and on the basis of the same reference date an old-age pension acquired in one Member State under Article 27 and another old-age pension which has not yet been acquired in another Member State or which has been acquired in another Member State whose legislation permits the payment to be deferred at the request of the person concerned; Cf. paragraph 3, summary, Case 9/67, Rec. 1967, p. 298.

4. Since the provisions of Articles 27 and 28 of Regulation No 3, in conformity with the objectives of Article 51 of the Treaty, aim at securing for a migrant worker the advantages corresponding to his various periods of work they may not, in the absence of an express exception in conformity with the objectives of the Treaty, be applied so as to deprive him of the benefit of part of the legislation of a Member State.
Claiming a pension from the social security institution of one Member State does not therefore imply a waiver of the rights of election which the legislative systems of other Member States grant the workers concerned. The national social security authorities are competent to decide when such election must be made.

In Case 11/67

Reference to the Court under Article 177 of the EEC Treaty by the Belgian Conseil d'État for a preliminary ruling in the action pending before that court between

OFFICE NATIONAL DES PENSIONS POUR OUVRIERS

and

MARCEL COUTURE

on the interpretation of Article 28 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.) and of Article 30 of Regulation No 4 of the Council of the EEC, on implementation procedures and supplementary provisions in respect of the before-mentioned Regulation No 3 (Official Journal of 16 December 1958, p. 597 et seq.),

THE COURT

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

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

gives the following

# JUDGMENT

## Issues of fact and of law

I — Facts and procedure

Mr Marcel Couture, born on 17 July 1899, a Belgian national resident in France, was insured as a worker for one year in Belgium and then for thirteen years in France.

On 15 May 1960 while he was still working in France he applied for a pension to the social security institution at his place of residence in France.

This French pension was paid to Mr Marcel Couture from 1 October 1960 and was calculated according to the proportion which the number of insurance periods completed by him in France bore to the aggregate of the insurance periods completed by him under both Belgian and French legislation.

As soon as the Office National des Pensions pour Ouvriers, a Belgian social security institution, received notice of Mr Couture's application to the French institution, it treated it as an advance application for a Belgian pension and also calculated the part of the pension claimed in advance as a proportion of the whole of Mr Couture's insurable working life.

Since a pension granted to an insured person aged between 60 and 65 years is reduced in Belgium by 5% for each of the years which remain after it is granted until he attains the age of 65, his pension was therefore reduced by 20%, as he was 61 years old in 1960.

In addition under Belgian law a retirement pension is not granted if the beneficiary does not undertake to cease to be gainfully employed except on an occasional basis.

As a result the Belgian pension, which was fixed at a smaller figure because the Belgian social security institution believed the amount had to be determined in 1960, was not paid to Mr Couture because he was gainfully employed.

In addition the Belgian social security institution applied Article 28 (1) (b) of Regulation No 3 and calculated this pension on a proportional basis.

On 25 October 1963 the Commission d'Appel Spéciale to which Mr Couture appealed decided that the attitude taken by the Belgian social security institution had no justification in law on the ground that Mr Couture had not applied for a pension before attaining the age of 65 and that such an application 'can only be made by a claimant of his own free will and at his own request'.

The Office National des Pensions pour Ouvriers appealed to the Commission Supérieure des Pensions which on 5 March 1965 upheld the decision of the Commission d'Appel Spéciale that Mr Couture had not applied for a Belgian retirement pension on 1 October 1960. It found in addition that, as Mr Couture had not ceased to be gainfully employed on that date, he could not be paid any benefit and did not therefore fulfil the legal conditions for obtaining a Belgian retirement pension so that 'Article 28 (1) (f) of Regulation No 3 is applicable to him'.

The Office National des Pensions pour Ouvriers appealed on 20 July 1965 to the Belgian Conseil d'État and asked that the before-mentioned decision be quashed.

The Belgian Conseil d'État in its judgment of 24 March 1967 referred the following six questions to the Court of Justice:

*First question*

Does a worker, who completes successively or alternately insurance periods under the legislation of two or more

Member States and who does not have to aggregate these periods in order to acquire the right to benefit in any of these Member States, have the right to elect either the method of calculation provided by Article 28 of Regulation No 3 or the method of calculation resulting from the application of the legislation under which he has completed the insurance periods, or does the fact that the method of calculation provided by Article 28 of Regulation No 3 may be applicable to him exclude the application of the legislative systems under which he has completed his insurance periods?

