JUDGMENT OF THE COURT
OF 3 DECEMBER 1974 [1]

Kingdom of Belgium, Henri Costers and Maria Vounckx Berufsgenossenschaft der Feinmechanik und Elektrotechnik (preliminary ruling requested by the Bundessozialgericht)

Case 40/74

Summary

1. *Social security for migrant workers — Claims, declarations or appeals — Admissibility — Submission within a specified period to the corresponding agency of another Member State — Liaison department — Validity of submission of an appeal*

   (Regulation No 3 of the Council, Article 47)

2. *Social security for migrant workers — Claims, declarations or appeals — Admissibility — Submission within a specified period to the corresponding agency of another Member State — Conditions — Residence of the party concerned or of his representative in that State*

   (Regulation No 3 of the Council, Article 47)

1. In using the adjective 'corresponding,' Article 47 requires that the claims, declarations or appeals in question be submitted to an authority, institution or other agency forming part of the social security system of the Member State in question without the need to observe distinctions between the competences of administrative or judicial authorities.
   It is not impossible for a liaison department such as is referred to in Article 3 of Regulation No 4 to be considered another corresponding agency, even where one is dealing with the submission of an appeal.

2. Article 47 only refers to the case where the worker lives in a Member State other than that whose law has to be applied. The worker who for the purposes of his claim, declaration or appeal is represented by a representative, established in the Member State whose law must be applied, cannot rely on this provision.

Reference to the Court under Article 177 of the EEC Treaty by the Bundessozialgericht, for a preliminary ruling in the action pending before that court between

1 — Language of the Case: German.

1. THE KINGDOM OF BELGIUM

2. HENRI COSTERS

3. MARIE VOUNCKX

and

BERUFSGENOSSENSCHAFT DER FEINMECHANIK UND ELEKTROTECHNIK

on the interpretation of Article 47 of Regulation No 3 of the Council of 25. 9. 1958 concerning social security for migrant workers (OJ 1958, p. 561) and of Article 3 and of Annex 4 of Regulation No 4 of the Council on implementing procedures and supplementary provisions in respect of Regulation No 3, of 3 December 1958.

THE COURT

composed of: C. Ó Dálaigh and Lord Mackenzie Stuart, Presidents of Chambers, A. M. Donner (Rapporteur), R. Monaco, J. Mertens de Wilmars, P. Pescatore, H. Kutscher and M. Sørensen, Judges,

Advocate-General: G. Reischl,
Registrar: A. Van Houtte,

gives the following

JUDGMENT

Issues of fact and of law

The facts and procedure and the written observations submitted under Article 20 of the EEC Statute of the Court may be summarized as follows:

I — Facts and procedure

René Costers, a Belgian citizen, was killed during a bomb attack in 1943 on the Messerschmitt works at Regensburg, where he was working as a compulsorily recruited worker. His parents, the first and second-named plaintiffs, who reside in Belgium, are at present endeavouring to recover, by virtue of Supplementary Agreement No 3 to the General Convention on Social Security entered into between the Kingdom of Belgium and the Federal Republic of Germany on

7 December 1957, the parents' pension which is provided for under Paragraph 593 of the original version of the Reichsversicherungsordnung (the German Social Security insurance) from the German insurance institutions, who have recognized the death of René Coster as an accident at work.

After the competent Social Security Insurance Fund had refused the grant of a parents' pension, the Kingdom of Belgium, represented by the Ministry for National Health and the Family, together with the second and third-named plaintiffs, brought the matter before the Sozialgericht of Cologne, which rejected the appeal as lacking in substance. According to the grounds of this judgment the fact that the second and third plaintiffs had been substantially maintained by their son before his death had not been proved.

The order rejecting the appeal was notified to the lawyers representing the plaintiffs in Cologne on 1 August 1972.

On 30 August the Belgian Ministry for National Health and the Family appealed against the judgment of the Sozialgericht of Cologne, on the basis of Article 7 (3) of the aforementioned Supplementary Agreement No 3, in the version thereof set out in Article 5 of the Supplementary Protocol of 10 November 1960. However, the notice of appeal, addressed to the Landessozialgericht at Essen, which in the present case is the appellate jurisdiction, was not sent to that court direct, but to the Belgian Ministry for Social Security as the liaison department mentioned in Annex 4 of Regulation No 4 of the Council; this body received the notice of appeal on 31 August 1972. Through the German liaison department designated in Annex 4 aforementioned, the notice of appeal reached the Landessozialgericht on 7 September 1972, that is to say after the time limit for appealing had expired.

