concerned to clarify the scope of subparagraph (ii) of that paragraph *vis-à-vis* British legislation.

2. A person who is entitled under the legislation of a Member State to benefits covered by Regulation No 1408/71 by virtue of contributions previously paid compulsorily does not lose his status as a "worker" within the meaning of Regulations Nos 1408/71 and 574/72 by reason only of the fact that at the time when the contingency occurred he was no longer paying contributions and was not bound to do so.

3. The phrase "legislations of two or more Member States", which occurs in Article 8 of Regulation No 574/72, must be understood as also including the provisions of Community regulations.

4. Article 86 of Regulation No 1408/71 must be interpreted as meaning that where a claim, declaration or appeal is submitted to an authority, institution or court of a Member State other than that under the legislation of which the benefit must be awarded, that authority, institution or court has no power to determine the admissibility of the claim, declaration or appeal in question. That power belongs exclusively to the authority, institution or court of the Member State under the legislation of which the benefit must be awarded and to which the claim, declaration or appeal must in all circumstances be forwarded.

5. Article 8 of Regulation No 574/72 applies only to the extent to which a claim by the person concerned may in fact be satisfied by the application of the legislation of two or more Member States and only in regard to the period for which the claimant may claim benefits under the legislation specified by that article.

   On the other hand that provision does not preclude a person who has exhausted the maximum entitlement awarded by the State of the confinement from benefiting for an additional period from benefits awarded by other legislation to which she has been subject and which, for reasons of the welfare of the mother and child, allows a longer period of leave from work. Indeed, such a result could not be regarded as coming within the category of "unjustified overlapping" which the provision in question seeks to prevent.

In Case 143/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the National Insurance Commissioner, London, for a preliminary ruling in the dispute pending before him between

MARGARET WALSH

and

NATIONAL INSURANCE OFFICER

upon the interpretation of Article 86 of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416) and Article 8 of Regulation No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71 (Official Journal, English Special Edition 1972 (I), p. 159), and of the meaning of "worker" for the purposes of both regulations,

THE COURT (Second Chamber),

composed of: A. Touffait, President of Chamber, P. Pescatore and O. Due, Judges,

Advocate General: F. Capotorti
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted in pursuance of Article 20 of the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. The claimant in the main action, Mrs Margaret Walsh, has been insured under the British social security scheme from 1967. She worked in the Republic of Ireland from August 1973 until January 1974 when she returned to the United Kingdom where she continued to work. Having married in June 1974 — at which point she ceased to pay full British contributions — Mrs Walsh went back to Ireland the following October to join her husband. On 31 July 1975, Mrs Walsh gave birth to a child in Ireland and again returned to live in the United Kingdom on 21 August 1975.

2. Maternity allowance which she claimed in the United Kingdom on 3 October 1975 was disallowed by the Insurance Officer on the ground that the

claim was not made within the requisite time und that she hat not proved continuous good cause for the delay in making the claim. Her appeal to a local tribunal was dismissed and Mrs Walsh further appealed to the National Insurance Commissioner. During this second appeal the point was raised that a right to benefit during the stay in Ireland did not exist under British legislation alone and that since Mrs Walsh was no longer a "worker" within the meaning of Regulation No 1408/71, Articles 19 and 22 of the regulation did not apply either. The additional question was raised whether, if Regulation No 1408/71 applied, the place of confinement was the determining factor under Article 8 of Regulation No 574/72 and whether the case should not therefore be referred to the Irish authorities pursuant to Article 86 of Regulation No 1408/71.

3. By an order of 11 September 1979 the National Insurance Commissioner deferred a decision on the matter and applied to the Court of Justice under Article 177 of the EEC Treaty for a preliminary ruling on the following questions:

(1) Whether a person who satisfies the contribution conditions of one Member State (in this case the United Kingdom) for entitlement to maternity allowance (in this case at a reduced rate) throughout the period for which maternity allowance is claimed in that State is a "worker" for the purpose of

(a) Regulation (EEC) No 1408/71; and

(b) Regulation (EEC) No 574/72,

notwithstanding that during that period she has paid no contributions and is not liable to pay contributions.

