JUDGMENT OF THE COURT
10 OCTOBER 1973 [1]

G. Fiege
v Caisse régionale d'assurance maladie de Strasbourg
(preliminary ruling requested by the Cour de Cassation)

Case 110/73

Summary

1. *Social Security — Migrant workers — Invalidity pension — Transfer — Regulation No 4, Article 30 — Inapplicability*

2. *Social Security — Migrant workers — Algeria — Right acquired before 19 January 1965 — Obligation of French institutions to honour such right — Recipient — Resident within a Member State other than France — Claim — Institution to which claim addressed*

(Regulation No 3, Annex A, former version; Regulation No 3, Article 10)

1. The provisions of article 30 of Regulation No 4 do not apply to transfers of invalidity pensions.

2. Annex A to Regulation No 3, in its former wording, requires French institutions to honour rights acquired in Algeria before 19 January 1965 by a migrant worker. This obligation persists even if the worker takes up residence within another Member State, and even if the claim for transfer was not referred to those institutions until after the coming into force of Regulation No 109/65.
A migrant worker resident, before 19 January 1965, within French territory within the meaning of Annex A to Regulation No 3 is entitled to submit his claim to the last French institution to which he had formerly been affiliated.

In Case 110/73

Reference to the Court under Article 177 of the EEC Treaty by the Chambre Sociale of the Cour de Cassation, Paris, for a preliminary ruling in the action pending before that Court between

G. FIEGE, of Bad Pyrmont (Germany),

and

CAISSE RÉGIONALE D'ASSURANCE MALADIE DE STRASBOURG

1 — Language of the Case: French.

on the interpreation to be put upon Articles 10 of Regulation No 3 and 30 of Regulation No 4 and upon Regulation No 109/65 of the Council of the European Economic Community on Social Security for migrant workers,

THE COURT

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

Advocate General: J. P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

1. By judgment of 22 January 1973 the Chambre Sociale of the Cour de Cassation, Paris, requested the Court of Justice of the European Communities to state:

(i) 'whether the provisions of Article 30 of Regulation No 4 of the Community which apply to claims for grant of benefits, also apply to transfers of invalidity pensions;

(ii) whether the provisions of Annex A of Regulation No 3 which, in their former wording of the definition of the territories to which it applies mentioned Algeria together with Metropolitan France, led to particular obligations for the French Social Security institutions distinct from those devolving on the Algerian institutions, compelling them to pay benefits in cases of default by the Algerian institutions;

(iii) whether it is equally so for rights to benefits arising in favour of a national of a Member State and recognized by an Algerian institution after Algeria's independence but before the introduction of Regulation No 109/65 of 30 June 1965 expressly excluding Algeria from the territories to which Regulation No 3 applies;

(iv) whether it is equally so for a claim for transfer addressed to a German institution after Algeria's independence, but which was referred to a French institution only after the introduction of Regulation No 109/65;

(v) if the answers to the foregoing questions are in the affirmative, whether those provisions should be

interpreted as meaning that a migrant worker who worked in turn in Germany, then in France and finnally in Algeria where he obtained the grant of an invalidity pension from 1 November 1962, subsequently to Algeria's independence, and who wishes to take up residence in Germany, is entitled to address his claim for the transfer of his pension not to the last institution to which he was affiliated in Algeria, but to a French institution to which he had formerly been affiliated.

