1. The need for a uniform interpretation of Community regulations prevents the text of a provision from being considered in isolation, but in cases of doubt requires it to be interpreted and applied in the light of the versions existing in the other three languages.

2. A worker who is employed in the territory of one Member State but who resides in the territory of another Member State and who is conveyed at his employer's expense between his place of residence and his place of employment remains subject to the legislation of the former State by virtue of Article 12 of Regulation No 3, even as regards that part of the journey which takes place in the territory of the State in which he resides and in which the undertaking is established.

3. Article 12 of Regulation No 3 prohibits a Member State other than that in whose territory a worker is employed from applying its social security legislation to such worker where to do so would lead to an increase in the charges borne by wage-earners or their employers, without any corresponding supplementary protection by way of social security.

4. Decisions taken by the Administrative Commission in pursuance of Article 43 (a) of Regulation No 3 are not binding on national courts or tribunals.

5. Article 13(a) of Regulation No 3, as worded prior to the introduction of Regulation No 24/64, applies to a worker who is engaged solely for employment in the territory of a Member State other than that in which the establishment to which he is normally attached is situated, in so far as the probable duration of his employment in the territory of the former State does not exceed twelve months.

6. The expression 'the probable duration of their employment' used in Article 13 (a), as worded prior to the introduction of Regulation No 24/64, refers to the duration of the employment of each individual worker.

In Case 19/67

Reference to the Court under Article 177 of the EEC Treaty by the Centrale Raad van Beroep for a preliminary ruling in the action pending before that court between

BESTUUR DER SOCIALE VERZEKERINGSBANK

and

J. H. VAN DER VECHT, residing at Vlaardingen,

on the interpretation of Articles 12 and 13 of Regulation No 3 of the Council of the EEC concerning social security for migrant workers (Official Journal of 16 December 1958, p. 561 et seq.).

## THE COURT

composed of: R. Lecourt, President, A. M. Donner, President of Chamber, (Rapporteur), A. Trabucchi, R. Monaco and J. Mertens de Wilmars, Judges,

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Issues of fact and of law

I — Facts

The facts may be summarized as follows:

On 24 November 1963 Mr van der Vecht entered the service of N. V. Motorrevisie en Scheepsreparatiebedrijf Ceto at Schiedam, with the intention of only remaining in the service of this company until the end of the week. At that time the company carried out activities in the field of servicing and repairing in the Netherlands, although the defendant was engaged to do work at Genk in Belgium of a different kind from that which the company carried out in the Netherlands. The company had concluded an agreement with an undertaking established in Germany (the Dürr firm of Stuttgart) whereby it would either perform certain activities as sub-contractor or would supply the necessary labour. The defendant was provided by the company with accommodation in Geleen in the Netherlands and was taken daily by a bus belonging to this undertaking, at the latter's expense, to and from his work in Belgium. He was also paid for the time spent in travelling.

On 27 November 1963 the bus which conveyed the defendant to the site at Genk was involved in an accident on Netherlands territory in which he sustained serious injuries, with the result that he was unable to work and had to receive medical treatment. The company in question had taken no measures regarding statutory accident insurance in respect of its workers, either in the Netherlands or in Belgium.

The respondent in the main action claimed damages under the Netherlands Law of 1921 on accidents, but the appellant in the main action refused to pay on the ground that by virtue of Article 12 of Regulation No 3 of the Council of the EEC Belgian insurance legislation was applicable at the time of the accident.

The respondent brought an action against this decision rejecting his claim before the Raad van Beroep, Rotterdam, alleging, first, that at the time of the accident he was working in the Netherlands since, in a case such as the present, transport to his place of work formed part of the work to be carried out under his contract of employment. Alternatively, he submitted that his case fell within the ambit of the exception laid down in Article 13 (a) of Regulation No 3 (as worded at that time).

The Raad van Beroep annulled the decision of the present appellant to dismiss the respondent's claim, taking the

view that the accident which he sustained on 27 November 1963 had occurred in connexion with his occupation within the meaning of Article 1 (1) of the Law of 1921 on accidents, with the result that he was entitled to damages on the basis of that law.