Consequently, the Landessozialgericht rejected the appeal as inadmissible. In particular it pointed out that both under the terms of Article 49 of the General Convention on Social Security concluded between Germany and Belgium and under Article 47 of Regulation No 3 the one month's time limit for appealing provided under German legislation would only be observed if the notice of appeal which was sent from Belgium on 30 August had reached another institution, such as an appeal court in social security matters, before 2 September 1972. The Belgian Ministry for Social Security cannot be considered such an institution.

Thereupon the plaintiffs in the national proceedings appealed on a point of law to the Bundessozialgericht in Essen, basing themselves on the terms of Article 49 of the General Convention, which in their view the Landessozialgericht had interpreted incorrectly. However, as is shown by the Landessozialgericht in its order referring the matter, Article 49 of the aforementioned Convention was no longer in force. This provision does not appear in Annex D of Regulation No 3, and in accordance with the provisions of Article 5 and of Article 6 (2) (e) of this Regulation it is therefore, since 1 January 1959, the date of coming into force of Regulation No 3, no longer applicable. In the circumstances one must refer to Article 47 of Regulation No 3.

In its order of 15 May 1974 referring the matter which was registered at the Court on 11 June 1974, the Bundessozialgericht requested the Court under the provisions of Article 177 of the EEC Treaty to give its preliminary ruling on the following question:

'Is Article 47 of Regulation No 3 of the Council of the European Economic Community concerning social security for migrant workers (EEC Regulation No 3) to be interpreted as meaning that "a corresponding agency of another Member State" can include a liaison department *(vide* Article 3 and Annex 4 of Regulation No 4 on implementing procedures and supplementary provisions in respect of Regulation No 3) of this "other Member State" (in this case

the Ministry of Social Security, Brussels), so that "in order to comply with the legislation of one Member State" an appeal may, for the purpose of observing the time limit for appeal (in this case an appeal under paragraphs 143 and 151 of the Sozialgerichtsgesetz) be submitted to such a department?'

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

The Berufsgenossenschaft der Feinmechanik und Elektrotechnik (the defendant in the national proceedings) and the Commission of the European Communities, represented by Peter Karpenstein, acting as agent, submitted written observations.

II — Observations submitted under Article 20 of the Statute of the Court of Justice of the European Economic Community

1. The *defendant in the national proceedings* refers to the German text of Article 47, first sentence, of Regulation No 3, according to which 'any claim, declaration or appeal which should have been submitted, in order to comply with the legislation of one Member State, within a specified period to an authority, institution or other agency of that State shall be admissible if it is submitted within the same period to an authority, institution or other corresponding agency (bei der entsprechenden Stelle) of another Member State.'

In drawing a distinction in Article 47, first sentence, between 'authority', 'institution' and 'other agency' of one Member State and in laying down that their competence is defined on the basis of the national legislation of that State, the authors of the Regulation had intended to set against them, in a word, 'the corresponding agency of another Member State.' It necessarily follows from this that 'the corresponding agency of another Member State' can only be an agency similar to an 'authority' or 'institution' or an 'other agency' of the first-mentioned Member State. In the present case one is dealing with a specific German appeal court; consequently the plaintiffs in the national proceedings ought to have brought their appeal before a court, a corresponding agency within the meaning of Article 47, first sentence, of Regulation No 3. To interpret the provision in this manner would be in conformity with its purpose, that is to prevent geographical distance 'de facto' cutting short the time limit for an appeal. It is not the purpose of Article 47 aforementioned to facilitate, as regards the person appealing, the lodging of an appeal insofar as the other conditions of admissibility are concerned. Accordingly, the body which as an institution is competent under national law must also be treated as the corresponding agency abroad.