2. The judgment of the Cour de Cassation is based on the following facts:

(a) Mr Gerd Fiege, born 18. 7. 1922, of German nationality, was affiliated to Social Security institutions in Germany from 1936 to 1947, in France from 19. 9. 1947 to 4. 4. 1949 and in Algeria from 1951, in which country he contracted poliomyelitis, on 12 November 1959. Having first received sickness benefits, he was granted an invalidity pension by the Caisse Sociale of Oran, as from 1 November 1962. Upon subsequent intimation of his wish to return to Germany, he was informed by the Caisse of Oran that, in the absence of any reciprocal agreement, his pension would cease to be paid if he left Algeria. In pursuance of Articles 10 of Regulation No 3 and 30 of Regulation No 4 of the Community, Mr Fiege lodged a claim for transfer of his pension to Germany with the Bundesversicherungsanstalt für Angestellte in Berlin on 26 January 1963. This institution transmitted the claim, on 31 May 1967, through the Centre de Sécurité Sociale des Travailleurs Migrants, to the Caisse Primaire d'Assurance Maladie de Strasbourg, this being the last institution of a Member State to which Mr Fiege had been affiliated.

(b) The Caisse de Strasbourg rejected the claim, this rejection being upheld by a Decision of the Cour d'Appel of Paris, of 22 December 1970, on the grounds that the provisions under which the claim was made were not applicable in this case, since the pension had been granted after Algeria had obtained independence, Community Regulations having no force there, by an Algerian Caisse which ensured the regular payment of the pension; that even in the context of the provisions of the abovementioned Regulations the relevant institution of the State under whose legislation the worker had last been insured was that of Algeria, not that of Strasbourg; that no Community Regulation provided procedures for transfer through a Caisse other than that to which the worker was affiliated and that Article 30 of Regulation No 4 was concerned only with claims for benefits.

(c) The appellant next appealed to the Cour de Cassation against this decision of the Cour d'Appel.

The Cour de Cassation decided to suspend proceedings, finding that the case before it raised a question of interpretation of acts of the institutions of the Community and that, there being no judicial remedy against its decisions under national law, it was bound to bring the matter before the Court, pursuant to Article 177 of the EEC Treaty.

3. The reference from the Chambre Sociale of the Cour de Cassation, Paris, was lodged with the Registry of the Court on 22 March 1973.

The appellant in the main action, represented by Me Nicolay, of the Cour de Cassation, the C.R.A.M. of Strasbourg, respondent in the main action, and the Commission of the European Communities, represented by the Commission's legal adviser, Italo Telchini, acting as agent, assisted by Marie-José Jonczy, a member of the Commission's legal department, lodged written observations, pursuant to Article 20 of the Statue of the Court of Justice of the EEC. Upon 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.

II — Written observations submitted to the Court

The observations submitted to the Court under Article 20 of the Statute may be summarized as follows:

A — Observations submitted by the Caisse régionale d'assurance maladie de Strasbourg

The Caisse draws the Court's attention to the fact that it has already made its position in this case clear, in particular before the Commission de Première Instance du Contentieux de la Sécurité Sociale in Paris and before the Cour d'Appel of Paris, and that the latter had upheld its argument in finding against Mr Fiege and dismissing his appeal by its Decision of 22 December 1970. The C.R.A.M. adds that it must however stress that a claim was put to it, through the Bundesversicherungsanstalt für Angestellte in Berlin and the Centre de Sécurité Sociale des Travailleurs Migrants in Paris, for an invalidity pension (not a claim for the transfer of benefits), and that this claim was not put to it until 6 June 1967. The C.R.A.M. states that even on the hypothesis that Algeria is to be regarded as French territory, for the purposes of Regulations 3 and 4 of the European Economic Community, up to 18 January 1965, it would remain the case that the Algerian Caisse, being the 'French Caisse' to which the appellant was last affiliated was alone responsible for the grant and maintenance of the invalidity pension. Lastly, the C.R.A.M. refers to the provisions of Order No 53/167 of 25 February 1953, cites Article 14 of the Government Order of the same date and submits that in any case it could not, under these circumstances, be ordered to pay the Algerian invalidity pension.

