OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 28 NOVEMBER 1972[1]

Mr President,
Members of the Court,

The reference for a preliminary ruling which concerns us today turns on the interpretation of Article 45 of Regulation No 3 concerning social security for migrant workers (JO of 16.12.1958, p. 580), which is a significant element with regard to the following situation.

Mr Merola, the plaintiff in the main action, is of Italian nationality. In the 1930's he worked in Italy and from 1947 to 1957 he was employed as a miner in Belgium. Thereafte—as he has said—for reasons of health he returned with his family to Italy where he has since resided. From Italy he claimed in Belgium the grant of a miner's invalidity allowance. Nevertheless this was refused him by the competent agency, the Caisse de Prévoyance du Centre (the Central Insurance Fund). Mr Merola submitted an application against this decision of refusal to the Arbeidsrechtbank, Hasselt, a court which, it appears, has recently acquired jurisdiction in social security matters. In those proceedings an initial problem arose, namely that the application was drafted in *French*. In fact, this is not in accordance with the Belgian Law of 15 June 1935 on the use of languages in legal proceedings, the provisions of which require on the contrary that proceedings before civil and commercial courts of first instance in the province of Limburg must be in *Dutch*. The plaintiff, who clearly must be considered as a migrant worker within the meaning of Regulation No 3, invokes Article 45 of that regulation which states *inter alia* '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 question thus arose for the Arbeidsrechtbank, Hasselt whether labour courts, which belong to the judiciary and thus do not form part of the executive, are to be considered as 'authorities of a Member State' within the meaning of Article 45 of Regulation No 3. With this in view the court stayed the proceedings by a decision of 23 June 1972 and submitted the following question for a preliminary ruling:

'Since labour courts and tribunals indisputably form part of the judiciary, supervising the administration without, dealing with questions of active administration and since they do not form part of the executive, unlike the former administrative courts having jurisdiction in social security matters and the Raad van State, may labour courts still be considered as 'an institution charged with the administration of social security' with all the consequences following therefrom with regard to the use of languages in applications submitted to Belgian labour courts by migrant workers?'

Only the Government of the Italian Republic and the Commission of the European Communities have given their views on the substance of the case. Both consider that the question should be answered in the affirmative, that is, that to the extent to which they deal with social security questions Belgian labour courts should be regarded as authorities within the meaning of Article 45 of Regulation No 3.

I should like to say from the outset that this is the view to which I subscribe.

In this respect reference may be made first of all to the judgment given in the preliminary ruling in Case 6/67 ((1967) ECR 219) which was submitted to the Court by a reference from the Belgian Raad van State (Conseil d'État). In that judgment an interpretation has already been given of the concept 'authorities' contained in Article 45 of Regulation No 3, and the Court ruled that social security courts of the Member States are included amongst the 'au-

1 — Translated from the German.

thorities' referred to in Article 45(4). It is true that this judgment was given with regard to the *Belgian* Raad van State, that is to say, to an administrative court which the court making the reference considers as constituting an institution of the executive. Nevertheless, I have no doubt in this respect that that ruling has a quite general validity with regard to the judiciary and that it includes the ordinary courts which in Belgium clearly include labour courts as well. This may be inferred in particular from an argument applied by the Court of Justice, that is to say, in the sentence which runs: 'it must be considered first and foremost whether the obligation, which falls on the agencies entrusted with the daily application of legislation concerning social security, to admit claims written in the official language of another Member State also properly falls on the authorities entrusted with the judicial review of such application, since, according to the principles of legal protection in all the Member States, this review constitutes a necessary guarantee of administrative action'. The Italian Government also supported this view in the present proceedings and indeed, as I have said, it would be absurd to consider that the exceptions provided with regard to languages relate only to administrative proceedings but not to protection by the courts which is at least equally, if not more, important and which in legal proceedings of any kind ensures the supervision of the application of social law.

Further reference may also be made to bilateral conventions on social security which as a rule contain provisions on the use of languages and which undoubtedly relate equally to the administration and the judiciary. Since Regulation No 3 replaced these conventions and, since according to the relevant case-law the principle is that the persons concerned may not be placed in a less favourable situation than that which existed in their earlier legal position, only a wide interpretation can in fact be justified for the concept of 'authorities' contained in Article 45 of Regulation No 3.

With regard to the substance of the case, I might end there. In particular, it appears to me unnecessary to consider the arguments to the same purpose which the Commission previously expounded in Case 6/67 and has now repeated. Accordingly, I simply refer to the comprehensive statement of the Commission and to its arguments with regard to the comparison of the versions in the various languages of Article 45, to its origins, to the clarification of other provisions of Regulation No 3 and to the comparison with the conventions on social security for nationals of third countries. At this point it is also relevant that Regulation No 1408 of the Council of 14 June 1971 (OJ, Special Edition, 1971 II, p. 416) which, after 1 October 1972, replaced Regulation No 3 contains a provision (Article 84) corresponding to Article 45 and that in it too courts and indeed courts purely and simply are expressly mentioned. When in addition the Commission, an authority which participated in the drafting of the new regulation, gives an assurance that the modification did not intend to alter or improve the provision previously in force and was rather in the nature of an amendment *in the drafting* to accord with the case-law of the Court which had developed in the meantime, this is by no means irrelevant with regard to the settlement of the problems to be considered in the present proceedings.

The foregoing completes consideration of the only problem which was raised in the order referring the matter. Further questions regarding the interpretation of Article 45 of Regulation No 3 were not submitted. In view of the facts of the main proceedings with which the Court has become acquainted one concluding remark might nevertheless be made. Thus we learn from the file of the Belgian court that the plaintiff, an Italian national whose mother-tongue is clearly Italian, conducted the defence of his interests with the assistance of a fellow Italian who, although he appears to be able to speak Dutch, lodged an application in French to a Belgian court of the Flemish-speaking region. This appears remarkable and provides grounds for wondering whether such a procedure is also covered by the rules on language of Article 45 of Regulation No 3. In fact, it is

generally to be considered that the system of Article 45 is essentially based on the concept that a migrant worker should not be placed at a disadvantage in defending his rights by the fact that he can express himself only in his *mother-tongue*. On the other hand, it must certainly be recognized that Article 45 refers quite generally to the *official languages* of the Member States and contains no restriction of the sort to which I have referred. It must nevertheless be admitted that perfectly objective and sensible reasons could be adduced in a specific case for the choice of a language other than the mother-tongue, for example when the person chosen to defend the party's interests has a good command of the language selected and the person concerned considers that the authority to whom the application is submitted has a better understanding of it than of his mother-tongue. Consequently, in my opinion, the view may be adopted that Article 45 is not intended to reserve recourse only to the mother-tongue of the person concerned. This view is no doubt incompatible with the principle, which has already been cited may times, to the effect the interpretation of the provisions on on social security for migrant workers must have regard for the widest possible protection of this group. The following at least can be added: the choice of language should not indeed give rise to an *abuse*, having regard to the fact that there is an underlying limitation on every law that abuse is not permitted. Nevertheless, since strict requirements obtain in this sphere (an abuse must be patent or found undoubtedly to exist by the court) and since in the present case there is no clear indication of this I can refrain from a more penetrating review of those considerations and the Court may refrain from including corresponding references to it in the preliminary ruling.

In sum, I propose that the reply to the question submitted by the Arbeidsrechtbank, Hasselt, should be as follows:

National courts having jurisdiction in social security matters, *inter alia* the Belgian labour courts, form part of the 'authorities' within the meaning of Article 45 of Regulation No 3. Accordingly they may not reject claims submitted to them by migrant workers on the grounds that they are written in an official language of another Member State.