JUDGMENT OF THE COURT
13 DECEMBER 1972[1]

Giuseppe Merola v Nationaal Pensioenfonds voor Mijnwerkers (Reference for a preliminary ruling by the Arbeidsrechtbank, Hasselt)

Case 45/72

Summary

Social security for migrant workers — Community law — Implementation by the Member States — Communication of information to each other — Rules governing languages (Regulation No 3, Article 45)

Article 45(4) of Regulation No 3 of the Council concerning social security for migrant workers (JO of 16.12.1958, p. 561) draws no distinction according to the nature, administrative or judicial, of the institutions or authorities required to receive the documents referred to in that provision.

This provision refers to all national courts having jurisdiction in social security matters.

In Case 45/72

Reference to the Court under Article 177 of the EEC Treaty by the Arbeidsrechtbank for the Judicial District of Hasselt (Belgium) for a preliminary ruling in the action pending before that court between

GIUSEPPE MEROLA, residing at Macerata, Campania (Italy),

and

NATIONAAL PENSIOENFONDS VOOR MIJNWERKERS, Brussels,

on the interpretation of Article 45 of Regulation No 3 of the Council concerning social security for migrant workers (JO of 16.12.1958, p. 561),

1 — Language of the Case: Dutch.

THE COURT

composed of:R. Monaco, President of Chamber (acting President), P. Pescatore, President of Chamber, A. M. Donner, A. Trabucchi and H. Kutscher (Rapporteur), Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and the procedure may be summarized as follows:

1. On the Belgian social security institutions' refusing to grant an invalidity pension to Giuseppe Merola, a worker of Italian nationality, he instituted proceedings against this decision before the Arbeidsrechtbank (Labour Court) for the Judicial District of Hasselt. His application was drafted in French whereas the Belgian Law of 15 June 1935 on the use of languages in legal proceedings requires Dutch to be employed as the language of procedure in the Province of Limbourg.
In its judgment making the reference the national court made the following statement in particular.
Mr Merola is 'clearly a migrant worker within the meaning of Regulations Nos 3 and 4 of the EEC' and is thus covered by Article 45(4) of Regulation No 3, which provides that '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 Community provision takes precedence over national law in the use of languages as well. Nevertheless, the question here is whether Arbeidsgerechten (Labour Courts) which form part of the judiciary and are quite outside the sphere of active administration are referred to by the said provision. It must be considered whether 'the earlier case-law (Raad van State, 11 October 1968, Rechtskundig Weekblad 1968/69) which applied to administrative tribunals and to the Raad van State, which were agencies of the executive, may ... be upheld as proceedings in social security are henceforth restricted to courts of law properly so-called'. In those circumstances the following question should be submitted to the Court:

'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?'

2. The judgment making the reference was delivered on 7 July 1972 and was received at the Court Registry on 10 July 1972.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, the parties to the main action, the Government of the Italian Republic and the Commission of the European Communities submitted written observations.

After hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to dispense with a preparatory inquiry.

The plaintiff in the main action was represented by his authorized agent, Antonio Acetoni, the defendant in the main action by J. Kranzen, Advocate of Hasselt, the Italian Government by Adolfo Maresca, Minister Plenipotentiary, assisted by Giorgio Zagari, Deputy Head of the State Legal Advisory Office, and the Commission by its Legal Adviser, Robert C. Fischer, assisted by Marie-José Jonczy, a member of the Legal Service of the Commission.

The oral observations of the Commission of the European Communities were heard on 15 November 1972.

The Advocate-General delivered his opinion at the hearing on 28 November 1972.

II — Observations submitted to the Court

The observations submitted to the Court may be summarized as follows:

The *plaintiff in the main action* does not express his views on the question raised by the national court, merely giving a brief description of his personal situation and criticizing the refusal to grant him the pension.

The *defendant in the main action* declares that in this matter it relies on the wisdom of the Court.

The *Italian Government* states that it is essential to allow migrant workers to employ, before the courts of States which receive them, their mother tongue or at least a language which they know, as otherwise they will in practice be deprived of the protection of the courts and thus be subject to serious discrimination in comparison with national workers.

An affirmative reply should be given to the question which has been raised. Article 45 of Regulation No 3 draws no distinction between executive and judicial agencies; a court cannot draw a distinction which the legislature has not made. Whilst Article 1(d) of this regulation terms as a 'competent authority' 'the Minister, Ministers or other equivalent authority responsible for social security schemes ...' it cannot be supposed that the authors of the regulation thereby intended to exclude the agencies entrusted with the proper implementation of this scheme regardless of whether they are of an administrative or judicial nature. If the migrant worker is indisputably entitled to use before the administrative authorities any official language of a Member State, this privilege must apply *a fortiori* before the courts, which ensure legal protection in its most complete form. A contrary interpretation is incompatible with the principle of non-discrimination established by Article 7 of the EEC Treaty and which constitutes the basis of Regulation No 3.