B — Observations submitted by the Commission

The Commission wishes to point out that Regulations Nos 3 and 4 originally applied to Algeria but that upon the latter's becoming independent, on 1 July 1962, the reference to Algeria and Algerian nationals was deleted from Annex A of Regulation No 3 by Regulation No 109/65 of the Council, with effect from 19/1/65 (OJ No 125 of 9 July 1965, p. 2131), and the references to Algeria were deleted from Annexes B and D of Regulation No 3 and from Annexes 1, 2, 3, 5 and 9 of Regulation No 4 by Communications of 1 and 18 February 1965, also with effect from 19 January 1965 (OJ No 68 of 23 April 1965 and No 83 of 13 May 1965). 19 January 1965 is the date of the signing of the Franco-Algerian General Convention on Soical Security, which came, into force on 19 May 1965.

In the Commission's view this is why the appellant believes that France was relieved of its obligations under Regulations Nos 3 and 4 with regard to nationals of Member States resident in Algeria only from 19 January 1965, that his claim for transfer to the Bundesversicherungsanstalt für Angestellte in Berlin was made prior to this date and why he considers that non-payment of the pension to which he was entitled by reason of his insurance in Algeria constitutes an infringement of Article 10 of Regulation No 3, which provides for the transfer abroad of benefits.

(a) As to the first question

The Commission observes that the provisions of Article 30 of Regulation No 4 are intended to determine the Social Security institution to which claims for pension benefits must or may be addressed, depending on whether the worker is resident within the territory of a Member State to whose legislation he has been subject (paragraph (1)), whether he is resident within the

territory of a Member State to whose legislation he has not been subject (paragraph (2)), or whether, finally, he is resident within the territory of a third State (paragraph (3)), and in any case whether the claim is transmitted to the relevant institution of a Member State to whose legislation the worker has been subject; this institution, pursuant to Article 32 of Regulation No 4, is responsible for examining the claim and passing it on to any other institutions to which the worker may have been affiliated.

Article 30 of Regulation No 4, in that it designates the institution to which the worker should address his claim, spares him the complications which might arise from his having been subject to the legislation of several Member States, and thereby ensures that the claim arrives by the most direct route at the institution which has to examine it: in short, these provisions are intended to simplify and expedite the settlement of pension claims. The Commission emphasizes that Article 30 of Regulation No 4 is the only provision applicable to claims for invalidity benefits or oldage pensions pursuant to Articles 26 to 28 of Regulation No 3.

It follows, in the Commission's view, that it does not appear that the said Article 30 is inapplicable in the event of a claim for a transfer from one institution to another. It is open to doubt, however, whether such application is possible. In fact, since it is intended that an institution of one Member State should not assume any obligation to pay benefits due under the legislation of a different Member State, a transfer could only be effected between institutions of the same Member State. In this event, in the case of a pension the amount of which had already been quantified, the procedure would be that provided by the legislation of the Member State concerned, there being no necessity for the institution of another Member State to intervene.

Having remarked that the terms of Article 30 are mandatory, ('the worker must . . .'), the Commission maintains that the conclusion cannot be drawn therefrom that a worker who does not comply with its provisions, but addresses his claim to an institution other than that designated by Article 30, loses his rights. The Regulations do not provide any sanction against a worker who fails to abide by the prescribed procedure, since the text of the provisions, although creating rights in respect of those concerned, is primarily addressed to the institutions whose task it is to apply the Regulations. The sanction lies in the delay in processing the worker's file occasioned by the misdirection of the claim.

(b) As to the fourth question

Without prejudice to the answer to be given on the merits, the Commission considers that a claim cannot be rejected on the basis, firstly, that it was lodged with a German institution and, secondly, that it was not referred to the French institution until after Regulation No 109/65 had come into force. In the Commission's view Article 47 of Regulation No 3 means that the date to be taken into account as being that upon which the claim was lodged is the date the claim was lodged with the German institution, not the date it was communicated by the latter to the French institution.

(c) As to the other questions

The other questions referred relate to the problem as to the merits created by the termination of the applicability to Algeria of Regulations Nos 3 and 4.