(2) Whether a worker who satisfies the contribution conditions for maternity benefit (either at the full or at a reduced rate) under the legislation of two or more Member States (in this case those of the United Kingdom and the Republic of Ireland) is to be regarded, for the purpose of Article 8 of Regulation (EEC) No 574/72 as "entitled to claim maternity benefits" under those legislations

(a) whether or not such worker falls to be disqualified for receipt of such benefits under the legislation of one or more of such Member States on the ground of delay in claiming or on other grounds; or

(b) only if the claim of such worker would in fact succeed under the legislation of all such Member States.

(3) Whether the reference in Article 8 of Regulation (EEC) No 574/72 to "the legislations of two or more Member States" is to be regarded as (a) including or (b) excluding the regulations of the European Economic Community.

(4) Whether, in the case of a worker who is entitled to claim maternity benefits under the legislation of two or more Member States within the meaning of Article 8 of Regulation (EEC) No 574/72, the provision of that article that those benefits shall

be granted exclusively under the legislation of the Member State in whose territory the confinement took place (in this case the Republic of Ireland) operates to exclude the claimant from obtaining maternity benefits in Member States where the confinement did not take place (in this case the United Kingdom)

(a) only in respect of the period for which the claimant is entitled to claim maternity benefits under the legislation of the Member State where the confinement took place; or

(b) in respect of all maternity benefits in relation to that confinement in those Member States where the confinement did not take place.

(5) Whether the said Article 8, to the extent to which it operates to exclude the claimant from obtaining maternity benefits in Member States where the confinement did not take place is valid in so operating and is not *ultra vires.*

(6) Whether the directions in Article 86 of Regulation (EEC) No 1408/71 as to the forwarding of claims to the competent authority apply in the case of a claim which should have been, but has not been, submitted, in order to comply with the legislation of one Member State (in this case the Republic of Ireland), within a specified period to an authority, institution or court of that State but has been submitted, outside that period, to a corresponding statutory institution or court of another Member State (in this case the Department of Health and Social Security, London, United Kingdom).

4. In the United Kingdom maternity benefits are granted for a maximum period of 11 weeks before and seven weeks after confinement (Section 22 (2) of the Social Security Act 1975). A prior condition for the grant of those benefits is that the claimant must have paid contributions as a worker during a certain qualifying period (Section 22 (1) (b) and Schedule 3, Part I, paragraph 3, of the Social Security Act). A claim for maternity benefit may be made either before or after confinement but if it is made after confinement the benefits are granted only for a maximum period of seven weeks (Regulation 6 (1) (b) of the Social Security (Maternity Benefit) Regulations, S.I. 1975, No 553), and the claim must be made within three weeks following confinement. If it is made after that period, benefits are generally granted only from the week in which the claim was made and are maintained until the end of the sixth week after that in which confinement occurred (Social Security (Claims and Payments) Regulations 1975, Schedule 1, S.I. 1975, No 560). Claims made after the prescribed time has expired may nevertheless be accepted if good cause for the delay in making the claim is proved. (Section 82 (1) of the Social Security Act and Regulation 13 of S.I. 1975, No 560).

5. The provisions of the Irish Social Welfare Act 1952 and of the implementing regulations concerning maternity benefits correspond in the main to those of the United Kingdom. However, in Ireland the benefits are granted for a maximum period of six weeks before and six weeks after confinement.

6. According to Article 1 (a) (ii) of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416), the expression "worker" means:

"any person who is compulsorily insured for one or more of the contingencies covered by the branches of social security dealt with in this regulation, under a social security scheme for all residents or for the whole working population . . .;".

7. The rules applicable in the event of the overlapping of entitlement to maternity benefits under the legislation of two or more Member States are contained in the first paragraph of Article 8 of Regulation No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1972 (I), p. 159), which is worded as follows:

"If a worker or a member of his family is entitled to claim maternity benefits under the legislations of two or more Member States, those benefits shall be granted exlusively under the legislation of the Member State in whose territory the confinement took place or, if the confinement did not take place in the territory of one of these Member States, exclusively under the legislation of the Member State to which the worker was last subject."