*Second question*

If the worker has the option which is the subject-matter of the first question and, having regard to the fact that Regulations Nos 3 and 4 do not lay down rules for the exercise of this option, how must a pension application made to the competent social insurance institution of one only of the Member States and based on the insurance periods completed under the legislative systems of two or more Member States be interpreted? In particular, must such an application be regarded as an abandonment by the claimant of the right to avail himself of the application of the legislation of these states which may produce a more favourable result? Or must it be interpreted as necessarily involving the application of the most favourable system?

*Third question*

If an application such as the one described in the second question must be interpreted as involving the application of the most favourable system, must it necessarily be regarded as an application made in proper form to each national social insurance institution with the object of obtaining the determination of benefits which may be more favourable under the national legislation which this institution is under a duty to apply, rather than a claim based on the application of the system of proportional calculation provided for by Regulation No 3?

*Fourth question*

If the worker has the option which is the subject-matter of the first question and if an application such as the one described in the second question must be deemed to be made to each national institution so that, where appropriate, the legislation of each of the states is applied, when must he exercise his option? Can he wait for a final determination, that is to say, until all legal remedies have been exhausted or not exercised, of the claims which he has under both Article 28 of Regulation No 3 and the various national legislative systems?

*Fifth question*

If the worker does not have the option referred to in the first question, is the object of an application for a pension made by him in conformity with Article 30 (1) of Regulation No 4 necessarily the benefits which, in a Member State where he has completed insurance periods, are subject to a reduotion because the application was made in advance?

*Sixth question*

If the worker does not have the said option, is the object of an application which he makes in conformity with Article 30 (1) of Regulation No 4 necessarily benefits, payment of which, in a Member State where he has completed insurance periods, are subject to the condition, not imposed in the other Member State, that he must cease to be gainfully employed?

The judgment of 24 March 1967 served by one Registrar on the other reached the Court of Justice on 21 April 1967.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC the parties to the

proceedings before the Belgian Conseil d'État, the Commission of the EEC and the Member States were invited to submit their written observations.

Only the Belgian Government, the Office National des Pensions pour Ouvriers and the Commission of the EEC filed statements of case.

During the oral procedure the oral submissions of the Commission of the EEC were heard on 17 October 1967.

The Advocate-General delivered his opinion on 8 November 1967.

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

### A — *The first, second, third and fourth questions*

The *Belgian Government* calls attention to the fact that Questions 2, 3 and 4 are in the alternative and need only be answered if in fact the right to exercise an option could be granted to the worker.

The Belgian Government takes the view that the worker is not entitled to elect whether to adopt the method of calculation provided by Article 28 of Regulation No 3 or the one which must be adopted if the legislative systems under which he has completed his insurance periods apply; on the contrary, the possibility of applying the method of calculation provided for by Article 28 of Regulation No 3 is a bar to the application of the legislative systems under which he has completed insurance periods.

As Mr Couture in fact fulfilled the required conditions in Belgium and France he could not claim that Article 28 (1) (f) of Regulation No 3 should be applied to his case. Under Article 28 (4) of this regulation, if the claimant can invoke the provisions of Chapter 3 of Regulation No 3 entitled 'Old-age and Death (Pensions)' he cannot claim a pension calculated under the two national legislative systems in question. Any other reasoning would make the provisions of Article 28 (3) of Regulation No 3 unnecessary.

The *Office National des Pensions pour Ouvriers* argues first of all that according to the judgment of the Court in Case 100/63 Articles 27 and 28 of Regulation No 3 'apply only in so far as the regulations make it possible to secure for the persons concerned benefits at least equal in amount to those which they would receive in each country by virtue of the national legislation applicable to them, considered independently of Regulations Nos 3 and 130 of the Council of the EEC'.

This judgment certainly does not say that claimants have an option but only that the application of the articles in question is, in the final analysis, subject to a condition, namely that the effect of their implementation at least has the effect of guaranteeing benefits which are at least equivalent to the aggregate of the benefits which the claimants would receive in each country.

In addition the authors of Regulations Nos 3 and 4 of the Council of the EEC intended to exclude the option system. This word is only found in Articles 14 and 14A of Regulation No 3 and in Articles 12 and 13 of Regulation No 4 and only refers to the possibility of opting either to be subject to the legislation of his country of employment or to that of his country of origin (or the country where he was last insured).