The first point to be clarified is that of the date these Regulations ceased to apply in Algeria.

Confronted with this problem, the Administrative Commission on Social Security for Migrant Workers considered that Algeria left the ambit of the Treaty of Rome as from the date of its independence and that Regulation No 3, by its continued inclusion of Algeria at

Annex A, could not have a wider ambit than that of the Treaty. The Commission is in some doubt whether this point of view is correct, or at least whether it should not be somewhat modified; in its opinion the institutions of the Member States of the Community should regard the territory of Algeria as having been Community territory up to the coming into force of Regulation No 109/65 (1 August 1965).

The Commission states that this is indeed the case with regard to the rights of nationals of Member States and that, in contrast, it may be said that the date 1965 has no significance for Algerian workers. It would be more exact, in the Commission's view, to say that Regulations Nos 3 and 4, as a matter of law, ceased, as from 1 July 1962, to be applicable, not to Algeria but to Algerians.

The second point on which some explanation is necessary is whether France is not under a subsidiary obligation, under Regulation No 109/65, to pay to a pensioner who is a national of a Member State other than France, a pension, the right to which was acquired under an Algerian Social Security system at a time when Regulation No 3 applied to Algeria, in the event of an Algerian institution ceasing to pay.

Regulation No 109/65 deleted the reference to Algeria at Annex A of Regulation No 3 without prejudice to acquired rights, and the Commission finds nothing in this Regulation, or even in the preparatory work on it, which would justify a finding that the duty to service acquired rights should rest with France.

The Commission considers that in the absence of any express provision, Regulation No 109/65 could not be interpreted in the way put forward by the party concerned, unless France was bound to pay benefits owed by the Algerian institutions by reason of periods of insurance completed before 1 July 1962.

The Commission notes that this was a pension of very markedly Algerian character, even before Algerian independence: in the Annexes to Regulation No 4, under the heading of France, particular mention was made of Algeria. The Commission therefore concludes that in this case it would be difficult to attribute even a subsidiary obligation to France. It would be different if France itself held itself liable to assume such debts. But the Commission counters this hypothesis by reference to Protocol No 3 dated 19 January 1965 (OJ F.R. of 19 May 1965, p. 4005) which, mentioning the provisions of the General Convention between France and Algeria, which imposes on the institutions of the country of employment the obligation to give effect to rights in respect of old-age benefits, acquired or in course of acquisition, by reason of insurance periods or assimilated periods in that country, indicates that 'in consequence of the exceptional circumstances accompanying Algeria's independence the institutions of that country are not able to undertake the obligations under the abovementioned provisions in respect of French nationals resident in France'.

Moreover, referring to the French Law of 26 December 1964 (OJ F.R. of 29 December 1964, p. 11790) on the assumption of responsibility for social rights and advantages granted to French nationals formerly resident in Algeria, the Commission notes that it is there stated that this Law 'is in the nature of a Law of national solidarity' and that 'it is for the Algerian Social Security institutions to fulfil their obligations towards their foreign contributors . . .'.

In the opinion of the Commission the outcome of the foregoing, and of the fact that Article 2 (3) of Regulation No 3 exluces from the ambit of the Regulation benefit schemes for war victims, is that the French Law of 26 December 1964 is not, within the meaning of the

Community Regulations, legislation the extension of which to nationals of other Member states may be required.

As a consequence France, according to the Commission, is not obliged, even subsidiarily, to pay workers of the Member States benefits acquired by reason of insurance periods completed in Algeria.

The *Commission submits* that the answers to be given to the questions referred are as follows:

1. 'The provisions of Article 30 of Regulation No 4 of the Council which apply to claims for the payment of benefits could also apply to the transfer of invalidity pensions, if such a hypothesis were shown to be possible.'
2. 'The French Social Security institutions are not bound, even subsidiarily, to pay benefits owed by an Algerian institution, by virtue of Regulations Nos 3 and 4,

   and consequently the answers to Questions 2, 3, 4 and 5 should be negative.'