8. Article 86 of Regulation No 1408/71 contains the rules in relation to claims, declarations or appeals submitted to an authority, institution or court of a Member State other than the competent State. It states:

"Any claim, declaration or appeal which should have been submitted, in order to comply with the legislation of one Member State, within a specified period to an authority, institution or court of that State shall be admissible if it is submitted within the same period to a corresponding authority, institution or court of another Member State. In such a case the authority, institution or court receiving the claim, declaration or appeal shall forward it without delay to the competent authority, institution or court of the former State either directly or through the competent authorities of the Member State concerned. The date on which such claims, declarations or appeals were submitted to the authority, institution or court of the second State shall be considered as the date of their submission to the competent authority, institution or court."

9. The order by the National Insurance Commissioner making the reference was received at the Court Registry on 14 September 1979. In accordance with Article 20 of the Statute of the Court of Justice of the EEC, written submissions were lodged by the respondent in the main action, represented by G. S. Kerrigan, Senior Legal Assistant, Solicitor's Office, Department of Health and Social Security, and by the Commission, represented by J. Forman, a member of its Legal Department, acting as Agent.

The Council, represented by its Legal Adviser, J. Carbery, acting as Agent, reserved the right to lodge written observations in order to uphold the validity of Article 8 of the regulation, should questions concerning this subject be pursued and should the reasons for them be explained in the subsequent pleadings.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

By order of 16 January 1980, the Court assigned the case to the Second Chamber, pursuant to Article 95 (1) of the Rules of Procedure.

II — Written observations submitted to the Court

First question

1. The *Commission* points out that the definition of "worker" in Article 1 (a) (ii) of Regulation No 1408/71 refers to a person covered for a contingency and does not provide that such person must be compulsorily insured at the time a contingency arose. In its opinion, a person in the position of Mrs Walsh is to be regarded as a worker so long as entitlement to benefit claimed depends upon the contribution paid by her, or on her behalf, as a worker under a compulsory scheme covered by the said article. On this point the Commission refers to paragraph 18 and especially paragraph 21 of the decision of the Court of 29 September 1976 in Case 17/76, *Brack* v *Insurance Officer* [1976] ECR 1429.

The Commision adds that according to Article 1 (c) of Regulation No 574/72 the definitions in Article 1 of Regulation No 1408/71 are the same as those for Regulation No 574/72.

2. The *Insurance Officer* points out that a person "is insured" according to the ordinary meaning of those words so long as his insurance against a particular risk continues.

The answer to the question whether a person is a worker depends on whether he had that status, not at the time the risk materialized, but at the time the insurance periods taken into account for the purposes of the acquisition of the benefit in question were completed. According to him, this view is borne out by the words of Article 2 (1) of Regulation No 1408/71 as well as by the objectives contained in Articles 48 to 51 of the Treaty.

Second question

1. The *Commission* refers to Article 8 of Regulation No 574/72 on the overlapping of benefits, stating that for the principle of overlapping to operate there must be a real or effective entitlement to receipt of the benefit concerned. It points out on this point that were alternative (a) of the question to prevail, then the situation might be envisaged where a worker having entitlement to maternity benefit in both State A and State B was confined in State B where she was disqualified from receipt of the benefit

by reason of a late claim and had no entitlement from State A because of the application of Article 8.

2. The *Insurance Officer* points out that the object of Article 8 is to restrict payment of maternity benefit to the State where confinement takes place. In his opinion that object would be achieved if the Court were to reply to the second question that a worker who satisfies the contribution condition for benefit under the legislation of two or more Member States is to be regarded, for the purpose of Article 8 of Regulaton No 574/72, as "entitled to claim maternity benefits" under those legislations if the claim of such worker would succeed under the legislation of one such State, whether or not such worker falls to be disqualified for the receipt of benefits under the legislation of the other Member States.