The Court never intended to revive a system no longer in force, the abolition of which does not conflict with Articles 48 to 51 of the EEC Treaty.

The judgment in Case 10/63 (*Kalsbeek, née Van der Veen*) delivered by the Court on 15 July 1964—to the extent to which it is relevant to this case where Belgian law has to be considered —stated that the provisions of Regula-

tions Nos 3 and 4 are applicable in principle. It is only when it transpires that the aggregate of the benefits which the claimants would receive in each country under the national legislation applicable to them, considered independently of Regulations Nos 3 and 130 of the Council of the EEC (and after necessarily taking into account any provisions of national legislation relating to the prohibition of cumulation and to reduction on grounds of claims made in advance etc.), is higher than the amount arrived at by applying the method of calculation provided for by Article 28 of Regulation No 3 that the provisions of the national legislation should be exclusively applied in substitution for the application of Regulations Nos 3 and 4.

The *Commission of the European Communities* points out first of all with reference to the *wording of Question 1* that the Belgian Conseil d'État has in mind a situation where the aggregation of insurance periods is unnecessary in any of the Member States concerned in order to acquire the right to benefit. In the present case, however, according to the information obtained by the Commission, Mr Couture had on 1 April 1960 only completed 54 quarterly insurance periods. The Commission states that without aggregation the right to benefit is not acquired after 13 years of insurance because the qualifying period laid down under French law by Article 335 of the Social Security Code is 15 years, that is to say, 60 quarterly insurance periods. The right to benefit was only acquired in France on 1 October 1960 after aggregating the four Belgian and the two additional French quarterly insurance periods, that is to say, the second and third quarters of 1960, which moreover explains why the date of the commencement of the payment of the French part of the pension was postponed until 1 October 1960. On the other hand in Belgium there is no qualifying period so that the right to a pension by proportional calculation is acquired after only one year of insurance (the unit used for calculating pensions).

With regard to *Questions 1, 2, 3 and 4* the Commission takes the view that the insured person does not have the right to elect whether to apply the provisions of Article 28 of Regulation No 3 or the national legislative systems with the result that the alternative Questions 2, 3 and 4 are irrelevant. In fact the option provided by Regulation No 3 (Articles 14 and 14A) only refers to the choice of the legislation of one of the states whereas no option is permitted which would preclude the application of regulations which according to Article 189 of the EEC Treaty are *binding* in their entirety and directly applicable in all Member States. In the opinion of the Commission the social security institutions have nevertheless a *duty* with regard to the method of calculating old-age benefits, when, as the Conseil d'État states in its first question, aggregation is unnecessary for the acquisition of a right to benefit in any of the Member States concerned. In fact following the judgment in Case 100/63 (*Kalsbeek, née Van der Veen*) delivered by the Court on 15 July 1964 Article 28 of Regulation No 3 should not be applied independently of Article 27 ([1964] E.C.R. 565) and is only applicable in connexion with the acquisition, maintenance or recovery of the right to benefit referred to in Article 27 (ibid). Having regard to the particular facts of this dispute the Commission takes the view that in this case proportional calculation under Article 28 is possible, since aggregation was necessary. Nevertheless, in the situation described by Question 1 where the right to benefit has been acquired in all the Member States concerned the application of Article 28 is not justified having regard to the grounds of the judgment in Case 100/63. In this case whether the method of proportional

calculation is adopted or not the amount of the Belgian pension remains the same. Mr Couture has in fact under Belgian law alone the right to a pension which is simply proportionate to the period during which he has been insured and the proportional calculation of this type of pension has no effect on its amount and produces the same result as the said direct method of calculation. To sum up, the Commission takes the view that the answer to *Questions 1 to 4* should be that Regulation No 3 does not permit the beneficiary to elect whether to apply this regulation or the national legislative systems and the only consequence of this view is that the application of the provisions in question must be effected with due regard to their proper meaning and does not in every case entail proportional calculation.