C — Observations submitted by the appellant

(a) As to the first question

The appellant maintains that it cannot be denied that Article 30 of Regulation No 4 is indeed applicable to the transfer hypothesis, since a claim for the transfer, of benefits is no different from an actual claim for benefits.

The point at issue, in fact, is merely a claim for benefits which have already been quantified: it is only a subsidiary procedure in relation to the award of benefits. The expression 'claim for the award of benefits' should encompass the main claim, that is to say, the award and those procedures ancillary to it.

(b) As to the second question

The appellant observes firstly that it was France alone — and not Algeria — who signed Regulations Nos 3 and 4 of the European Community, and that France alone undertook to abide by those texts, considering them to be applicable to the territories listed at Annex A of Regulation No 3, that is: 'Metropolitan France, *Algeria,* and the Overseas Departments (Guadeloupe, Giuana, Martinique, Réunion)'. He further observes that the text of Annex A of Regulation No 3 was applicable up to 19 January 1965, pursuant to Article 16 (2) (a) of Regulation No 109/65 EEC of the Council, dated 30 June 1965, which states that Article 5, defining the territory within which the new legislation was to apply, that is: 'Metropolitan France and the Overseas Departments (Guadeloupe, Guiana, Martinique, Réunion)', was to come into force on 19 January 1965.

The appellant maintains that it is a general rule that an international agreement is appliable for so long as it is not denounced, and that Algeria's independence could certainly not relieve France of its obligations with respect to nationals of the Community as long as Annex A of Regulation No 3 remained unamended; that if France had wished to withdraw from its obligations in relation to the application of that text within Algerian territory it could have denounced Annex A of Regulation No 3 as soon as Algeria became independent in 1962. The fact that France did not request this amendment immediately following Algeria's independence evidences its intention to honour undertakings with regard to nationals of Member States of the European Community in respect of Social Security. 19 January 1965, the date fixed by the Regulation of 30 June is, moreover, not arbitrary, since it coincides with the signing of a bilateral convention between France and Algeria.

(c) As to the third question

The appellant notes that in this matter a single State undertook to fulfil the

obligations deriving from Regulations Nos 3 and 4 — France — and that the fact that the appellant's claim was made between the date of Algeria's independence and that of the publication of Regulation No 109/65 of 30 June 1965 indicates clearly that France alone was involved. As long as the Regulations in question were neither amended nor abrogated, France was bound to fulfil the obligations devolving on it and thus was also bound to award the payment of benefits to persons meeting the requirements of Regulation No 3 at Annex A, those of territoriality and of nationality.

(d) As to the fourth question

The appellant refers to the wording of Articles 30 (2) and 83 of Regulation No 4, to the effect that the date the claim was put before an authority of another Member State is deemed to be the date it was put before the authority having the power to deal with the matter, and he emphasizes that, this being the case, it is unnecessary to take into account the date reference was made to the French Institution, since in any case the only date to be considered is the date the claim was first made. Here 'the claim' within the meaning of Articles 30 and 83 was made on 26 January 1963, that is, prior to the date of implementation of Regulation 109/65.

(e) As to the fifth question

The appellant considers it necessary first of all to underline the fact that the problem in this case is not that of implicating the Sovereign State of Algeria, which is not a party to the dispute: the only problem is whether a national of a Member State, resident within the territory of a Member State which is subject to Regulation No 3, who contracts an illness, retains his right to benefits if he leaves that territory for another territory within the Community. In so far as the State of Algeria cannot be compelled to honour undertakings signed by a Member State of the European Community and in so far as a national of a Member State cannot be obliged to bring an action against Algeria he must be permitted to have recourse against the Community Caisse to which he was last affiliated, pursuant to Article 30 (3) of Regulation No 4. The appellant believes that any other course would result either in a denial of rights recognized by the relevant Regulations or in compelling a national of a Member State to abstain from leaving a certain territory, thereby depriving that national of the right to freedom of movement between the States granted by Article 51 of the EEC Treaty, thus obliging him to remain within the territory of a third State if he wishes to continue to receive the means of his existence, and infringing Article 10 of Regulation No 3 which prohibits the termination or confiscation of pensions acquired pursuant to the legislation of a Member State.