Third question

1. The *Commission* recalls that Article 1 (j) of Regulation No 1408/71 defines the expression "legislation" to mean: "All laws, regulations and other provisions and all other ... implementing measures ... relating to the sectors of social security and schemes for social security ..." Since Regulations Nos 1408/71 and 574/72 are binding in their entirety and are directly applicable, the Commission argues that they form part of the social security law of each Member State.

In its opinion it follows that alternative (a) of the question is the appropriate one.

2. The observations of the *Insurance Officer* are along the same lines. He relies in particular upon the judgment of the Court of 7 November 1973 in Case 51/73, *Bestuur der Sociale Verzekeringsbank* v *Smieja* ([1973] ECR 1213).

Fourth question

1. The Commission, referring to the example which it gave for the second question, points out that Article 8 of Regulation No 574/72 is not to be invoked during any period when maternity benefit is suspended or not payable under the legislation of one Member State but also that it is inapplicable when entitlement has not commenced or has been exhausted under one Member State's legislation but continues under the legislation of another Member State.

2. The *Insurance Officer* suggests that the reply to the fourth question should be based in particular on the judgment of the Court of 13 July 1976 in Case 19/76, *Triches,* [1976] ECR 1243, and of 6 March 1979 in Case 100/78, *Rossi,* [1979] ECR 831, that where the right to maternity benefits in a Member State other than the State of confinement is not acquired by virtue of national legislation alone or the amount of maternity benefits is less than the amount paid in the State of confinement Article 8 totally excludes the claimant from obtaining maternity benefits in the first Member State. Where, however, the right to benefits is acquired by virtue of national legislation alone and the benefits are greater in amount than in

the State of confinement Article 8 operates only to exclude the claimant from obtaining an amount of maternity benefits in the first Member State equal to the amount of maternity benefits paid in the State of confinement.

sequently ends for reasons of national law or because it has been exhausted, then any underlying entitlement which might continue to exist under the other Member State's legislation would revive.

Fifth question

1. The *Commission* recalls that under the case-law of the Court, in so far as the benefits at issue have both been earned by virtue of the Community aggregation procedure, suspension according to Article 8 of Regulation No 574/72 may be said to constitute the counterbalance of an award which, but for Community law, would not exist. It goes on further to say that even where separate entitlement to maternity benefit exists by virtue of each Member State's legislation, independently of Community law, suspension in the terms of Article 8 would still seem admissible by virtue of the basic principle that a person cannot be reimbursed twice in respect of the same risk.

In respect of both situations described in the preceding two paragraphs, the Commission also notes that a worker may, in the circumstances laid down in Regulation No 1408/71, on the one hand export a benefit to another Member State, and, on the other, enjoy the other advantages conferred by that regulation in respect of further benefits. According to the Commission, to argue without more for the invalidity of Article 8 would mean that national law would determine whether and to what extent two awards are payable. Further, if national overlapping rules did not already exist to cater for the receipt of foreign maternity allowances then a declaration as to the invalidity of Article 8 might well incite action by Member States in this respect.

The Commission further observes that where the maternity benefits payable by the Member State where the claimant was not confined, are, or become, higher than those in the State where she was confined, the former State is obliged under the judgment of the Court in Case 100/78, *Rossi,* to pay a supplement so as to ensure that the worker shall receive the higher of the allowances due. Likewise it may be said that if entitlement to allowances in a Member State, which is not suspended, sub-

2. The *Insurance Officer* thinks that it follows from the answer which he proposed for Question 4 that Article 8 of Regulation No 574/72 is valid only to the extent to which it does not, without cause, deprive a worker of the benefit of part of the legislation of a Member State. There is no need in his opinion to consider the validity of Article 8 in this case since Mrs Walsh was disqualified for receipt of maternity allowance under United Kingdom legislation by reason of

her absence abroad. The Insurance Officer thinks this is the effect of the Court's judgment in *Triches,* Case 19/76, even though it is recognized that the maternity allowance which Mrs Walsh was entitled to claim under United Kingdom law may be more than that payable under the legislation of the State of confinement.