During the oral proceedings on 17 October 1967 the Commission of the EEC gave its views on the conclusions to be drawn from the judgments in Cases 1/67 (*Ciechelski*) and 2/67 (*de Moor*) delivered by the Court on 5 July 1967, after the Commission had settled its written observations. It concluded from the decisions in the beforementioned cases and the judgment of 15 July 1964 in Case 100/63 (*Kalsbeek, née Van der Veen*) that proportional calculation of a pension payable by an institution of one Member State is only admissible in two cases. The first case arises when the right to a pension payable by the institution is not acquired solely on the basis of the insurance periods completed under the legislation which it is applying and it is thus necessary to resort to the *aggregation* of insurance periods completed under the legislation of other Member States for such a right to be acquired. The second case arises where the right to a pension payable by an institution is acquired *without aggregation* solely on the basis of the insurance periods completed under the legislation which it is applying but where *insurance periods have overlapped*, that is to say, where the benefit relates to 'insurance periods which have already been used as a basis for the calculation of the amount of benefit paid by the competent institution of another State' in order to avoid a plurality of benefits covering the same period.

The Commission, after applying these decided cases to the present case, concludes that, if the aggregation of the Belgian insurance periods was necessary in order to acquire the right to a French pension, this fact does not justify proportional calculation of the pension in another Member State, in this instance Belgium. It is necessary to draw the conclusion that in this case proportional calculation of the Belgian pension was not justified. It is, however, necessary to bear in mind that in this dispute, as in all cases where the calculation of a pension is strictly proportionate to the duration of the insurance period, proportional calculation and the direct method of calculation produce the same result.

B — *The fifth question*

The *Belgian Government* takes the view that the object of the pension application *made by Mr Couture* was necessarily the benefits which, in one State in which he has completed insurance periods, are reduced because the application for them was made in advance.

The *Office National des Pensions pour Ouvriers* merely states that in its opinion this question should be answered in the affirmative.

The *Commission of the EEC* calls attention to the fact that this question has already been raised in Case 9/67 (*Colditz*). It agrees with the opinion of Mr Advocate-General Roemer in that case that Article 30 (1) of Regulation No 4 is only a procedural provision, whose aim is to simplify applica-

tions for pensions, to rationalize and expedite their determination, and which applies when pensions are determined simultaneously in various countries but which is not intended to determine in which case they must be determined simultaneously. In conformity with the before-mentioned opinion the question arises whether the provisions of Article 28 (1) (e) and (f) do not permit an interpretation implying, on the contrary, the *successive* determination of benefits at the request of the claimant. If such an application is one of the *conditions* stipulated under Belgian law the successive determination of benefits provided by Article 28 (1) (g) would be possible when the claimant had not made an application.

It appeared in Case 9/67 that the main idea was to prevent insured persons losing any rights as a result of the application of the regulations. In the present case the simultaneous determination of pensions in different countries would lead, as it did in Case 9/67, to such a loss of rights, since the insured person would be deprived of the right to obtain a pension at the normal rate on reaching the normal retirement age (65) and for this reason would suffer in Belgium a diminution of his benefits for which there would be no corresponding compensation in France. As a result of the determination of his Belgian pension in advance, his insurable working life in Belgium and consequently the whole of his working life have been curtailed, which, the Commission points out, is incompatible with Article 51 of the EEC Treaty.

During the oral proceedings on 17 October 1967 the Commission of the EEC called attention to the fact that the question to be answered is whether the social security institution of a Member State (in this case Belgium) has the power to determine automatically a worker's pension, although he has not applied for it, just because he has applied in another Member State (in this case France) for the determination of the pension to which he is entitled under the legislation of this second state. It pointed out that in its judgment in Case 9/67 (*Colditz*) of 5 July 1967 the Court held that 'Article 28 of Regulation No 3 together with Articles 30 to 36 and 83 of Regulation No 4 does not imply the simultaneous payment, one the basis of the same reference date, of a pension payable in one Member State without recourse to Article 27 and of another pension not yet payable in another Member State'.

The Commission takes the view that this rule must be applied generally and extended so as to include the present case in which the French pension was acquired by aggregation as provided by Article 27. The fact that the worker applies for a pension in a country where account has to be taken of insurance periods completed in another country does not necessarily mean that the same application can be used for the calculation and determination of the pension in that other country where it is not in his interest to apply for his pension at the same time. In other words the question whether there is a right to adopt the method of proportional calculation because aggregation was necessary is not the same as the question of the date when the right to a pension is acquired in the respective countries.

C — *The sixth question*

The *Belgian Government* takes the view that the object of the pension application *made by Mr Couture* must necessarily be to obtain the benefits payment of which, in one State in which he has completed insurance periods, is dependent upon his giving up work, whereas this is not required by the legislation of the other state.

