**2. The decision on costs in the present proceedings is a matter for the Belgian Conseil d'État.**

Trabucchi Monaco

Donner Lecourt Strauß

Delivered in open court in Luxembourg on 5 July, 1967.

A. Van Houtte
Registrar

A. Trabucchi
President

## OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 13 JUNE 1967[1]

*Mr President,*
*Members of the Court,*

Mr Pace, an Italian, was employed in the Belgian collieries from 1946 to 1953 and subsequently returned to his country of origin where he worked in farming. After his death in 1965, the Commission de Réclamation (the Complaints Committee), and then the Commission d'Appel en Matière d'Assurance Sociale contre la Maladie et l'Invalidité (the Health Insurance Appeals Committee) refused to grant a pension to his widow Mrs Pace (née Guerra), because there was insufficient proof that the death of the person concerned was due to an occupational disease contracted in Belgium.

Mrs Pace, who resided in Brescia, lodged an appeal written in Italian with the Belgian Conseil d'État.

That court considered that, from the point of view of Belgian legislation alone, such an appeal was inadmissible as the Law of 23 December 1946, as amended by the Law of 15 April 1958 governing the use of languages before the Conseil d'État, restricts the choice of individuals to the three languages in use in the country, French, Dutch and German.

But Regulation No 3 of the Council concerning social security for migrant workers, which is binding in Belgium by virtue of Articles 189 and 191 of the Treaty of Rome, includes the following provision in Article 45 (4): 'The institutions and authorities of one Member State shall not reject claims, or other documents submitted to them, on the grounds that they are written in an official language of another Member State'.

The Conseil d'État, in application of the third paragraph of Article 177 of the Treaty of Rome, refers the interpretation of this provision to you by an order of 27 January 1967. It asks you to give a ruling whether it must be included amongst 'the institutions and authorities' mentioned in Article 45 of Regulation No 3. Since, as the Conseil itself says, it functions in this case as a court, the question raises the more general point of whether the courts of the six Member States are included in the terms employed in Article 45. Of course

1 — Translated from the French.

the reply which you give will be valid only within the context of the Regulation, although it will be deciding in advance the meaning which must be given to those same terms in other Community provisions.

The Belgian Government, the Institut National d'Assurance Maladie-Invalidité, which appeared before the Conseil d'État, and the Commission of the EEC, to all of whom the order referring the matter to you was notified as provided by Article 20 of the Statute of the Court, all suggest an affirmative answer in the written observations which they have submitted.

The solution must first and foremost be sought in an explanation of the Regulation, but it must be recognized that this does not constitute a determining factor to any extent, even less as the terms employed by the languages in the four versions—which are equally valid—are not always perfectly in accord.

Although Article 1 includes very varied definitions of the terms employed, they can scarcely be used. Thus, for example, 'institution' is stated by this Article to mean in respect of each Member State 'the agency or *authority* responsible for enforcing all or part of the legislation'. Although Article 45 mentions 'institutions' and 'authorities' separately, it appears to imply that each of these terms has a distinct meaning, 'authority' here becoming a kind of 'institution'. Be that as it may, it is clear from all the provisions of Regulations Nos 3 and 4, together with the Annexes thereto, that the institutions therein referred to are non-judicial bodies responsible for calculating and administering benefits.

Furthermore, the Regulation does not define 'authorities' but only 'competent authorities' which, as enumerated in Annex 1 to Regulation No 4, are the Ministers (of Social Insurance in Belgium, of Labour in France, the Federal Minister of Labour and Social Affairs in the Federal Republic of Germany etc.) responsible for social security. At first sight, one might be inclined to conclude on the basis of Article 1 that they can only be administrative and not judicial 'authorities'.

But if reference is now made to the disputed Article 45 (4) it must be noted that the word 'claims', of which it is said that they may be written in the language of another Member State, may very well apply, although not exclusively, to legal claims.

This Article must moreover be set in juxtaposition to another provision which appears in Article 47 and is as follows: 'Any claim, declaration or appeal which should have been submitted ... 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 lays down the conditions under which they are to be forwarded from one State to another. It does not seem to be disputed that this provision is valid both for legal appeals and administrative applications; its effect is to widen the scope of admissibility and to abolish certain bars, but it is only fully effective if those appeals or applications do not have to be drawn up in the language of the State which will ultimately receive them, since they are in fact most often written in the language of the country in which they are lodged. It is true that the terms employed in Article 45 differ from those in Article 47, since the latter in addition mentions 'agencies', but I think that what must be kept in mind above all is that it would be unsatisfactory to accord to the first of those articles a more limited scope than to the second.

The discussion on vocabulary in which I have just indulged has the twofold disadvantage of being tiresome and of not coming to any really definitive conclusion. It would be the same if we were to attempt to establish the precise

meaning of the disputed expressions not in the Regulation itself, but in the legal terminology of the Member States; I shall however refrain from indulging in this endeavour.

I agree with the Belgian Government and the Commission that another consideration may result in giving an affirmative answer to the question put; this is that before the entry into force of Regulation No 3 the clause on the use of languages was accepted style in bilateral social security conventions. To take an example, it appeared in the Convention of 30 April 1948 between Belgium and Italy in the following terms: 'Communications submitted under the present Convention, *by persons to whom it applies*, to agencies, authorities or *courts* dealing with social security in one of the contracting countries shall be drafted in one of the official languages of either country'. The same clause is repeated in ten other bilateral conventions between Member States, sometimes with different shades of meaning in the drafting which do not modify its scope, as they always include the relationships of those subject to social insurance with the courts. We know that by virtue of Article 5 (a) Regulation No 3 replaces the provisions of the previous conventions, except where the Member States have maintained them in force by listing them in Annex D. In fact none of them has availed itself of this power with regard to the provision which I have cited. But it is difficult to interpret so general a silence as indicating an intention on their part to deprive migrant workers of a right previously accorded to them by the bilateral conventions; it may more reasonably be thought that they considered, despite the difference in drafting, that courts were by implication included in the terms of Article 45 (4) as they had been expressly included by the previous conventions.

Against this argument, which rests on the presumed intention of the Member States, it may be objected that it involves the interpretation not of a multilateral convention but of a Community measure emanating from the Council. We must recall that the Council merely repeated for its part a convention already signed by the Member States which it stamped with the Community's mark, and that the States retain the right to modify its scope to a certain degree by keeping in force certain clauses of previous agreements.

In sum, it is the *ratio legis* of Article 51 of the Treaty and of Regulation No 3 adopted in implementation thereof which leads me to give an affirmative answer to the question put. Both the Treaty and the Regulation must in case of doubt be interpreted so as to avoid placing migrant workers in an unfavourable legal position. In the absence of an express indication to this effect, which is not to be found in its provisions, it cannot be assumed that the Regulation intended to withdraw from those to whom it applies a right granted to them by the Member States in their bilateral conventions, and enjoyed at present by the workers of various third countries employed within the territory of the Community under conventions concluded between those third countries and the Member States.

I am of the opinion that:

— a reply should be given to the effect that the provisions laid down in Article 45 (4) of Regulation No 3 are applicable to courts;

— a ruling should be given by the Belgian Conseil d'État on the costs incurred before this Court.