Sixth question

The *Commission* and the *Insurance Officer* both think that a negative answer to this question would result in the institution which is acting as agent having to interpret the legislation of the competent Member State and in delegating to that institution, without express authority, the role of the determining authority of the competent State.

The Commission further observes that it might be that although, *de facto,* a claim was not made in good time, the competent State would nevertheless be prepared to accept it if, for instance, there was good cause for its late submission. It adds that any refusal by the competent authority to allow the claim may itself form the subject of an appeal within the competent State. In its opinion it would therefore be unacceptable if a migrant worker were to be deprived of these possibilities by virtue of a decision arrived at by an agent.

III — Oral procedure

At the sitting on 6 March 1980, the National Insurance Officer, represented by G. S. Kerrigan, Senior Legal Assistant Solicitor at the Department of Health and Social Security, and the Commission, represented by J. Forman, a member of its Legal Department, acting as Agent, presented oral argument.

The Insurance Officer then stated that, as regards the answer to be given to the second question referred to the Court, he shared the Commission's view.

The Advocate General delivered his opinion at the sitting on 27 March 1980.

Decision

1 By an order of 11 September 1979, which was received at the Court on 14 September 1979, the National Insurance Commissioner, London, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty six questions on the interpretation and validity of certain provisions of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416) and of Regulation No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71 (Official Journal, English Special Edition 1972 (I), p. 159). Those questions are submitted in

the context of a dispute concerning the maternity benefit due to a person, Mrs Margaret Walsh, who worked both in the United Kingdom and in the Republic of Ireland and who, after bearing a child in Ireland on 31 July 1975, returned to live in the United Kingdom on 21 August 1975.

2 Mrs Walsh, who, according to the information provided, appears to have satisfied the conditions for claiming maternity benefit in Ireland, did not however lodge a claim for such benefit in that country. On the contrary, after her return to the United Kingdom she submitted a claim on 3 October 1975 to the British Insurance Officer for the maternity benefit payable by virtue of the United Kingdom legislation. Although Mrs Walsh satisfied the contribution conditions for the acquisition of a right to benefit at a reduced rate the Insurance Officer disallowed the claim on the ground that it had not been made within the requisite time and that there was no good cause for the delay.

3 Following the dismissal of the appeal which Mrs Walsh made to a local tribunal, the claimant brought a further appeal before the National Insurance Commissioner. In the course of the proceedings before the Commisioner certain issues arose concerning the application of Community rules to the case in question and the Commissioner requested the Court to give a preliminary ruling on the following questions:

"(1) Whether a person who satisfies the contribution conditions of one Member State (in this case the United Kingdom) for entitlement to maternity allowance (in this case at a reduced rate) throughout the period for which maternity allowance is claimed in that State is a 'worker' for the purpose of

(a) Regulation (EEC) No 1408/71; and

(b) Regulation (EEC) No 574/72,

notwithstanding that during that period she has paid no contributions and is not liable to pay contributions.

(2) Whether a worker who satisfies the contribution conditions for maternity benefit (either at the full or at a reduced rate) under the legislation of two or more Member States (in this case those of the United Kingdom and the Republic of Ireland) is to be regarded, for the purpose of Article 8 of Regulation (EEC) No 574/72 as 'entitled to claim maternity benefits' under those legislations

(a) whether or not such worker falls to be disqualified for receipt of such benefits under the legislation of one or more of such Member States on the ground of delay in claiming or on other grounds; or

(b) only if the claim of such worker would in fact succeed under the legislation of all such Member States.

(3) Whether the reference in Article 8 of Regulation (EEC) No 574/72 to 'the legislations of two or more Member States' is to be regarded as (a) including or (b) excluding the regulations of the European Economic Community.