The *Commission* states that the judgment of the Belgian Raad van State of 11 October 1968 to which the Arbeidsrechtbank Hasselt, refers is partly based on the judgment of the Court of Justice of 5 July 1967 in Case e6/67 (*Teresa Pace (née Guerra)* v *Institut National d'Assurance Maladie-Invalidité* [1967] ECR 219). Mrs Pace, the widow of an Italian worker, submitted an application in Italian to the Raad van State for the annulment of a decision refusing to grant her a pension. Since the Belgian law governing the use of languages before the Raad van State excluded the use of a language other than French, Dutch or German in the documents and declarations of individuals, that court submitted the question to the Court whether 'the Raad van State (Conseil d'État) is to be consid-

ered as one of the institutions and authorities referred to in Article 45 of Regulation No 3'. In its judgment the Court ruled that 'the courts of a Member State having jurisdiction in social security matters are included amongst the authoriteis within the meaning of Article 45 of Regulation No 3'. In implementation of this judgement the Raad van State decided that the application was admissible and gave a ruling on the merits by the said judgment of 11 October 1968. It is clear from the grounds of the judgment making the reference that the question submitted is whether it is possible to uphold the precedent established by the abovementioned judgment of the Court, which was delivered at a period when proceedings in social security matters in Belgium fell within the jurisdiction of administrative courts, when in the meantime such proceedings have been entrusted to labour courts and tribunals which constitute courts of law properly so-called. In other word, the point at issue is whether Belgian labour courts constitute 'authorities' within the meaning of Article 45(4) of Regulation No 3. Since the term 'courts of a Member State having jurisdiction in social security matters' employed by the Court encompasses all courts, whether administrative or judicial, required to issue judgments in this sphere, the reply is 'on all the evidence affirmative'.

In this connexion the Commission recalls the arguments which it advanced in Case 6/67:

The term 'authority' is not expressly defined by Regulation No 3. It may not be inferred from the fact that Article 1(d) refers only to administrative authorities that 'courts' are excluded from the concept of 'authority' employed by Article 45 of that regulation; in fact, the abovementioned subparagraph (d) refers to a restricted number of authorities, that is, those having ministerial status and entrusted within the framework of Regulations Nos 3 and 4 with the administrative coordination of social security.
The versions in the four languages of Article 45 do not have a fully identical scope: the terms 'autorités' and 'autorità' undoubtedly include courts; on the other hand, the term 'Behörden' appears to intend only administrative authorities and the word 'autoriteiten' seems to refer to them at least *prima facie*.
The nature of the documents mentioned in Article 45(4) ('claims, or other documents') in no way excludes courts. On the other hand, under Article 47 of Regulation No 3, under the terms of which

'Any claim, declaration or appeal whch 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,'

periods relating to applications to courts may also be extended. Ultimately the literal interpretation of the term 'authorities' does not exclude courts but this is not conclusive.
The preparatory documents do not provide conclusive information.
It is clear from the case-law of the Court that the interpretation of Regulations Nos 3 and 4 must be guided by the objectives established by Articles 48 to 51 of the Treaty rather than the literal content of the provisions. In this connexion, it is important to bear in mind that provisions on the use of the languages of contracting parties, comparable with Article 45(4) of Regulation No 3 have become stylized in international conventions on social security even with regard to the relationships between individuals and the courts. Most of the bilateral conventions concluded between the Member States, for which the Community provisions have been substituted, contained provisions worded as follows: 'Communications dealing with social security submitted under the present Convention to agencies, authorities and courts of one of the contracting parties shall be drawn up in one of the official languages of one or other of the contracting parties'. Although Article 45 of Regu,ation No 3 did not repeat the term 'court' it is impossible to concede that the legislators

intended to make the position of migrant workers worse than it was before the entry into force of this provision. This conclusion is confirmed by the judgment of the Court of 9 June 1964 in Case 92/63 (*Nonnenmacher* (*Widow of H. E. Moebs*) v *Bestuur der Sociale Verzekeringsbank* [1964] ECR 281) according to which 'in case of doubt the abovementioned Articles (that is, 48 to 51 of the Treaty) and the measures taken in implementation of them must be construed so as to avoid placing migrant workers in an unfavourable legal position, particularly with regard to social security'.

Likewise Community workers must not be placed in an unfavourable position in relation to workers from third countries employed within the Community. Conventions concluded by Member States with third countries frequently contain the abovementioned clause on the use of languages.