The Sociale Verzekeringsbank appealed to the Centrale Raad van Beroep against this decision. After observing that, irrespective of the provisions of Article 12 of Regulation No 3, the Law of 1921 on accidents was applicable to the respondent at the time of the accident, this court decided by order of 10 February 1967 to refer the following questions to the Court:

(1) Is a worker, who is engaged solely to work in the territory of a Member State other than that in which he resides and in which the undertaking which employs him is established and who, in order to carry out this work, is conveyed daily by and at the expense of his employer to and from the territory of the former State, employed in the territory of this Member State within the meaning of Article 12 of Regulation No 3, even during the time in which he is being conveyed to this State and, in particular, during that part of the journey which takes place in the territory of the Member State in which he resides and in which the undertaking is established?

(2) Does not Article 12 of Regulation No 3 prevent a worker who, by virtue of this article, is subject to the statutory accident insurance scheme of the Member State in whose territory he is employed from benefiting simultaneously from the comparable statutory accident insurance scheme of the Member State in whose territory he resides and where the undertaking which employs him is established, when the relevant legislation of the latter Member State provides for a (statutory) insurance scheme for a worker employed outside the territory of this Member State and when as a result on the one hand the worker in question might be entitled in principle to claim damages in both Member States, even though on the other hand contributions must be paid on his behalf in both Member States?

As regards the applicability of Article 13 (a) of Regulation No 3 (as worded at that time) the question may possibly arise of the extent to which a judicial authority such as the Raad is bound by a decision of the Administrative Commission referred to in Article 43 of the regulation taken within the scope of its duties defined under paragraph (a) of that article.

In addition, the following questions have arisen in respect of Article 13 (a):

Can the phrase 'to which they are normally attached' used in this provision apply in the case of a worker who has been engaged solely for work in the territory of a Member State other than that in which the undertaking is established and even for work in that Member State which is different from that normally carried out in the State in which the undertaking is established?

Furthermore, how should the probable duration of the employment of these workers in the territory of the other Member State be determined? Must it be on the basis of the anticipated duration of the employment of each individual worker, or on the probable duration of the work to be carried out?

The request for a preliminary ruling was received at the Court Registry on 22 May 1967.

The written observations provided for in Article 20 of the Protocol on the Statute of the Court were submitted by the Commission of the European Communities on 3 August 1967.

The oral proceedings took place on 17 October 1967.

The Advocate-General delivered his

opinion at the hearing on 8 November 1967.

## II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice

The observations of the *Commission* may be summarized as follows:

(1) Article 13 (a) of Regulation No 3, as worded at that time, provides that:

'Wage-earners and assimilated workers whose permanent residence is in the territory of one Member State and who are employed in the territory of another State by an undertaking having in the territory of the former State an establishment to which they are normally attached (" waarbij zij gewoonlijk werkzaam zijn") shall be subject to the legislation of the former State as though they were employed in its territory, in so far as the probable duration of their employment in the territory of the latter State does not exceed twelve months; if such employment continues beyond twelve months, the legislation of the former State shall continue to apply for a further period of not more than twelve months, on condition that the competent authority of the latter State, or the agency designated by it, has given consent thereto before the end of the first twelve month period.'

In accordance with these provisions, the Commission considers the relevant Netherlands legislation to be applicable in the present case.

(a) The condition laid down in Article 13 (a) that the worker concerned should be permanently resident in the Netherlands does not raise any problem in this case.

(b) The requirement in Article 13 (a) that the workers must be employed by an undertaking having an establishment (in this instance in the Netherlands) 'to which they are normally attached' forms the subject-matter of one of the additional questions in the order of reference and is at the centre of the discussion.

In principle, by virtue of Article 12 workers are subject to the legislation of the State in whose territory they are employed, even if the undertaking which employs them is established in the territory of another Member State.

As an exception to this rule, Article 13 (a) allows the legislation of the country in which the undertaking is established to take effect, subject, as is stated in the phrase in question, to the existence of a specific economic link between the workers and the undertaking which has temporarily posted them to another country.

The Netherlands version of this phrase ('waarbij zij gewoonlijk werkzaam zijn') suggests the existence of a link between the present employment and earlier employment in an establishment situated in the territory of another Member State and thus appears to prevent the application of Article 13 (a) in this instance.