(4) Whether, in the case of a worker who is entitled to claim maternity benefits under the legislation of two or more Member States within the meaning of Article 8 of Regulation (EEC) No 574/72, the provision of that article that those benefits shall be granted exclusively under the legislation of the Member State in whose territory the confinement took place (in this case the Republic of Ireland) operates to exclude the claimant from obtaining maternity benefits in Member States where the confinement did not take place (in this case the United Kingdom)

(a) only in respect of the period for which the claimant is entitled to claim maternity benefits under the legislation of the Member State where the confinement took place; or

(b) in respect of all maternity benefits in relation to that confinement in those Member States where the confinement did not take place.

(5) Whether the said Article 8, to the extent to which it operates to exclude the claimant from obtaining maternity benefits in Member States where the confinement did not take place is valid in so operating and is not *ultra vires.*

(6) Whether the directions in Article 86 of Regulation (EEC) No 1408/71 as to the forwarding of claims to the competent authority apply in the case of a claim which should have been, but has not been, submitted, in order to comply with the legislation of one Member State (in this case the Republic of Ireland), within a specified period to an authority, institution or court of that State but has been submitted, outside that period, to a corresponding statutory institution or court of another Member State (in this case the Department of Health and Social Security, London, United Kingdom)."

4 Whereas questions 1, 3 and 6 concern provisions or expressions of general application, questions 2, 4 and 5 involve specific issues and must be considered in the light of the objectives of the benefits in question. It is appropriate therefore to deal with these two groups of questions in turn.

Questions 1, 3 and 6

5 The issue raised in the first question is really whether the expression "any person who is compulsorily insured" which is contained in the definition of the term "worker" in Article 1 (a) (ii) of Regulation No 1408/71 — a definition which also applies in the context of Regulation No 574/72 — presupposes the compulsory payment of contributions at the time when the contingency covered by the insurance occurs or whether it suffices that, under the legislation in question, the person should still be insured at the time of the contingency by virtue of contributions paid compulsorily as an employed person at an earlier period. This problem is no different if there is also taken into consideration paragraph (1) of Point I of Annex V to Regulation No 1408/71 which, with reference to the provision cited above and United Kingdom legislation, regards as workers "all persons required to pay contributions as employed workers". In fact, the Court has already decided in its judgment of 29 September 1976 in Case 17/76 *Brack* v *Insurance Officer* [1976] ECR 1429 at p. 1449 that, far from restricting the definition of the

term "worker" as it emerges from Article 1 (a) of the regulation, the provision in Annex V is solely concerned to clarify the scope of Article 1 (a) (ii) *vis-à-vis* British legislation so that persons covered by the definition in the regulation may be identified as such by virtue of the manner in which the British system is administered or financed.

6 As the aforementioned judgment of 29 September 1976 also stressed, it follows from certain provisions of Regulation No 1408/71 that it applies to certain categories of persons who, when the contingency occurs, do not have the status of "employed persons" within the meaning of the law of employment. It would be contrary to the spirit of those provisions and to one of the essential objectives of the regulation, which is to guarantee to workers who move within the Community their accrued rights and advantages, to exclude from the scope of the regulation — by giving a restrictive interpretation to the definition of the term "worker" — any other case where, under the relevant legislation, the insurance continues to cover the insured against risks but the insured is no longer bound to pay contributions.

7 The answer to the first question should therefore be that a person who is entitled under the legislation of a Member State to benefits covered by Regulation No 1408/71 by virtue of contributions previously paid compulsorily does not lose his status as a "worker" within the meaning of Regulations Nos 1408/71 and 574/72 by reason only of the fact that at the time when the contingency occurred he was no longer paying contributions and was not bound to do so.

8 The expression "legislation", the interpretation of which is called for by the third question, is to be found in a great number of provisions in the two regulations. It is included among the definitions contained in Article 1 of Regulation No 1408/71 for the purpose of the application of the regulation. Even though the problem of interpretation raised by the question does not find an express answer in that definition, the very existence of such a general provision implies that the answer must, so far as possible, be based upon a uniform interpretation. In its judgment of 7 November 1973 in Case 51/73 *Bestuur der Sociale Verzekeringsbank* v *Smieja* [1973] ECR 1213 the Court construed that concept, as it occurs in Article 10 (1) of Regulation No 1408/71, as embracing the provisions of Community law relevant to that

paragraph. That conclusion was based, *inter alia,* on the consideration that the rights under discussion often derive not from national legislation alone but from that legislation combined with Community rules. That consideration is equally applicable to this case. Indeed, the need to provide for a restrictive rule such as that in Article 8 of Regulation No 574/72 is explained precisely by the extension of the rights of the person concerned which results from other provisions of the two regulations.

