OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 18 MAY 1972[1]

Mr President,
Members of the Court,

The reference for a preliminary ruling on which I am delivering an opinion today once again relates to the interpretation of Regulation No 3 of the Council concerning social security for migrant workers (OJ 1958, p. 561). The Cour d'Appel, Paris, asks you to resolve the following question:

> In order to ascertain under Regulation No 3 of the EEC whether a period of unemployment may be assimilated to a period of employment for the purpose of determining the entitlement of a migrant worker to an invalidity pension, must reference be made to the rules of assimilation prescribed by the legislation under which the period of unemployment occurred or by the legislation of the country in which the invalidity pension is claimed?

To give a proper ruling, it is necessary to know that for many years Mr Murru, who is the appellant before the court which has made the reference to you and who is of Italian nationality, was employed alternately in Italy and in France. From 1938 to 1946 he worked in Italy; then, from 1947 to 1951 he was employed in France, following which he was again employed in Italy from 1952 to 1955; from 1956 to 1959 he again worked in France and, finally, he was once again employed in Italy from 1961 to 1963. After that it seems that owing to illness he no longer worked, apart from a short period of employment said to have occurred in Italy between 12 June and 24 July 1965.

Mr Murru's invalidity was established on 11 June 1965 and in the same month he claimed a French invalidity pension from the Caisse Régionale d'Assurance Maladie de Paris, relying on the periods of employment which he had completed in France. He was, however, refused the pension. The French law on the subject (the former text of Article 250 of the Code de la Sécurité Sociale) provides in effect that in order to obtain an invalidity pension the person concerned must either prove that he has completed 480 hours of paid employment during the twelve months prior to the date on which invalidity was established and 120 hours of paid employment during the period between the beginning of the twelfth month and the beginning of the ninth month prior to the date on which invalidity was established or show that during those periods he was in an assimilated position (illness during which benefits were received, registered involuntary unemployment). As regards the required periods of paid employment, it was clearly impossible for Mr Murru to prove that he had satisfied these requirements (the facts which I have mentioned suffice to show this). As for unemployment, to be sure Mr Murru, who has resided in Italy since 1961, could show that during the period from 25 July to 27 November 1964 he had been registered as seeking employment at an Italian labour exchange. But that was not a period of unemployment during which he was in receipt of benefit and, according to the information given by the Italian social security authorities, Italian law does not provide that periods of unemployment for which no benefit is paid are assimilated to periods of employment for the purpose of the grant of an invalidity pension. As the French Caisse Régionale considers that it is necessary that periods of unemployment should be recognized as being assimilated to periods of employment by the legislation of the country in which the period of unemployment was completed it was bound to reject Mr Murru's claim.

Refusing to accept this decision he appealed to the Commission de Première Instance du Contentieux de la Sécurité Sociale et de la Mutualité Sociale Agricole de Paris, before which he asserted in support of his claim that under French law the conditions

1 — Translated from the French version.

laid down in Article 250 of the Code de la Sécurité Sociale are satisfied when person concerned has simply been registered as unemployed. He observed that according to the case-law of the French Cour de Cassation (Judgment of 13 April 1967) every registered day of unemployment is assimilated to 6 hours of work, even if it does not give rise to unemployment benefit. Mr Murru stated that according to the provisions of Regulation No 3 concerning social security for migrant workers those are the principles to which reference should be made in considering a claim for the grant of a French invalidity pension and this is so even where the period of unemployment was registered in another Member State.

Having also been unsuccessful before the Commission de Première Instance, Mr Murru finally appealed to the Cour d'Appel, Paris. In view of the fact that in support of his claims the appellant relied, *inter alia*, on certain provisions of Community law, that court delivered on 1 December 1971 an interim judgment by which it stayed the proceedings and requested the Court of Justice to reply on a preliminary basis to the question the terms of which I set out at the beginning of my opinion.

This question gave rise only to written observations, which were submitted by the parties to the main action and by the Commission of the European Communities. In order to resolve the problem and to understand the system instituted by Regulation No 3 it must first be observed that in some Member States the amount of the invalidity pension is dependent upon the duration of insurance periods (this is the case in Italy), whereas in other Member States (for example in France) the amount of the pension is not influenced by the insurance periods. When a worker has been insured against the risk of invalidity in several Member States, *one* of which calculates the amount of benefits on the basis of the duration of insurance periods, Article 26(1) of Regulation No 3 provides that the right to benefit must be determined in accordance with the provisions of Chapter 3 of that regulation (that is to say, the rules relating to old age and survivor's pensions).

This reference to Chapter 3 (which comprises Articles 27 and 28) also applies in this case, and its significance is as follows. Article 27 states that for the acquisition of the right to benefit 'the insurance periods and assimilated periods completed under the legislation of each of the Member States shall be aggregated in so far as they do not overlap'. Article 28 then provides that the social insurance institution of each of those States 'shall, in accordance with its own legislation, determine whether the person concerned satisfies the conditions for entitlement to the benefits prescribed in that legislation taking into account the aggregation of periods, as set out in the preceding article'. If such entitlement is acquired, each of those institutions 'shall, for accounting purposes, determine the amount of benefit to which the person concerned would be entitled if all insurance periods or assimilated periods, aggregated in accordance with the procedures set out in the preceding article, had been completed exclusively under its own legislation'. It is on the basis of this amount that the insurance institution 'shall determine the amount due *pro rata* with the length of the periods completed under the said legislation, before the risk materialized, as compared with the total length of the periods completed under the legislation of all the Member States concerned before the risk materialized'.

