OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 4 NOVEMBER 1965[1]

Mr President,
Members of the Court,

Once again it is Article 52 of Regulation No 3 concerning social security for migrant workers the interpretation of which is requested by the Cour d'Appel, Colmar, under Article 177 of the EEC Treaty.

The facts are as follows: on 24 September 1957, that is, before the entry into force of Regulation No 3, Mr Gassner, a miner of German nationality, was killed in a motor accident while on holiday in France. He was struck by a cattle truck belonging to Maison Singer et Fils and driven by Mr Stadelweiser, an agent of that firm. The driver was prosecuted for causing death by negligence and acquitted on appeal for lack of evidence. Moreover proceedings commenced by Mr Gassner's successors against the driver and the third party liable under civil law for compensation for the damage suffered ended in an out of court settlement between the successors and the company insuring both the driver and his employer. But the Hessische Knappschaft which, as a social security agency, had paid to the successors of the victim benefits, and in particular a pension, under the provisions in force in the Federal Republic of Germany, claimed repayment from Maison Singer et Fils on the ground that it had been substituted for the successors in their claims both under German legislation and Article 52 of Regulation No 3.

Its claim was rejected as inadmissible by the Tribunal de Grande Instance, Strasbourg, which considered that Regulation No 3 was inapplicable in this case for two reasons: it concerned migrant workers, whereas the victim was on holiday in France when the accident occurred; and the accident occurred on 24 September 1957, whereas the Regulation, which could not have retroactive effect, only entered into force on 1 January 1959.

On appeal by the Hessische Knappschaft, the Colmar court has asked you two questions on the interpretation of the Regulation, which I shall examine in turn.

I

First Question

Does Article 52, which provides for substitution, apply exclusively to migrant workers who are or have been at the time of the event, employed in one of the six countries of the Communities, or does it affect any worker affiliated to a social security scheme of any of the Member States, even if he is not a migrant worker and even if the accident which he suffered and which gave rise to the payment of social security benefits did not occur either during or arising out of his work?

1. It is thus the scope *ratione personae* and *ratione materiae* of Article 52, and more generally of Regulation No 3, which is at issue here. These two points have already been dealt with either expressly or by implication in your case-law. Thus Maison Singer, not unaware of this, rather than attacking the interpretation which you have given of Article 52, alleges that that Article is illegal and that, when the Council of the EEC adopted the disputed provision, it acted *ultra vires* and exceeded the powers which it derives from Article 51 of the Treaty.

1 — Translated from the French.

You are acquainted with its argument. It is based on Article 184 of the Treaty which states that any party may, in proceedings in which a regulation of the Council or of the Commission is in issue notwithstanding the expiry of the period laid down in the third paragraph of Article 173, plead the grounds specified in the first paragraph of that Article in order to plead before you the inapplicability of that regulation. If its objection is both admissible and well founded, it means that Article 52 is inapplicable and that the request for its interpretation is thus pointless.

But is the objection raised on the basis of Article 184 admissible? The reply must be in the negative. When Maison Singer endeavours to establish this admissibility by referring solely to the conditions laid down by that Article, it fails to observe the essential point, namely that it is trying to graft these proceedings on to other proceedings brought within the framework of Article 177. Thus the admissibility of its objection should be considered in relation to this latter Article.

The prevailing principle in your preliminary rulings is the mutual respect for the respective jurisdictions of the two legal systems: the national courts and tribunals of the Member States and the Court of Justice of the Communities. Just as it is not for you, within the framework of Article 177, to apply the Treaty or any other rule of Community law to a particular case, or to give a ruling on the validity of a measure of national law, so you do not admit the right to appraise either the considerations which may have guided the national court or tribunal in selecting the questions, or the relevance which it wishes to accord them within the framework of the dispute before it.

Consequently, and subject to the reservation that you sometimes have to 'interpret' the questions put to you in order to isolate the problem of Community law which they contain, you may not and must not give a ruling on the questions which have been referred to you by the national courts or tribunals since it is for them alone and not the parties to the main action to bring matters before you. You could not exceed these limits without involving yourselves in an appraisal of questions necessary for resolving the merits of the dispute and without trespassing on the jurisdiction of the national court or tribunal.