However, the meaning of the other three versions of this phrase is different; they express no more than an organic relationship between the workers and the undertaking which is temporarily employing them in the territory of another Member State ('stabilimento da cui i lavoratori dipendono normalmente', 'établissement dont ils relèvent normalement', 'Betrieb dem die Arbeitnehmer gewöhnlich angehören'). These three phrases correspond to the Dutch phrase ('bedrijf, waaraan hij gewoonlijk verbonden is') which was inserted in the new Article 13 by Regulation No 24/64 of the Council.

Moreover, the preparatory documents were prepared exclusively in French and the expression 'dont ils relèvent normalement' ('to which they are normally attached') was to be found in all the preliminary drafts.

Article 13 (a) should therefore be inter-

preted to apply to workers who are engaged solely in order to carry out work in the territory of a Member State other than that in which the establishment to which they are attached is situated.
This interpretation is in accordance with that given by the Administrative Commission in its Decision No 12 of 18 September 1959.
The Commission of the European Communities, therefore, attaches little importance to the fact that the work assigned to the workers in the country to which they are temporarily posted is different from that normally carried out by that undertaking in the country in which it is established, as it in no way weakens the link between the worker and the undertaking.
The Commission therefore replies in the negative to the additional question put forward on this point.
On the other hand, the Commission states that in the case of a 'temporary loan of labour', application of the legislation of the State in which the undertaking is established could not be justified because in such a case the worker no longer comes under the authority of this undertaking in carrying out his work.
(c) As regards the question posed by the Centrale Raad regarding the meaning of the word 'employment' in the phrase 'the probable duration of their employment', the Commission considers that in the light of the present text, which is laid down by Regulation No 24/64 and which refers to the 'anticipated duration of the work', this expression must be interpreted in the original text of Article 13 (a) as applying to the worker himself rather than to the work. This modified wording is in no way intended to interpret the earlier text, but represents a concern to combat the abuses to which the latter had given rise.
(2) As regards the interpretation of Article 12, the second part of the first question raises the problem whether a worker may be considered as being employed, within the meaning of this article, in the territory of the country in which he permanently resides when an accident occurs in this territory during transport at the employer's expense to his place of employment.
The Commission takes the view that this question is identical with the question whether, for the purposes of the application of Article 12, the journey must be treated as the place of employment and whether an accident occurring in circumstances such as those of the present case constitutes an industrial accident.
The Commission considers that the distinction which is made in national law between industrial accidents in the true sense and accidents which occur during the journey to the place of employment cannot influence the solution which emerges from the conflict of laws, as it might lead to the adoption of different solutions according to the laws applicable.
Moreover, reference cannot be made to a principle of national law in determining the legislation to be applied.
If the territory in which the accident happened were to be decisive as regards the legislation applicable, such legislation would vary according to the traffic hazards in that country.
The result in this instance would be to render Article 12 meaningless, since a worker would be subject to two legislative systems rather than to one.
As a result of the principle of the obliteration of frontiers in the field of social security for workers an accident which occurs during the journey to the place of employment must be considered as occurring in the territory of the Member State whose legislation is applicable. It is therefore unnecessary to consider whether the worker is already employed during the journey.
(3) As regards the Centrale Raad van Beroep's question whether a court in a Member State is bound by a decision

taken by the Administrative Commission —a question concerning the interpretation of Article 43 of Regulation No 3 —the Commission of the European Communities states:

(a) that in interpreting Community provisions, national courts are not obliged to follow the interpretation of the Administrative Commission, as is shown by the wording of the second part of Article 43 (a);

(b) that, although the courts concerned regard them as mere expressions of opinion, these decisions still carry great weight; that the members of the Administrative Commission are in fact chosen from among the highest officials in each national administration; that they are especially well qualified officials, many of whom have been involved in the studies concerning the 'European Convention on Social Security for Migrant Workers'.

(4) As the Netherlands legislation providing for a compulsory insurance scheme in respect of industrial accidents for workers employed outside the Netherlands already applies to the defendant, the court referring the matter asked whether the Netherlands legislation may also be applied 'at the same time and in addition' to the relevant Belgian legislation, should the latter be applicable under Article 12 of Regulation No 3.