2. The Commission agrees with the Bundessozialgericht's analysis according to which Article 47 of Regulation No 3 applies in this case. It is the purpose of this provision to facilitate procedures in matters of social security. It is already difficult to determine jurisdiction in this field at national level. At international level the determination of the agency having jurisdiction gives rise to even greater difficulties. This is why the Commission considers that Article 47 of Regulation No 3 must be interpreted in the widest possible sense. Nevertheless it does not agree that the liaison departments referred to in Article 3 of Regulation No 4 amount to agencies to which under Article 47 an appeal could be presented having the effect of preserving the time limits, whatever might be the functions of these departments. The text of Article 47 of Regulation No 3, which expressly states that the effect of preserving the time limit only occurs where the appeal was

submitted within the specified period to a 'corresponding agency' (German text), runs counter to the interpretation advocated by the plaintiffs in the national proceedings. It also follows from the wording of Article 47, second sentence, of Regulation No 3 that, for its first sentence to apply, the functions of the institutions must at least 'correspond.' This provision draws a clear distinction between agencies to which the matter is submitted under the first sentence and the 'competent authorities' to which the first-mentioned agencies may address themselves for the purpose of forwarding to them appeals which they have received. The liaison departments mentioned in Article 3 of Regulation No 4 are not, therefore, always at the same time the 'corresponding agency' to which a matter may be submitted so as to preserve the time limit under Article 47.

Even interpreting Article 47 of Regulation No 3 in a very wide sense, it is impossible to ignore the differences that separate the administrative field on the one hand and the functions of courts on the other. Whilst the organization or the name of an institution is not the determining factor it is nevertheless necessary that the agency to which an appeal is submitted with a view to preserving a time limit in *legal proceedings* should exercise *judicial functions* or quasi-judicial functions. The Commission does not exclude the possibility that the submission of a notice of appeal to a ministry might suffice for the purpose of applying Article 47 where there are within this ministry (in respect of a particular field of social security), special commissions having a quasi-judicial character that have the task of deciding appeals, such an the commissions created in a Belgian Ministry for the purpose of, for instance, the compensation of war victims (Belgian Law 15 April 1954 Article 20 (4) and 22), but this question of fact must be decided by the national courts. Nevertheless, the mere fact that the ministry is included amongst the 'liaison departments' referred to in the Annex to Regulation No 4 does not in itself justify the application of Article 47.

This way of interpreting Article 47 of Regulation No 3 is confirmed by the provisions of Article 86 of Regulation No 1408 of 14 June 1971 (OJ L 149, p. 2), which replaced those of Article 47 of Regulation No 3.

The Commission of the European Communities, represented by Peter Karpenstein, its legal adviser, acting as agent, made oral observations at the hearing of 22 October 1974.

The Advocate-General delivered his opinion on 12 November, 1974.

Law

1 By order of 15 May 1974, lodged at the Registry on 11 June 1974, the Bundessozialgericht has referred to the Court, under Article 177 of the EEC Treaty, a question for a preliminary ruling on the interpretation of Article 47 of Regulation No 3 of the Council of 25 September 1958 concerning social security for migrant workers (OJ 1958, p. 561).

2 It appears from the request that the question, referred within the framework of an appeal on a point of law before the Bundessozialgericht, is concerned

with the admissibility of an appeal made to the Landessozialgericht of North Rhine-Westphalia, by one of the plaintiffs in the national proceedings, against a judgment of the Sozialgericht of Cologne.

Notwithstanding the fact that this judgment had been served upon the lawyers of the plaintiffs in the national proceedings, whose office is at Cologne, that an acknowledgement of receipt had been issued on 1 August 1972 and that the judgment served bore a note to the effect that an appeal could be entered within one month with the Sozialgericht of Cologne or the Landessozialgericht, the plaintiff in the national proceedings entered a notice of appeal dated 30 August 1972 with the Ministry of Social Security in Brussels in its capacity of Belgian liaison department.

Having received this document on 31 August 1972, the latter passed it on to the Bergbauberufsgenossenschaft of Bochum — the German liaison department — which in turn transmitted it to the Landessozialgericht of North Rhine-Westphalia, where it was received on 7 September 1972.

3 When this court rejected the appeal as being out of time, the plaintiffs in the national proceedings appealed on a point of law to the Bundessozialgericht, basing themselves on the argument that the Kingdom of Belgium and the Federal Republic of Germany had established liaison departments for the purpose of alleviating the difficulties in carrying into effect the Conventions in the field of social security.

The Bundessozialgericht thereupon, by the request at present before the Court, invited it to rule on the question whether Article 57 of Regulation No 3 must be interpreted as meaning that the 'corresponding agency of another Member State' may also mean the liaison department of the other Member State — in the present case the Ministry of Social Security in Brussels — to which 'in order to comply with the legislation of one Member State' an appeal within the meaning of paragraphs 143 and 151 of the 'Sozialgerichtsgesetz' may be submitted for the purpose of preserving the time limits for appeal.