In the opinion of the *Office National des Pensions pour Ouvriers* this ques-

tion must be answered in the affirmative.

The *Commission of the EEC* calls attention to the fact that this question has already been raised in Case 2/67 (*de Moor*). Where benefits are not paid because the claimant is gainfully employed, he does not fulfil the conditions laid down by Belgian law and consequently the provisions of Article 28 (1) (e) and (f) authorize the determination of a Belgian pension based exclusively on the insurance periods completed under the laws of the other countries. It follows that the application for a French pension cannot be treated as an application for a Belgian pension which cannot be claimed since the conditions for its acquisition have not been fulfilled.

During the oral proceedings on 17 October 1967 the Commission of the EEC recalled that the question of taking into account insurance periods completed under legislation—as is the case under Belgian legislation—which provides that the payment of benefits is subject to the claimant's ceasing to be gainfully employed has already been raised in Case 2/67 (*de Moor*) and was referred to the Court again in Case 22/67 (*Goffart*). The Commission takes the view that it follows from its observations on the fifth question that the sixth question must also be answered in the negative. If in fact it is to be assumed that the application for a pension in one country is not to be treated as a simultaneous application for a pension in a second country, the determination of the pension in the second country is deferred until the claimant applies for his pension after taking into account all the conditions laid down by the legislation of the second country and, in this case, the condition that he has ceased to be gainfully employed.

## Grounds of judgment

By judgment of 24 March 1967 which reached the Court Registry on 21 April 1967 the Belgian Conseil d'État has referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a request for the interpretation of Article 28 of Regulation No 3 of the Council of Ministers of the EEC and of Article 30 of Regulation No 4 of the said Council.

This request for interpretation raises the preliminary question whether the before-mentioned Articles of Regulations Nos 3 and 4 must be construed as conferring upon a migrant worker in certain circumstances 'the right to elect either the method of calculation provided by Article 28 or the method of calculation resulting from the application of the legislation under which he has completed the insurance periods'.

The subsequent questions deal essentially with the question whether an application for a pension made in one Member State automatically implies, even though contrary to the wishes and interests of the worker concerned, an application for and the determination of a pension in the other Member States.

The request for an interpretation seems to have been formulated by the Conseil d'État on the assumption that a migrant worker, who has completed insurance periods in various Member States, does not have to resort to aggregation in any of these States in order to acquire the right to benefit.

It is however necessary not to rule out the assumption made by the Commission in its statement of case that in order to acquire the right to benefit in France Mr Couture had to aggregate the French and Belgian insurance periods in order to comply with Article 335 of the French social security code.

Neither Regulation No 3 nor Regulation No 4 provides for an option within the meaning suggested by the Conseil d'État in its first question.

Although Articles 14 and 14A of Regulation No 3 and Articles 12, 12A and 13 of Regulation No 4 provide for such an option, it is only granted to a limited number of migrant workers, for example those employed at different posts or in the personal service of officials of such posts and the auxiliary staff of the European Communities. Moreover, the option is restricted to a choice between the legislation of the country of employment and that of the country of origin. The application of the system established by Articles 27 and 28 of Regulation No 3 depends, therefore, only on the objective conditions and circumstances in which the migrant worker concerned is situated.

Article 51 of the Treaty is essentially intended to cover cases in which the legislation of a Member State does not by itself confer on the person concerned a right to benefit because he has not completed a sufficient number of insurance periods under that legislation. To this intent it provides, for the benefit of a migrant worker who has been successively or alternatively subject to the legislation of several Member States, that the insurance periods completed under the legislation of each of the Member States shall be aggregated. It follows from the foregoing that the provisions of Articles 27 and 28 of Regulation No 3 only apply in certain specific cases and that they have no application in the case of a Member State in which the objective sought by Article 51 is achieved by virtue of national legislation alone. At least under those systems based on insurance periods, under which the amount of a retirement pension varies in proportion solely to the insurance periods which have been completed, these provisions do not apply to a migrant worker who does not have to resort to the aggregation of insurance periods in order to acquire the right to benefit in any of the Member States in which he has completed insurance periods.

