5 The reasoning given by the Court in the above-mentioned judgment applies equally to Article 3 (1) of Regulation No 1408/71, which provides that:

"Subject to the special provisions of this regulation, persons resident in the territory of one of the Member States to whom this regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State."

For the purposes of the present case it is sufficient, therefore, to consider whether the arguments produced by the Belgian Government introduce any new factor in relation to that statement of the law.

6 In the first place, the Belgian Government claims that Articles 48 to 51 of the Treaty have never applied to the former Belgian colonies, which were also exluded from the sphere of application of Regulation No 3 of the Council of 16 December 1958 on social security for migrant workers (Journal Officiel 1958, p. 561). It considers it unreasonable for social legislation which has been formally excluded from the sphere of application of the Treaty for the whole of the period during which the workers were in fact subject to it to be subsequently included in that sphere of application. The Law of 16 June 1960 is said to be based on that legislation and to do no more than guarantee entitlement to benefits which have been acquired under the colonial scheme. It is, in fact, a gesture of goodwill on the part of the Belgian State towards persons formerly employed in the colonies which have become independent. Apart from a few minor exceptions, the scheme has been kept independent of the general Belgian social security system in the form in which it was organized under the colonial decrees.

7 As to that argument of the defendant, it must be stressed that the application does not refer to the colonial scheme as it operated in the Belgian colonies prior to their gaining independence on 1 July 1960. There is no question but that that scheme, repealed by the newly independent States, fell outside the ambit of the Treaty and of Regulation No 3. The application concerns a scheme introduced by a Belgian law and administered under the control of the Belgian State by a public body subject to Belgian law the effects of which are produced, in general, not in the former Belgian colonies but principally in the Belgian metropolitan territory. It follows that that scheme is capable of affecting the movement of workers within the Community, the freedom of which is ensured by Articles 48 to 51 of the Treaty and by Community regulations. Furthermore, the independent nature of the present scheme as opposed to the colonial scheme is made evident by the fact that, whilst the Belgian legislation refers to the colonial decrees, it includes a large number of amendments which relate both to the conditions of payment and the benefits themselves. In the circumstances the mere fact that all the payments

are based on periods of insurance completed prior to 1 July 1960 outside Community territory does not prevent the Community regulations on social security from applying.

8 The Belgian Government maintains in the alternative that the non-application of Article 10 of Regulation No 1408/71 is permitted by analogy with paragraph C 1 (b) of Annex V thereto, according to which:

"The provisions of Article 10 of the regulation shall not affect the provisions under which accidents (and occupational diseases) occurring outside the territory of the Federal Republic of Germany, and periods completed outside that territory, do not give rise to payment of benefits, or only give rise to payment of benefits under certain conditions, when those entitled to them reside outside the territory of the Federal Republic of Germany."

It adds that although Belgium did not seek to have the Law of 16 June 1960 included in Annex V the reason for that was that the Belgian State was convinced that the benefits in question fell outside the scope of Regulation No 1408/71.

9 That defence cannot be accepted either. Annex V contains a number of provisions containing special application procedures which refer to various special situations. Such procedures may only derive from an express provision in the rules in question and cannot be extended to situations other than those expressly envisaged.

10 It follows from the foregoing considerations that the Kingdom of Belgium, by imposing conditions of nationality or residence on workers who are nationals of the Member States of the Community and who come within the sphere of application of Regulation No 1408/71 for the grant of the social security benefits provided for by the Law of 16 June 1960 placing under the control and guarantee of the Belgian State the institutions administering social security for workers from the Belgian Congo and Ruanda-Urundi and providing a guarantee by the Belgian State of social security benefits in favour of such persons, has failed to fulfil its obligations under the EEC Treaty.

Costs

11 Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. Since the Kingdom of Belgium has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that the Kingdom of Belgium, by imposing conditions of nationality or residence on workers who are nationals of the Member States of the Community and who come within the sphere of application of Regulation No 1408/71 for the grant of the social security benefits provided for by the Law of 16 June 1960 placing under the control and guarantee of the Belgian State the institutions administering social security for workers from the Belgian Congo and Ruanda-Urundi and providing a guarantee by the Belgian State of social security benefits in favour of such persons, has failed to fulfil its obligations under the EEC Treaty;**

2. **Orders the Kingdom of Belgium to pay the costs.**

Kutscher O'Keeffe Touffait Mertens de Wilmars Pescatore

Mackenzie Stuart Bosco Koopmans Due

Delivered in open court in Luxembourg on 11 July 1980.

For the Registrar

J. A. Pompe
Deputy Registrar

H. Kutscher
President