This scrupulous respect for the jurisdiction of the national court or tribunal and for taking the questions in the state in which they are brought before you has led you for example to consider that your jurisdiction is exclusively dependent on the existence of a request under Article 177, without its being necessary for you to consider whether the decision of the national court or tribunal has acquired the force of *res judicata* under the provisions of the national legal system (Case 13/61, *Bosch*, 6 April 1962, Rec. 1962, p. 91). It may also explain why you have not allowed intervention in proceedings under Article 177, because this only occurs between the parties to the action pending before the court from which the request for a preliminary ruling comes (order of 3 June 1964 in *Costa* v *ENEL*, Rec. 1964, p. 1197).

There is all the more reason for you not to reply, either of your own motion or at the request of the parties to the main action, to questions which have not been put to you or, which amounts to the same thing, to modify the meaning or scope of the questions brought before you. But this is what you would be doing if, when you are requested as in the present case to interpret a regulation of an institution of the Community, you were to give a ruling on its validity. Certainly subparagraph (b) of the first paragraph of Article 177 of the Treaty also gives you jurisdiction in this matter, but, in accordance with the principle governing the Article

as a whole, only when the national court or tribunal brings the matter before you.

No doubt Maison Singer also tries to justify its request by the saving of time which it allows, since the defendant in the main action could always raise the question of the validity of the provisions in dispute, either by coming again before the Cour d'Appel or at a later stage before the Cour de Cassation, so that the matter would of necessity be brought before you sooner or later. But, without saying perhaps, as the lawyer for the Commission, quoting Molière, that 'time has nothing to do with it,' it must nevertheless be affirmed that the one thing which takes precedence over speed is respect for legal principles, and in particular the sequence of jurisdictions. You are prohibited from giving a ruling, through the oblique use of Article 184, on the validity of Article 52 of Regulation No 3, when the Cour d'Appel merely asks you to interpret it. Maison Singer's request is therefore inadmissible and its conclusions that the reference is without purpose cannot be accepted.

2. If however it were necessary to consider whether that objection was well-founded, it might be recalled that it is based on Article 51 of the Treaty, the sole Article in the Treaty concerning social security. The power to make regulations which it gives to the Council is strictly limited: its sole object is to provide freedom of movement for workers as it is defined in Article 48, that is to say, considered from the standpoint of employment in its relationship thereto. As the title of Regulation No 3 bears out, it only refers to migrant workers, that is to say, to those whose employment induces them to move from one place to another, and it only allows the Council to take the measures necessary for the purposes which I have just indicated. In fact Regulation No 3 would be vitiated by internal contradictions and illegal to the extent that certain of its provisions lay down rules falling outside the framework thus defined; this would particularly be so in the case of Articles 4 (1), 19 and 52.

These questions, which were thoroughly and brilliantly developed by counsel for Maison Singer at the hearing, are not new to you: you encountered them when you had to interpret Regulation No 3. In Case 75/63, *Hoekstra (née Unger)*, of 19 March 1964 (Rec. 1964, p. 351), you had to take into account the basis of this Regulation and its scope, especially Article 19 thereof, one of those whose legality is disputed by Maison Singer. You noted that Article 51 was included in the Chapter entitled 'Workers' and positioned in Title III (Free movement of persons, services and capital) of Part Two of the Treaty (Foundations of the Community). You added that the establishment of as complete freedom of movement for workers as possible, which thus forms part of the 'Foundations of the Community', therefore constitutes the principal objective of Article 51, and thereby conditions the interpretation of the regulations adopted in implementation of that Article.

Mr Advocate-General Lagrange emphasized, moreover, in that same case that the sphere provided for by Article 51 of the Treaty was not limited to the provisions contained in subparagraphs (a) and (b) thereof (aggregation . . . of all periods taken into account under the laws of the several countries and payment of benefits to persons resident in the territories of Member States). These provisions are not exclusive, being preceded by the words 'to this end' ('notamment'), as it emerges from the grounds of your judgment.