9 The answer to the third question should therefore be that the expression "the legislations of two or more Member States", which occurs in Article 8 of Regulation No 574/72, must be understood as also including the provisions of Community regulations.

10 The sixth question asks, in substance, whether the duty set forth in the second sentence of Article 86 of Regulation No 1408/71, which requires an authority of a Member State other than that in which the competent authority is situated to forward to the latter claims lodged with the former, exists even where the claim is lodged after the expiry of the period provided for by the legislation of the competent authority.

11 This question of interpretation arises from the fact that the second sentence of Article 86 makes reference to the first sentence of that article and that sentence is concerned only with cases in which the claim has been submitted within the same period as that provided for by the legislation of the competent authority. However, Article 86 does not confer on the authority receiving the claim the power to adjudicate upon its admissibility under the legislation of the competent authority. It is for the latter to decide whether the claim has been submitted in time, regard always being had to the rule set out in the first sentence of Article 86. Consequently, the authority which has received the claim must forward it to the competent authority in accordance with the provision contained in the second sentence of the said article.

12 The answer to the sixth question should therefore be that Article 86 of Regulation No 1408/71 must be interpreted as meaning that where a claim,

declaration or appeal is submitted to an authority, institution or court of a Member State other than that under the legislation of which the benefit must be awarded, that authority, institution or court has no power to determine the admissibility of the claim, declaration or appeal in question. That power belongs exclusively to the authority, institution or court of the Member State under the legislation of which the benefits must be awarded and to which the claim, declaration or appeal must in all circumstances be forwarded.

Questions 2, 4 and 5

13 The second and fourth questions seek to have specified the scope of Article 8 of Regulation No 574/72 as regards maternity benefit of the kind at issue in this case and the fifth question is concerned with the validity of that article as it is interpreted by the Court in answer to the other two questions.

14 Article 8 of Regulation No 574/72 is worded as follows:

"If a worker or a member of his family is entitled to claim maternity benefits under the legislations of two or more Member States, those benefits shall be granted exclusively under the legislation of the Member State in whose territory the confinement took place or, if the confinement did not take place in the territory of one of these Member States, exclusively under the legislation of the Member State to which the worker was last subject".

15 That provision constitutes a rule for the application of Article 12 of Regulation No 1408/71. That article, which is entitled "Prevention of overlapping of benefits" provides, *inter alia,* in paragraph (1) that the regulation "can neither confer nor maintain the right to several benefits of the same kind for one and the same period of compulsory insurance". Even though, according to its wording, Article 8 of Regulation No 574/72 is a rule concerning the applicable law, it also comes, as a consequence, within the framework of the provisions which, in accordance with the seventh recital in the preamble to Regulation No 1408/71, seek to prevent unjustified overlapping of benefits.

16 The benefits at issue in the main proceedings are allowances granted for a certain period both before and after the confinement. Even though the duration of that period and the amount granted per week or per day differ from one Member State to another, the grant of the benefits rests on the same concept of the welfare of the mother and child. The mother must enjoy a period of rest or leave from work and the allowances paid serve to make good, at least partially, any wage or salary which the mother might have drawn during that period.