Finally, Article 84(4) of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, Special Edition, 1971 II, p. 416), which replaced Regulation No 3 as from 1 October 1972, contains a provision which is substituted for Article 45(4) of Regulation No 3 and is worded as follows: 'The authorities, institutions and tribunals of one Member State may not reject claims or other documents submitted to them on the grounds that they are written in an official language of another Member State. They shall have recourse where appropriate to the provisions of Article 81(b)'.

Article 81(b) repeats the provisions of Article 43(b) of Regulation No 3, nevertheless expressly mentioning courts. It requires the Administrative Commission referred to in Regulation No 3 and Regulation No 1408/71 'to carry out all translations of documents relating to the implementation of this regulation at the request of the competent authorities, institutions and *courts* of the Member States, and in particular translations of claims submitted by persons who may be entitled to benefit under this regulation'.

The introduction of the word 'courts' into those provisions seemed appropriate to the Council not because it constituted an 'advance' in relation to Regulation No 3 but as an improvement in draftsmanship which took into account the decisions of the Court and thus endeavoured to avoid any interpretative difficulty in the future.

Consequently the Commission considers that the reply to be given by the Court should be as follows:

'National courts having jurisdiction in social security matters, in this case the Belgian labour courts and tribunals, are included amongst authorities within the meaning of Article 45 of Regulation No 3 and consequently may not reject applications submitted to them by migrant workers by reason of the fact that they are drawn up in an official language of another Member State.'

Grounds of judgment

1 By a judgment of 7 July 1972 which was received at the Court Registry on 10 July 1972 the Arbeidsrechtbank for the Judicial District of Hasselt (Belgium) submitted to the Court, under Article 177 of the EEC Treaty, a question on the interpretation of Article 45(4) of Regulation No 3 of the Council concerning social security for migrant workers (JO of 16.12.1958, p. 561).

2 In this question the Court is requested to rule whether, '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, labour courts may 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'.

3 It is clear from the file that the question relates to the judgment of the Court of 5 July 1967 (*Teresa Pace (née Guerra)* v *Institut National d'Assurance Maladie-Invalidité*, Case 6/67 [1967] ECR 219) which gave a ruling under Article 177 of the Treaty on a request for an interpretation by the Belgian Raad van State (Conseil d'État) as well as the judgment given in the main action by that court in the same case on 11 October 1968.

4 The abovementioned judgment of the Court ruled that 'the courts of a Member State having jurisdiction in social security matters are included amongst the authorities within the meaning of Article 45 of Regulation No 3' under which provision '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 other than that of another Member State'.

5 The wording of the question is to be explained by the fact that, before this judgment, social security proceedings in Belgium passed from the jurisdiction of the administrative courts and of the Raad van State, described as 'agencies of the executive' by the Arbeidsrechtbank, Hasselt, to labour courts and tribunals which are considered as courts properly so-called.

6 Consequently it appears that the question is whether Article 45 of Regulation No 3 also covers national courts other than administrative courts.

7 Article 45(4) of Regulation No 3 draws no distinction according to the nature, administrative or judicial, of the institutions or authorities required to receive the documents referred to in that provision.

8 Furthermore, Article 84(4) of Regulation No 1408/71 of the Council of 14 June 1971 (OJ, Special Edition, 1971 II, p. 416), which replaced Article 45(4) of Regulation No 3 as from 1 October 1972, expressly mentions 'tribunals' together with 'authorities' and 'institutions'.

9 In these circumstances the reply to be given to the Arbeidsrechtbank, Hasselt, must be that Article 45(4) of Regulation No 3 refers to all national courts having jurisdiction in social security matters.

10 The costs incurred by the Government of the Italian Republic and the Commission of the European Communities, which submitted observations to the Court, are not recoverable. As the proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Tribunal du Travail, Hasselt, 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 Commission of the European Comunimties;
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 concerning social security for migrant workers (JO of 16 December 1958, p. 561), especially Article 45;
Having regard to Regulation No 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community (OJ, Special Edition, 1971 II, p. 416), especially Article 84;
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 question sub itted to it by the Arbeidsrechtbank for the Judicial District of Hasselt, in accordance with the judgment given by that courton 7 July 1972, hereby rules:

Article 45 (4) of Regulation No 3 of the Council on social security for migrant workers (JO of 16.12.1958, p. 561) refers to all national courts having jurisdiction in social security matters.

Monaco Pescatore

Donner Trabucchi Kutscher

Delivered in open court in Luxembourg on 13 December 1972.

A. Van Houtte
Registrar

R. Monaco
President of the First Chamber on behalf of the President who was unable to attend