The fact that a migrant worker has to aggregate insurance periods in a Member State in order to be granted in that state the old-age pension which he claims does not imply that old-age pensions in other Member States must be determined simultaneously, since the duty to determine pensions simultaneously in the other Member States is not prescribed in any of the relevant provisions. Such a requirement cannot, in particular, be found in Article 30 of Regulation No 4 which is merely a procedural provision for the purpose of simplifying administration where pensions are determined simultaneously, but which cannot stipulate simultaneous determination.

Further there is the danger that such an obligation would deprive the claimant either of the right to a pension acquired in one Member State while he was waiting for the determination of another pension in another Member State, or would prevent him from taking advantage of the right, acknowledged by the legislation of the latter state, to defer such determination.

The provisions of Articles 27 and 28 of Regulation No 3 in no way provide for the loss of options granted under national legislative systems. In fact these provisions, which in conformity with the objectives of Article 51 of the Treaty, aim at securing for a migrant worker the advantages corresponding to his various periods of work may not, in the absence of an express exception in conformity with the objectives of the Treaty, be applied so as to deprive him of the benefit of part of the legislation of a Member State.

Therefore, if an application for a pension made in one Member State may be treated as an application for a pension in other states, the migrant worker concerned must in any case be given the opportunity to make his decision in full knowledge of the facts.

In answering the fourth question referred by the Conseil d'État it must be held that in those cases in which the migrant worker decides not to make simultaneous pension applications he must comply with the procedure and time-limits laid down by the internal legislation of each Member State concerned.

Costs

The costs incurred by the Government of the Kingdom of Belgium and by the Commission of the EEC which have submitted their observations to the Court are not recoverable and as these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Belgian Conseil d'État, 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 Commission of the EEC;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 48 to 51 and 177 of the Treaty establishing the European Economic Community;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to 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.), and especially Articles 14, 14A, 27 and 28;
Having regard to Regulation No 4 of the Council of the EEC on implementing procedures and supplementary provisions in respect of the said Regulation No 3 (Official Journal of 16 December 1958, p. 597 et seq.), especially Articles 12, 12A, 13, 30 to 36 and 83;
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 for a preliminary ruling by judgment of 24 March 1967 of the Belgian Conseil d'État, Administrative Law Division, 6th Chamber, hereby rules:

1. **The application to a migrant worker of the provisions of Articles 27 and 28 of Regulation No 3 does not depend upon the free choice of the person concerned but upon his objective situation;**

2. **At least in those systems based on insurance periods under which the amount of the retirement pension varies in proportion solely to the insurance periods which have been completed, Articles 27 and 28 of Regulation No 3 do not apply to a migrant worker who, in order to acquire the right to benefit, does not have to resort to aggregation in any of the Member States in which he has completed insurance periods;**

3. **Regulations Nos 3 and 4 and in particular Articles 27 and 28 of Regulation No 3 together with Articles 30 to 36 and 83 of Regulation No 4 do not imply that there is an obligation to determine simultaneously and on the basis of the same reference date an old-**

**age pension acquired in one Member State under Article 27 and another old-age pension which has not yet been acquired in another Member State or which has been acquired in another Member State whose legislation permits its payment to be deferred at the request of the person concerned;**

4. **Claiming a pension from a social security institution of one Member State does not imply a waiver of the rights of election which the legislative systems of other Member States grant to the workers concerned. The national social security authorities are competent to decide when such election must be made;**

5. **The decision as to costs in these proceedings is a matter for the Belgian Conseil d'État.**

Lecourt Donner Trabucchi

Monaco Mertens de Wilmars

Delivered in open court in Luxembourg on 12 December 1967.

A. Van Houtte
Registrar

R. Lecourt
President

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

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

The reference for a preliminary ruling, upon which I give my opinion today, was initiated by a request from the Belgian Conseil d'État. It refers—as many other references do—to the provisions issued by the Council relating to social security for migrant workers and the facts are as follows.

The defendant in the original proceedings, a Belgian national resident in France, worked and was insured under social security schemes in Belgium (for one year) and then in France (for an initial period of 13 years). On 5 May 1960 (at the age of 60) he made an application for an old-age pension to the social insurance institution at his place of residence, based on French law, under which the normal retirement age is 60, with the result that he was granted a part pension in France in accordance with Article 28 of Regulation No 3 commencing on 1 October 1960, that is to say, on the date when, after taking into account his insurance periods in Belgium, he had completed the minimum social insurance period of sixty quarters under French law. The French social insurance institution then sent the application to the Belgian social insurance authority, which treated

1 — Translated from the German.