In the appellant's opinion all the questions should be answered in the affirmative.

Grounds of judgment

1 By Order of 22 February 1973, lodged at the Registry of the Court on 22 March 1973, the Court de Cassation of France requested the Court of Justice to give a preliminary ruling on several questions on the interpretation of Articles 10 of Regulation No 3 and 30 of Regulation No 4, and of Regulation

No 109/65 of the Council (OJ No 125, 9.7.1965), on social security for migrant workers.

2 These questions are raised in relation to proceedings concerning a claim for the assumption by the French institutions of responsibility for the invalidity pension of a German worker who wishes to leave Algeria, where he was granted the pension, to take up residence in the Federal Republic of Germany.

3 The worker, who is the appellant in the main action, is of the opinion that the assumption of responsibility for the pension is justified by the fact that at the time it was granted to him Algeria, according to Annex A to Regulation No 3, was still part of those territories listed under the heading 'France' and was thus deemed to be part of the Community for the purposes of the application of the provisions on social security for migrant workers.

On the first question

4 The first question asks whether the provisions of Article 30 of Regulation No 4, which apply to claims for grant of benefits, also apply to transfers of invalidity pensions.

5 Article 30 of Regulation No 4 lays down the procedure to be followed in the event of a claim for the grant of 'benefits under Article 26 to 28 of Regulation No 3' and, in particular, designates the institution which, according to the country in which the claimant is resident, has to investigate the claim.

6 No Community provision exists which provides for the transfer of an invalidity pension from an institution of one Member State to that of another Member State.

7 Article 10 (1) of Regulation No 3, prohibiting the 'reduction, modification, suspension, termination or confiscation of a pension by reason of the fact that the recipient is resident within a Member State other than that of the

institution which services the pension', does not lend support to the theory that the pension can be transferred.

8 Accordingly the answer to the first question must be negative.

On the second question

9 The second question asks whether the provisions of Annex A of Regulation No 3 which, in their former wording, mentioned Algeria together with Metropolitan France, led to particular obligations for the French Social Security institutions compelling them to pay benefits in cases of default by the Algerian institutions.

10 Annex A of Regulation No 3, at Article 1 (a) under the heading 'France', makes specific mention of Algeria in the definition of the territories to which it applies.

11 Although Algeria gained its independence on 1 July 1962, it only ceased to be part of the Community for the purposes of the rights of nationals of the Member States by virtue of Regulation No 109/65 of the Council of 30 June 1965, which deleted the references to Algeria in the Annexes to Regulations Nos 3 and 4, with effect from 19 January 1965.

12 Article 16 (2) of Regulation No 109/65 expressly states that this deletion was made 'without prejudice to acquired rights'.

13 In its former wording, therefore, Annex A of Regulation No 3 implies that the French institutions must honour rights acquired in Algeria by a migrant worker before 19 January 1965.

14 Moreover, in view of the prohibition, contained in Articles 48-51 of the Treaty, on any discrimination based on nationality between workers of the

Member States, any worker from one of the Member States is to be treated, for the purposes of Regulation No 3, as if he were a national in similar circumstances.

15 Accordingly the answer to the second question must be in the affirmative.

On the third question

16 The third question asks whether the French Social Security institutions are equally liable in respect of rights to benefits arising in favour of a national of a Member State and recognized by an Algerian institution after Algeria's independence but before the introduction of Regulation No 109/65 of 30 June 1965 expressly excluding Algeria from the territories to which Regulation No 3 applies.