17 It is in the light of those aims that the questions relating to the scope of Article 8 must be answered. Overlapping of benefits occurs only in so far as a claim for benefits may actually be satisfied by the application of the legislation of two or more Member States. As the Commission has properly stressed, giving Article 8 a wider application might indeed, in cases such as the present, result in the person concerned receiving no allowance at all. It would be contrary to the objectives of the regulations were a rule against overlapping of benefits to produce such a result. The same considerations and, especially, the wording of the said Article 12 of Regulation No 1408/71 favour alternative (a) of the fourth question, which concerns the problem raised by the different periods of benefit provided for by the legislation of the various Member States. It is true that that alternative might have the result that a person who has exhausted the maximum entitlement awarded by the State of the confinement may benefit for an additional period from benefits awarded by other legislation to which she has been subject and which, for reasons of the welfare of the mother and child, allows a longer period of leave from work. However, such a result may not be described as an "unjustified overlapping" and, in the absence of an express provision to that effect, it may hardly be presumed that it is excluded by Article 8 of Regulation No 574/72.

18 The answer to the second and fourth questions should therefore be that Article 8 of Regulation No 574/72 must be interpreted as applying only to the extent to which a claim by the person concerned may in fact be satisfied

by the application of the legislation of two or more Member States and only in regard to the period for which the claimant may claim benefits under the legislation specified by that article.

19 The doubt concerning the validity of Article 8 which is expressed in the fifth question arises only in the event of that article's having the effect of excluding the claimant from receiving benefits in a Member State other than that of the confinement. That question is explained by the doubts concerning the interpretation of Article 8 which the National Insurance Commissioner expressed in Questions 2 and 4. In that respect, however, having regard to the solutions contained in the answers given those questions, the eventuality contemplated would arise only where the other provisions of Regulation No 1408/71 would have led, in the absence of recourse to Article 12 of that regulation and to Article 8 of Regulation No 574/72, to clearly unjustified overlapping of benefits.

20 It may therefore be stated in answer to that question that consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Article 8 of Regulation No 574/72.

Costs

The costs incurred by the Council and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings before the National Insurance Commissioner, the decision on costs is a matter for him.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions submitted to it by the National Insurance Commissioner by order of 11 September 1979, hereby rules:

1. Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community and Regulation No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71 must be interpreted as meaning that a person who is entitled under the legislation of a Member State to benefits covered by Regulation No 1408/71 by virtue of contributions previously paid compulsorily does not lose his status as a "worker" within the meaning of the said two regulations by reason only of the fact that at the time when the contingency occurred he was no longer paying contributions and was not bound to do so.

2. The phrase "legislations of two or more Member States", which occurs in Article 8 of Regulation No 574/72, must be understood as also including the provisions of Community regulations.

3. Article 86 of Regulation No 1408/71 must be interpreted as meaning that where a claim, declaration or appeal is submitted to an authority, institution or court of a Member State other than that under the legislation of which the benefit must be awarded, that authority, institution or court has no power to determine the admissibility of the claim, declaration or appeal in question. That power belongs exclusively to the authority, institution or court of the Member State under the legislation of which the benefit must be awarded and to which the claim, declaration or appeal must in all circumstances be forwarded.

4. Article 8 of Regulation No 574/72 must be interpreted as applying only to the extent to which a claim by the person concerned may in fact be satisfied by the application of the legislation of two or more Member States and only in regard to the period for which the

claimant may claim benefits under the legislation specified by that article.

5. Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Article 8 of Regulation No 574/72.

Touffait Pescatore Due

Delivered in open court in Luxembourg on 22 May 1980.

A. Van Houtte
Registrar

A. Touffait
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 27 MARCH 1980 [1]

Mr President,
Members of the Court,

1. In this reference for a preliminary ruling an interpretation is sought not only of two provisions of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, but also, and from various aspects, Article 8 of Regulation No 574/72 of the Council of 21 March 1972 which fixes the procedure for implementing the first-mentioned regulation. Moreover, a question is raised as to the validity of that article, doubts having been cast on its conformity with Article 51 of the EEC Treaty.

The facts may be summarized as follows.

Mrs Margaret Walsh, the claimant in the main proceedings, commenced employment in the United Kingdom and became insured as from 21 July 1967 under the British national insurance scheme. During the period between August 1973 and January 1974 she worked in Ireland and paid the prescribed insurance contributions to the Irish insurance authorities. Thereafter

1 — Translated from the Italian.