If we now ask (and this is of particular importance to the court making the reference) how the periods to be assimilated must be determined we have to agree with the Commission when it states that reference must be made to the definition contained in Article 1(r) of Regulation No 3. According to that definition, the term 'assimilated periods' means 'periods treated as insurance periods or, where applicable, as periods of employment, as defined in the legislation under which they were completed, in so far as they are regarded by the said legislation as being equivalent to insurance periods or periods of employment'. It is clear that the interpretation of this provision presents no difficulty. Merely to read it suffices to understand that the assimilation is governed solely by the legislation of the Member State in which the periods to be considered were completed. Furthermore, this is a principle which the Court of Justice has already clearly af-

firmed in its judgment in Case 14/67 (Judgment of 5 December 1967, preliminary ruling in *Welchner*, [1967] ECR 331). We read in that case that the double reference made by Article 1(r) of Regulation No 3 to national legislation 'sets forth very clearly the principle that the said regulation, in so far as it takes "assimilated periods" into account, intends neither to modify nor supplement national law, provided that the latter observes the provisions of Articles 48 to 51 of the Treaty. In particular, the phrase "in so far as they are regarded ... as being equivalent ..." shows that the regulation is also referring to the conditions under which national law will regard a given period as being equivalent to insurance periods properly so called'.

In this connexion, as the Commission rightly points out, a decisive principle may further be deduced from Article 51 of the Treaty which speaks expressly of 'aggregation ... of all periods *taken into account under the laws of the several countries*'. The same idea also emerges from the definitions appearing in Article 1(p) and (q) of Regulation No 3 which, in defining 'insurance periods' and 'periods of employment', also refers quite unequivocally to the legislation under which the periods in question were completed.

The appellant seeks in vain for a counter-argument based on Article 28 of Regulation No 3, paragraph (1)(a) of which provides (as I have already indicated) that the institution of each of the Member States shall, *in accordance with its own legislation*, determine whether the person concerned satisfies the conditions for entitlement to the benefits prescribed in that legislation. In fact, it emerges clearly from the general system of Articles 27 and 28 that the rule relied on applies only after it has been determined (and determined on the basis of the legislation of the relevant Member State) which periods may be considered as assimilated periods. This is indicated by Article 27 when it speaks of aggregating 'insurance periods and assimilated periods *completed under the legislation of each of the Member States*'. And this is also what emerges from Article 28(1)(a) which states that account shall be taken of 'the aggregation of periods, as set out in the preceding article'. Moreover, this is a point which the Court has already elucidated in its judgment in Case 14/67, when it declared that neither the provisions of Article 28 nor those of Article 27 clarify the concept of 'assimilated periods' and that it is necessary to refer to Article 1(r) of Regulation No 3.

Finally, let me say that the Commission's argument finds support also in the fact that every time that Regulation No 3 provides that the determination of the right to certain benefits rests on the notion that certain periods are deemed to have been completed in a Member State and must be judged according to the legislation of that State, it does so in express terms. In this connexion, let me cite for example the rule laid down in respect of unemployment in Article 33, paragraph (2) of which contains the following words: '... provided that such periods of employment and assimilated periods would have been regarded as insurance periods or assimilated periods *if* the worker had completed them in the territory of the former State'. Article 33(3) is drafted in similar terms: 'Where the legislation of one Member State in respect of a non-contributory scheme makes the grant of benefits conditional upon completion of periods of employment or assimilated periods or periods of permanent residence, the competent institution shall, in so far as is necessary, count periods of employment and assimilated periods completed in the territory of other Member States *as though they were* periods of employment or assimilated periods or of permanent residence completed under the legislation of the former State'. It is clear, on the other hand, that Articles 27 and 28 do not employ terms of this sort in respect of the acquisition of the right to benefit and the taking into consideration of assimilated periods.

It therefore appears that it is impossible to find in favour of the appellant who, apart from Article 28 of Regulation No 3, has not been able to support his argu-

ment otherwise than by relying very imprecisely on the spirit and principles of Regulation No 3 and on the need to interpret it widely in the interests of the migrant workers on whose behalf it was enacted. It is therefore my opinion, in accordance with those of the Commission and of the Caisse Régionale d'Assurance Maladie de Paris, that the Court should reply as follows to the question put to it:

It follows from Article 1 (r) of Regulation No 3 that in order to ascertain whether certain periods, and in particular periods of unemployment, can, for the purpose of granting entitlement to an invalidity pension, be considered as being assimilated periods and be equated to periods of insurance or employment, reference must be made to the legislation of the Member State under which they were completed.