4 Article 47 of Regulation No 3 reads as follows: 'Any claim, declaration or appeal which should have been submitted, in order to comply with the legislation of one Member State, within a specified period to an authority, institution or other agency of that State shall be admissible if it is submitted within the same period to an authority, institution, or other corresponding agency of another Member State. In such case the authority, institution, or

agency receiving the claim, declaration or appeal shall forward it without delay to the competent authority, institution or agency of the former State, either directly or through the competent authority of the Member States concerned.'

Article 83 of Regulation No 4 of the Council of 3 December 1958 on implementing procedures and supplementary provisions in respect of Regulation No (OJ 1958, p. 597) states 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.'

5 Article 47 of Regulation No 3 has the purpose of reducing the difficulties of a legal and administrative kind which might arise in applying this Regulation, having regard to the possible state of uncertainty of a worker residing in another Member State as regards which authorities, institutions, or other agencies to address in order to assert his rights.

Since such provisions have the purpose of protecting the parties involved against the consequences of the diversity both of national systems of social security and of competence within these systems, they must be interpreted and applied on the basis of taking into account the particular difficulties encountered by workers residing in another Member State and possibly unaware of these rules as to competence.

6 Having regard to the difference in social security systems and systems for legal protection of the rights of the parties as between the different Member States, the provision of Article 47 — which allows them to turn to an authority, institution or other 'corresponding agency of another Member State' — cannot be interpreted as obliging them to observe distinctions between respective competences.

In fact, in several Member States, the distinction between administrative and judicial authorities is not clear-cut and may induce a certain confusion in the minds of citizens of another Member State.

Accordingly, it must be understood that in using the adjective 'corresponding' Article 47 requires that the claims, declarations or appeals in question be submitted to an authority, institution or other agency forming part of the social security system of the Member State in question.

Accordingly, it is not impossible for a liaison department such as is referred to in Article 3 of Regulation No 4 to be considered another corresponding agency, even where one is dealing with the submission of an appeal.

7 However, Article 47 only refers to the case where the worker lives in a Member State other than that whose law has to be applied.

Subject to exceptions, it does not therefore apply where the party involved is resident, or is for the purposes of his claim, declaration or appeal represented by a representative, (e.g. a lawyer), established in the Member State whose law must be applied.

In case of doubt it is a matter for the national court to decide whether the conditions required for applying the provision are present.

Costs

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

As these proceedings are, insofar as the parties to the main action are concerned, a step in the action before the Bundessozialgericht, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Bundessozialgericht by order of that court dated 15 May 1974, hereby rules:

(a) **A liaison department such as that referred to in Article 3 of Regulation No 4 may be considered as another corresponding agency within the meaning of Article 47 of Regulation No 3, even where one is dealing with the submission of an appeal.**

(b) Subject to exceptions, this Article cannot apply where the party involved is resident, or is for the purpose of his claim, declaration or appeal represented by a representative, e.g. a lawyer, established in the Member State whose law must be applied.

Lecourt Ó Dálaigh Mackenzie Stuart Donner Monaco
Mertens de Wilmars Pescatore Kutscher Sørensen

Delivered in open court in Luxembourg on 3 December 1974.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 12 NOVEMBER 1974 [1]

Mr President,
Members of the Court,

Regulation No 3 concerning social security for migrant workers contains *inter alia* provisions having the purpose of reducing the legal and administrative difficulties which may arise on applying this regulation in the inter-State context.

Thus, pursuant to Article 47 thereof, 'any claim, declaration or appeal which should have been submitted, in order to comply with the legislation of one Member State, within a specified period to an authority, institution or other agency of that State shall be admissible if it is submitted within the same period to an authority, institution or other corresponding agency of another Member State'. The regulation goes on to read 'In such case the authority, institution or agency receiving the claim, declaration or appeal shall forward it without delay to the competent authority, institution or agency of the former State, either directly or through the competent authorities of the Member States concerned'.

On this point Article 83 of Regulation No 4 further 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.

This provision is also relevant to the proceedings currently pending before the Bundessozialgericht, proceedings that have resulted in the reference No 40/74.

1 — Translated from the German.