On this point the Commission makes the following observations:

(a) To what extent is a simultaneous application of the relevant Belgian and Netherlands legislation possible as regards *benefits*?

As regards the problem of the simultaneous application of several legislative systems, the Court in its judgment in Case 92/63 (*Moebs, née Nonnenmacher*) laid down the principle that Article 12 of Regulation No 3 'does not prohibit Member States other than those in the territory of which wage-earners or assimilated workers are employed from applying their social security legislation to such persons'. However, the Court considered that the position might be different where a Member State other than that in whose territory the worker is employed 'requires him to contribute to the financing of an institution which would not accord him supplementary protection by way of social security in respect of the same risk and of the same period'.

In this instance the burden of contributions is transferred and passes from the workers to the employers who directly or indirectly support the exclusive burden of compensation. In the case of the simultaneous application of both Belgian and Netherlands legislation, the employer concerned finds himself in this instance subject to claims for the amounts due under the legislation of both States. As the Advocate-General emphasized in the case of *Moebs, née Nonnenmacher,* for an employer to pay a double contribution in respect of a single risk is contrary to the aim of Article 12 and also, in the opinion of the Commission, to the objectives of Articles 48 to 51 of the Treaty, as well as to Articles 59 et seq.

Moreover, having regard to the fact that the activities of the employer in another Member State constitute a provision of services within the meaning of these articles, such a solution results in his being discriminated against in a manner prohibited by these articles.

(b) The Commission considers that Community law is not opposed to a temporary application of the relevant Netherlands legislation, which awards benefits to the person concerned until settlement of the action, subject to a possible appeal against the employer.

This solution is justified by Article 51 of the Treaty. As the Court said in the case of *Moebs, née Nonnenmacher,* the Treaty has placed upon the Council 'the duty to lay down rules preventing those concerned, in the absence of legislation applying to them, from remaining with-

out protection in the matter of social security'.

This is the result of the dispute over the conflict of laws because, since the Netherlands institutions were doubtful over the interpretation of Article 13 (a), they have refused to award the benefits to which the worker was entitled as long as the question of the application of the Netherlands legislation is not settled.

This absence of protection is even more serious in that it arises from the very existence of Community rules on the conflict of laws.

In the absence of express provisions in the regulations and by virtue of the obligation often referred to by the Court to interpret the regulations in accordance with Article 51, the Commission states that it must be acknowledged that the Netherlands institutions are bound to pay the relevant benefits to the worker concerned until such time as the application of different legislation enables that worker to receive these benefits from another social security institution.

The Commission envisages two methods of finally allotting the charges between the institutions, once the rights of the workers are protected:

— if the solution which emerges from the conflict of laws leads to the application of the Netherlands legislation, the Netherlands institution must pay the benefits in question;

— if, on the contrary, Belgian legislation must be applied, apart from the usual reimbursement of benefits in kind, the Netherlands institution must be entitled to bring an action against the employer for the benefits paid in cash or, if necessary, against the Belgian guarantee fund, even if it entails reimbursing the employer for any contributions paid.

## Grounds of judgment

By letter of 18 May 1967, received at the Court Registry on 22 May 1967, the Centrale Raad van Beroep requested the Court in due form to give a preliminary ruling in accordance with Article 177 of the EEC Treaty on the interpretation of Articles 12 and 13 of Regulation No 3.

The first question concerns the interpretation of Article 12 on the point whether a worker who is employed in the territory of a Member State other than that in which he resides and in which the undertaking which employs him is established, but who, in order to carry out his work, is conveyed daily by and at the expense of his employer between his place of residence and his place of work, is employed in the territory of the latter State within the meaning of Article 12 of Regulation No 3, even during the journey to the former State and, in particular, during that part of the journey which takes place in the territory of the latter Member State. This question must be examined in conjunction with the penultimate question put by the court referring the matter, which concerns the interpretation of Article 13 (a).