I am thus prepared to accept that your interpretation of Regulation No 3 is wide, even extensive, but I think that this interpretation is perfectly compatible with Article 51 of the Treaty. The Council's powers are limited by the purpose in view: freedom of movement

for workers (and Article 51 does not say 'of migrant workers'), justifying certain measures included in Regulation No 3 which very clearly concern persons who do not have the status of migrant workers. To the provisions cited by Maison Singer might be added those of Article 10 which provide that pensions payable under the legislation of one or more Member States shall not suffer reduction by reason of the fact that the beneficiary is permanently resident in the territory of a Member State other than that in which the institution liable for payment is situated. Or those of Article 40 on the extent of the right to family allowances for the children of a wage-earner who is employed in the territory of one Member State and has children who are permanently resident or are being brought up in the territory of another Member State.

Once it is admitted that Regulation No 3 concerns not only migrant workers but more generally the movement of workers, one meets another objection, it is true. It could only refer to the movement of workers as such, that is to say, to the extent to which it is connected with the carrying out of their employment, and for this purpose Article 51 is connected with Article 49 (1) and also Article 48 which lists the measures entailed by this freedom of movement with regard to employment. That the provisions can properly be linked in this way is not obvious, as Articles 51 and 48 do not necessarily cover the same field. The first of these Articles concerns social security; it is within the framework of and in connexion with social security that the measures necessary to provide freedom of movement for workers must be appraised. For example, any measure which equates the territory of the various Member States with the territory of the State of origin for entitlement to the various benefits thus conforms with the object of Article 51; the limitation of the territorial bounds of national laws on social security is perfectly compatible with that Article although such laws are not confined strictly to this sphere of employment. In spite of the brilliance with which it was sustained, the argument that Regulation No 3 is illegal in those of its provisions which are not restricted to the movement of migrant workers *stricto sensu* does not seem to me convincing.

3. We must now scrutinize once more the first question put to you by the Colmar court. It concerns Article 52 which provides, where a person who is in receipt of benefit under the legislation of one Member State, in respect of an injury sustained in the territory of another State, is entitled to claim compensation for that injury from a third party in the latter State's territory for claims by the institution liable for payment of benefit against such third party. The Article provides that where the said institution is; under the legislation applicable to it, substituted for the beneficiary in his claims against the third party, such substitution shall be recognized by each Member State.

The question which has been put to you in reality falls into two parts. It concerns both the scope *ratione personae* of that Article: whether it applies to a worker affiliated to a social security system who is not a migrant worker *stricto sensu*; and its scope *rationae materiae*: whether it applies even if the accident which gave rise to the payment of social security compensation took place neither during nor arising out of employment.

It is sufficient to recall that you have already given an affirmative answer to these two aspects of the question.

The first point was resolved, at least by implication, by the judgment in the Hoekstra (née Unger) case (75/63 Rec. 1964, p. 367) in which you recognized the entitlement to benefit from the rights conferred by Article 19 of Regulation No 3 of a person who was affiliated to the social security scheme of one

Member State and visited another Member State to stay with her parents and fell ill there. You said that workers in the situation envisaged by Article 19 (1) of Regulation No 3 benefit from the rights conferred by that provision, whatever may be the reasons for their temporary residence abroad. The solution thus admits of a general scope, which you applied to Article 52 in your judgments in the cases of Bertholet and Koster (née Van Dijk) (Cases 31/64 and 33/64, 11 March 1965, [1965] ECR).

You also replied to the second point when you stated in the judgment in the abovementioned Koster (née Van Dijk) case that Article 52 may be applied whether or not the injury is connected with the injured person's work.

Thus the interpretation had already been given even before the Colmar court brought the question before you. Neither the circumstances of the case, to the extent to which they might clarify the question brought before you, nor the legal arguments invoked with regard to the alleged illegality of Regulation No 3, and especially Article 52, constitute new factors in relation to your earlier preliminary rulings of such a nature as to modify the interpretation which you have given and which you may always reconsider. In these circumstances, I think that the method adopted by the judgment in the Da Costa case (Joined Cases 28 to 30/62, 27 March 1963, Rec. 1963, p. 63) should be applied and that you should refer the Colmar court to your judgments in the Bertholet and Koster (née Van Dijk) cases, without the need for a fresh interpretation of these two points of Article 53.

II

Second question

This is only put to you on the assumption that the first question receives an affirmative reply. It relates to the point whether the social security agencies in each of the Member States can bring actions in the other Member States, as from 1 January 1959 when Regulation No 3 entered into force, for the reimbursement of benefits granted to one of their insured persons who has suffered an accident in the territory of that other State for which he can claim compensation from a third party under the civil law of that State, even if the accident occurred before 1 January 1959.

