# OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 8 NOVEMBER 1967[1]

*Mr President,*
*Member of the Court,*

The number of references for the interpretation of Regulation No 3 has for some time been such that between the time when the national court brings the matter before you and when you give your judgment it may well be that the question put has been, if not settled by other judgments, at any rate largely considered.

This is rather the case in the request made to you by judgment of 27 April 1967 by the Second Civil Chamber of the French Cour de Cassation relating to Article 28 (1) (b) and (f) of the Regulation. The facts which gave rise to the reference are as follows:

Mr Goffart, who was born in 1897, completed successively 24 insurance quarters in Belgium and 124 quarters in France, that is, in all 148 quarters; as a result of this his right to a pension was conferred in each of the two countries without need of recourse to the aggregation of the periods completed in the other.

At the age of 65, while continuing to work in France as the legislation there permitted, he obtained from the Caisse Régionale de Sécurité Sociale du Nord-Est a French pension calculated under Article 28 (1) (b) and apportioned on the *pro rata* basis of 124/128. The Belgian institution for its part calculated a pension on the basis of the quarters completed in Belgium, but without paying it since, as you know, Belgian legislation makes the grant of a retirement pension dependent on the cessation of all gainful employment.

In those circumstances Mr Goffart requested that his French pension should be calculated solely on the basis of the insurance periods completed in France. He based his claim on Article 28 (1) (f) which reads thus: 'If the person concerned does not at a given date satisfy the *conditions required by all the legislative systems applicable to him,* but satisfies the conditions of one of them without need of recourse to periods completed under one or more of the other legislative systems, the amount of benefit shall be determined solely in accordance with the legislation under which the right to benefit is opened and taking account only of the periods completed under that legislation'.

He subsequently obtained a favourable ruling from the Commission du Première Instance du Contentieux de la Sécurité Sociale and afterwards from the Cour d'Appel, Nancy.

On appeal by the Caisse Régionale, the Cour de Cassation has brought before you the interpretation to be given to the provisions of Article 28 (1) (b) and (f) of the Regulation. The question submitted is whether a worker whose rights have been calculated in accordance with the legislation of two Member States under the provisions of Article 27 (1) and Article 28 (1) (a) and (b) but to whom payment of the fraction of the pension payable by one of them is suspended is entitled to obtain from the other State an amount of pension calculated solely in accordance with the legislation of that State and taking account of the insurance periods completed under that legislation.

Thus everything turns on the interpretation of the term 'conditions' used in subparagraph (f). Does it apply particularly to the conditions of payment of the pension, as the two French courts have successively ruled, or only to the conditions for conferring the right (the existence of a preliminary period for example), in which case the French

1 — Translated from the French.

Caisse would have to take account of the Belgian periods, although the Commission doubts whether in a case such as the present the right to a pension is really conferred under Belgian legislation, as the latter provides that the payments shall not commence unless employment has ceased.

The question has already been discussed in the *de Moor* case (2/67, 5 July 1967, [1967] E.C.R.), although it was neither expressly asked by the national court nor settled by you. On that occasion Mr Advocate-General Roemer set out the reasons why he considered that the term in dispute ought to be understood in its widest sense: both the general nature of the wording employed and also the objectives of Article 51 of the Treaty on which Regulation No 3 is based. The Commission recalls for example that, in accordance with your case-law (100/63, [1964] E.C.R. 577), the provisions of Article 28 shall not apply unless the Community regulations allow compensation for the loss of rights already acquired by at least equivalent benefits. Since, in view of the Belgian legislation, it must be accepted that the person concerned does not receive a pension from that country because of his gainful employment, from the Community point of view there is no reason why his French pension should in addition be cut by taking account of Belgian periods of payment for which he receives no pension.

This is therefore a problem very closely related to that put to you by the Belgian Conseil d'État in the 6th question in the *Couture* case (11/67) on which you have just heard Mr Advocate-General Roemer's opinion and which may be summarized thus: where a claim for payment of a pension is made in accordance with Article 30 of Regulation No 4 by a worker who has completed insurance periods under the legislation of two States and for whom aggregation is unnecessary in either of those States, must that claim necessarily apply to benefit, payment of which in one State in which he has completed insurance periods is dependent on giving up work, whereas this is not required by the legislation of the other State? This amounts to putting on the procedural level—the effects of the claim—the question which has been brought before you in this case on the level of a principle.

The reasons given by Mr Advocate-General Roemer to justify a negative response in the Couture case are connected with those tending to the conclusion in the present case that an insured person to whom payment of the fraction of pension payable by one of the States is suspended, is entitled to obtain from the social security institution of the other State an amount of benefit calculated exclusively according to the legislation of that State and taking account of the insurance periods completed under its rules.

I am consequently of the opinion that an affirmative reply should be given to the question and that the French Cour de Cassation should give a ruling on the costs of the present case.