By virtue of Article 12 of Regulation No 3, a worker is subject to the social security legislation of the State in whose territory he is employed, save as otherwise provided for in that regulation and in particular in Article 13. The

conveyance of the worker between his place of residence and his place of employment in another Member State is merely a consequence of his employment. A distinction between, first, a worker's employment in the territory of a Member State, consisting both of his actual work and conveyance to that work on the responsibility of the undertaking in that territory and, secondly, his employment in the territory of a different Member State, consisting of the remainder of the journey carried out the responsibility of the same undertaking, is contrary to the spirit of Regulation No 3, and in particular Article 12 thereof. In fact, in the interests of both workers and employers as much as of insurance funds, the aim of the regulation is to avoid any plurality or purposeless confusion of contributions and liabilities which would result from the simultaneous or alternate application of several legislative systems.

This interpretation of Article 12 is confirmed by the exceptions provided for in Article 13 which lays down precise rules even in respect of cases in which a worker is unquestionably employed in the territory of several Member States so as to avoid any simultaneous application of several legislative systems.

In its wording existing prior to the introduction of Regulation No 24/64, which the court referring the matter regards as of exclusive importance to the case before it, Article 13 (a) lays down an exception to the above rule for workers who are permanently resident in the territory of one Member State and who are employed in the territory of another Member State by an undertaking having an establishment to which they are normally attached in the territory of the first State, and subjects them to the legislation of that State in so far as the probable duration of their employment in the territory of the second State does not exceed twelve months. Among the criteria laid down in the former version of Article 13 (a) the phrase in the Dutch version 'een bedrijf ... waarbij zij gewoonlijk werkzaam zijn' (an establishment ... by which they are normally exployed) has been made the subject of the penultimate question in the request for a preliminary ruling. The court referring the matter raises the question whether the criterion thus formulated in the Dutch version may be applied to a worker who has been engaged exclusively to work in the territory of a Member State other than that in which the undertaking which has employed him is established. If this phrase is considered only as it appears in the Dutch version, it might suggest that a worker who is engaged solely in order to work in the territory of a Member State in which he does not permanently reside and in which the undertaking which employs his is not established is not covered by Article 13 (a), with the result that the general rule laid down in Article 12 is applicable to him.

However, the need for a uniform interpretation of Community regulations necessitates that this passage should not be considered in isolation, but that, in cases of doubt, it should be interpreted and applied in the light of the versions existing in the other three languages.

The French version reads: 'un établissement dont il (le travailleur) relève normalement' (an establishment to which he (the worker) is normally attached), whilst the Italian and German versions contain comparable if not identical terms.

Furthermore, Regulation No 24/64 of the Council modified the Dutch version of Article 13 to bring it closer to the versions existing in the three other languages ('bedrijf . . . waaraan hij gewoonlijk verbonden is').

It follows from these versions taken together that for the application of Article 13 (a) it is of little importance whether or not the worker was previously employed in the establishment in the State in which he resides or whether the work in question is different from that normally carried out in this establishment. On the other hand, in order to determine the establishment to which the worker is 'normally attached' it is necessary to deduce from all the circumstances of his employment whether he is under the authority of that establishment.

The answer must therefore be that Article 13 (a) applies equally to a worker who has been engaged exclusively to work in the territory of a Member State other than that in which the establishment to which he is normally attached is situated, in so far as the probable duration of his employment in the territory of that State does not exceed twelve months.

The second question concerns the interpretation of Article 12 for the purposes of ascertaining whether it constitutes an obstacle to the simultaneous application of the legislation of the State in which the worker resides and that of the State in which he is employed.

The purpose of Article 12 is to avoid any simultaneous application of national legislative systems which might result in a purposeless increase in the social security contributions of both the worker and the employer. Subject to the exceptions provided for by the regulation, Article 12 prohibits a Member State other than in whose territory a worker is employed from applying its social security legislation to such worker, where to do so would lead to an increase in the charges borne by workers or their employers without any corresponding supplementary protection by way of social security.

The third question concerns the interpretation of Article 43 of Regulation No 3 and the authority to be given to the decisions of the Administrative Commission referred to therein.