It is thus a problem of the scope of Article 52 with regard to time (from when and in what circumstances) which claims our attention, and it is indeed delicate. Quite clearly Article 56, as it arises from Article 88 of Regulation No 4, which provides that Regulation No 3 shall come into force on 1 January 1959, cannot govern the question of all the effects of the provision with regard to time. The solution must be sought either in Article 52 itself, or in its relationship with Head V on transitional and final provisions.

Although Article 52 employs the present tense ('chaque État Membre reconnaît une telle subrogation': 'such substitution shall be recognized by each Member State'), I do not think that any significance need be attached to that peculiarity which, in the French language at least, is used mainly to signify that the law lays down an obligation. But it will be said that the drafting of that Article does not imply any limitation of its scope as regards time. It is sufficient that the person concerned is in receipt of benefit under the legislation of one Member State in respect of an injury sustained in the territory of another State and is entitled to claim compensation for that injury from a third party in the latter State's territory. If no additional conditions are laid down with regard to the date on which these benefits were paid, or from which the right to claim compensation from

the third party arose, that still does not settle the precise question put to you.

Let us then refer to Article 53 which opens the transitional provisions. Article 53 (1) provides that no person shall be entitled by virtue of this Regulation to payment of benefits in respect of a period before the date on which the Regulation comes into force, but Article 53 (3), on the other hand, states that benefit shall be payable even if it relates to an event before the date on which it comes into force. Here we meet the objection made by Maison Singer. Article 53 refers to the rights of insured persons to the benefits, that is to say, their relationship with the institutions liable for payment and not the position covered by Article 52 of the relationship between the institutions liable for payment and the third parties causing the accidents suffered by the persons covered by social security. Invoking the rules which would be applicable in conflict of laws with regard to time, the defendant in the main action admits that the relationship between the insured person and the social security institution may be analysed, in so far as the benefit due for a social security risk which has materialized is concerned, as a situation continuing after that risk has materialized, which is immediately affected by the new law. On the other hand, the relationship between the third parties causing the accident and the social security institutions is connected with the civil liability of the former: in this case it would be the law at the time when the injury was caused which would determine the conditions of that liability, which would state whether a debt was or was not created with regard to the injured person and which would establish the extent of the right to compensation. It would follow from this that a substitution made by a regulation entering into force on 1 January 1959 cannot apply to an accident occurring before that date.

Unfortunately, there are as many systems of conflict of laws as there are States, so that the search for a doctrine common to all would be too hazardous a venture. Besides, is it really necessary, and what is the scope of Article 52? It does not modify previous national legislation; it coordinates its application. It lays down a rule under which the Member States are obliged to recognize, in addition to substitutions arising from their own legislation, those which are based on the legislations of other Member States, and only in so far as those legislations so provide. But, whilst substitution here implies the substitution of the German institution with regard to the rights of the injured party, it does not affect the existence and extent of the civil liability of the person causing the injury, which continues to be governed by French law.

On what basis can one then recognize in Community law the benefit of substitution for acts causing injury prior to the entry into force of Regulation No 3? The answer appears to me to arise from a passage in your judgment in the Koster (née Van Dijk) case. As you said, just as the Regulation was capable of extending the obligations of national social security institutions, in respect of events before 1 January 1959, to accidents occurring in the territory of a Member State other than that of the institution liable for payment, so the right to claim compensation from a third party for the injury under a substitution with regard to the rights of the victim should be recognized as a 'logical and fair counterpart' to the extension of their obligations. You added that the first paragraph of Article 52 should be applied by the same authority and in the same conditions as the new provisions of the Regulation. It must thus be admitted indirectly that the substitution may govern an accident before 1 January 1959. It appears to me that the second question must be answered in the affirmative.

To sum up, I am of the opinion that the answer must be in the following terms:

To the first question: bearing in mind your judgments in the Bertholet and Koster (née Van Dijk) cases, it is not necessary to give a new interpretation of Article 52 of Regulation No 3 on the points raised by this question;

To the second question: the substitution provided for in the first paragraph of Article 52 must be recognized, even if the accident in respect of which the injured person may claim compensation from a third party occurred before 1 January 1959.

Finally, my view is that the Cour d'Appel, Colmar, should give a ruling on the costs of the present case.