17 The fact that such rights were recognized after 1 July 1962 does not relieve the French Social Security institutions of their liability, which was maintained in respect of those territories listed with France at Annex A until such time as they were struck off at the instigation of the French Republic.

18 Any other finding would constitute a disregard of Article 16 of Regulation No 109/65 which was conceived precisely for the protection of acquired rights.

19 Accordingly the third question must be answered in the affirmative.

On the fourth question

20 The fourth question asks whether the French Social Security institutions are equally liable in the event of a claim for transfer addressed to a German institution after Algeria's independence, but which was referred to a French institution only after the introduction of Regulation No 109/65.

21 Article 10 (1) of Regulation No 3 prohibits any reduction, modification, suspension, termination or confiscation of a pension.

22 Thus the appellant in the main action, being in receipt of an invalidity pension, had acquired a right to retain it, without any modification, if he were to take up residence within a Member State other than that of the institution liable to service his pension.

23 The right to a pension acquired as from November 1962 could not be affected by the slowness with which the administration transferred his claim.

24 Accordingly the fourth question must be answered in the affirmative.

On the fifth question

25 Finally, in the event of the foregoing questions being answered in the affirmative, the Court is requested to state whether the worker was entitled to address his claim for the transfer of his pension not to the last institution to which he was affiliated, but to a French institution to which he had formerly been affiliated.

26 Such a worker was assimilated to the persons of French nationality mentioned in Annex A to Regulation No 3, placed in similar circumstances, and is thus a Community national subject to a French institution.

27 Article 10 of Regulation No 3 lays down the principle of the immutability of a pension even where 'the recipient is resident within a Member State other than that of the institution which services the pension'.

28 A migrant worker who, before 19 January 1965, was resident within French territory, within the meaning of Annex A to Regulation No 3, is therefore entitled to address his claim to the institutions of that Member State.

Accordingly the answer to the fifth question must be in the affirmative.

Costs

30 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable and as these proceedings are, insofar as the parties to the main action are concerned, a step in the action pending before a national court, the decision on costs is a matter for that Court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of the appellant in the main action and of the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulation No 3 of the Council of the EEC on social security for migrant workers, especially Article 10;
Having regard to Regulation No 4 of the Council of the EEC on social security for migrant workers, especially Article 30;
Having regard to Regulation No 109/65 of the Council of the EEC on social security for migrant workers;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT,

in answer to the questions referred to it by the Cour de Cassation of France by order of that court dated 22 February 1973, hereby rules:

1. **The provisions of Article 30 of Regulation No 4 do not apply to transfers of invalidity pensions.**

2. Annex A to Regulation No 3, in its former wording, obliges the French Social Security institutions to honour rights acquired in Algeria by a migrant worker before 19 Janury 1965.

3. The fact that such rights had been recognized by an Algerian institution before 19 January 1965 does not relieve the French institutions of their obligations, even if the claim for transfer was referred to them only after the introduction of Regulation No 109/65.

4. A migrant worker who had been resident within French territory, within the meaning of Annex A to Regulation No 3, before 19 January 1965 is entitled to address his claim to the last French institution to which he had formerly been affiliated.

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

Delivered in open court in Luxembourg on 10 October 1973.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 19 SEPTEMBER 1973

My Lords,

The aftermath of Empire has brought, for those of our countries that were formerly imperial powers, liabilities of many kinds which, whilst unwelcome, are for one reason or another inescapable. The central question in the present case is whether Community law imposes upon France an obligation to pay to a citizen of another Member State, who spent a large part of his working life in Algeria when it was French territory, a pension, the right to which he must otherwise lose as a result of Algerian independence.

The case, of which the facts are tragic, comes to this Court by way of a reference for a preliminary ruling by the Cour de Cassation of France.

Those facts are briefly as follows. The appellant in the Cour de Cassation, Herr Gerd Wolfgang Fiege, was born in