The authority of the decisions of this Commission is defined in Article 43 itself. This article directs the Administrative Commission to settle all administrative questions and questions of interpretation arising under that regulation 'without prejudice to the right of the authorities, institutions and persons concerned to have recourse to the procedures and legal remedies prescribed under the legislation of Member States, in this regulation or in the Treaty'. This provision does not affect the powers of the competent courts or tribunals to assess the validity and content of the provisions of the regulation, in respect of which the decisions of the said Commission have only the status of an opinion. No other interpretation of Article 43 would be in accordance with the Treaty, in particular Article 177 thereof, which establishes a procedure to ensure the uniform judicial interpretation of the rules of Community law.

The final question concerns the interpretation of Article 13 (a) as worded prior to the introduction of Regulation No 24/64, and whether the word 'employment' in the phrase 'the probable duration of their employment' refers to the duties of each worker individually or to the work for which he is employed. It follows from the adjective 'their' and from the fact that the meaning of the noun 'employment' (tewerkstelling) is the same in the four languages that this phrase refers to the duration of the employment of the worker and not to the duration of the work to which he is assigned. Consequently, in applying Article 13 (a), as worded prior to the introduction of Regulation No 24/64, it is the duration of the employment of the individual worker which must be taken into consideration rather than the duration of the work to be carried out.

## Costs

The costs incurred by the Commission of the European Communities, which submitted observations to the Court, are not recoverable and as these 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 Centrale Raad van Beroep, the decision as to 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 oral observations of the parties to the main action and the Commission of the EEC;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the EEC, especially Articles 48 to 51 and 177;
Having regard to the Protocol on the Statute of the Court of Justice of the EEC, especially Article 20;
Having regard to Regulation No 3 of the Council of the EEC concerning social security for migrant workers, especially Articles 12, 13 and 43, and Regulation No 24/64 of the Council;
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 Centrale Raad van Beroep by order of that court dated 10 February 1967, hereby rules:

1. **A worker who is employed in the territory of one Member State but who resides in the territory of another Member State and who is conveyed at his employer's expense between his place of residence and his place of employment remains subject to the legislation of the former State by virtue of Article 12 of Regulation No 3, even as regards that part of the journey which takes place in the territory of the State in which he resides and in which the undertaking is established;**

2. **Article 12 of Regulation No 3 prohibits a Member State other than that in whose territory a worker is employed from applying its social security legislation to such worker where to do so would lead to an increase in the charges born by wage-earners or their employers, without any corresponding supplementary protection by way of social security;**

3. **Decisions taken by the Administrative Commission in pursuance of Article 43 (a) of Regulation No 3 are not binding on national courts or tribunals;**

4. **Article 13 (a) of Regulation No 3, as worded prior to the introduction of Regulation No 24/64, applies to a worker who is engaged solely for employment in the territory of a Member State other than**

**that in which the establishment to which he is normally attached is situated, in so far as the probable duration of his employment in the territory of the former State does not exceed twelve months;**

5. **The expression 'the probable duration of their employment' used in Article 13 (a), as worded prior to the introduction of Regulation No 24/64, refers to the duration of the employment of each individual worker;**

6. **The decision as to costs is a matter for the Centrale Raad van Beroep.**

Lecourt Donner

Trabucchi Monaco Mertens de Wilmars

Delivered in open court in Luxembourg on 5 December 1967.

A. Van Houtte
Registrar

R. Lecourt
President

## OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 8 NOVEMBER 1967[1]

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

The request for a preliminary ruling referred to this Court by the Centrale Raad van Beroep concerns the interpretation of certain provisions of Articles 12 and 13 of Regulation No 3, which determine the social security legislation applicable to migrant workers. It arose out of the particularly complex facts of the action pending before that court. In order to understand clearly the scope of the questions referred by the President of the Raad van Beroep and to be able to reply adequately thereto it is necessary to give a short account both of the origin of the dispute which gave rise to the reference for a preliminary ruling and the rules for the solution of conflict of laws provided for in this regulation.

### I

On 24 November 1963, Mr van der Vecht was engaged by the Ceto undertaking which carried on servicing and repair work at Schiedam. He was, however, engaged to carry out other activities—electric welding—at Genk (Belgium). Ceto had concluded an agreement with a German firm to undertake certain work in the Ford factories at Genk as subcontractor, supplying the labour and certain equipment. Mr van der Vecht was accommodated at Geleen

1 — Translated from the French.