connexion there is no discrimination between nationals of the host State and nationals of the other Member States.

Consequently if national legislation makes affiliation to a social security scheme or to a particular branch under that scheme conditional in certain circumstances on prior affiliation by the person concerned to the national social security scheme Regulation No 1408/71 does not compel Member States to treat as equivalent insurance periods completed in another Member State and those which were completed previously on national territory.

In Case 110/79

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

UNA COONAN

and

THE INSURANCE OFFICER

on the interpretation of Article 7 (2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475) and of certain provisions of Regulation (EEC) 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 in particular of Articles 18 and 46,

THE COURT (Third Chamber)

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart, Judges,

Advocate General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts and the arguments of the parties put forward during the written procedure may be summarized as follows:

I — Facts and procedure

1. Mrs Una Coonan, the claimant, of Irish nationality, attained the age of 60 on 30 April 1971. On 17 March 1973 she took up residence in Great Britain having arrived from Ireland where she had duly paid her contributions under the Irish Social Welfare Acts 1963 to 1972. When she took up residence in Great Britain she had not yet reached the age entitling her to a retirement pension in Ireland (65) but was over the requisite age for obtaining such a pension in Great Britain (60). In Great Britain she was registered under the National Insurance Scheme as an employed person and paid full flat-rate contributions there in 1973, 1974 and 1975, whenever her earnings were sufficient for such contributions to be payable.

2. On 14 November 1975 Mrs Coonan claimed a cash sickness benefit but her claim was disallowed first by the Insurance Officer and then by the local tribunal. According to the National Insurance Commissioner, who has made the reference for a preliminary ruling, the ground of such disallowance was that the claimant, who is over the age of 60, did not qualify for the grant of sickness benefit in the case of a woman of her age, the qualification being that she would be entitled to a Category A retirement pension on her own insurance, if she had made the necessary claim (Section 14 (2) of the Social Security Act 1975). In order to be entitled to such a pension it was necessary for her to have complied with the conditions referred to in Section 28 (1) (b) of the Social Security Act 1975 and specified in Schedule 3, Part 1, paragraph 5 thereof, which require her to have paid or, failing payment, to have been credited with contributions over certain periods of time. The local tribunal took the view that, although the claimant has paid such contributions in Great Britain or has been credited with notional contributions for the period during which she resided there, that is to say from 1973 to 1975, the payment of those contributions cannot be taken into consideration, because her affiliation to the national insurance scheme for *sickness insurance* was, as such, illegal.

3. After the claimant had appealed against that decision to the National Insurance Commissioner the latter stated in his decision of 10 July 1979 that the fact, which was not in dispute, that the claimant had at all material times been correctly and properly insured against *industrial injuries* did not entitle her to receive cash sickness benefit for the reasons mentioned above. Nevertheless, the National Insurance Commissioner considered that the claim raised

questions of interpretation of Community law and that it was necessary to request the Court of Justice to give a preliminary ruling in answer to the following questions:

1. Whether in the case of a worker who is a national of one Member State [in this case the Republic of Ireland] in which she is under pensionable age and where she had paid social welfare contributions towards sickness and other benefits is entitled on entering on employment as an employed earner in another Member State, namely the United Kingdom, where she is over pensionable age, to pay the same full social security contributions towards sickness and other benefits in that other Member State as a national of that other Member State who is resident there and who entered on employment and paid full insurance contributions there while under pensionable age and has continued to pay such contributions while over pensionable age either by virtue of

   (a) Article 7 (2) of Regulation (EEC) No 1612/68 or

   (b) Article 3 of Regulation (EEC) No 1408/71 or

   (c) some other provision of the EEC legislation.

2. Whether a worker who is registered under the national insurance scheme of a Member State [in this case the United Kingdom] and who pays full insurance contributions to the competent institution of that Member State, namely the Department of Health and Social Security, London, and who is at the time of the application for the relevant benefit, namely sickness benefit, registered as insured with that institution, is insured with that institution for the purposes of Article 1 (o) (i) of Regulation (EEC) No 1408/71 in the context of either

   (a) Article 18 of that regulation or

   (b) Article 46 of that regulation

   notwithstanding that the said contributions were made, and the said registration was effected, in error.

3. Whether a worker who is only insured in respect of industrial injuries with the competent institution of a Member State, namely the Department of Health and Social Security, London, is to be regarded as insured with that institution for the purposes of the said Article 1 (o) (i) in the context of either

   (a) the said Article 18 or

   (b) the said Article 46.

4. Whether the said Article 18 applies to the acquisition, retention, or recovery of the right to sickness benefit in a Member State, namely the United Kingdom, where the calculation of the rate of sickness benefit is dependent on the calculation of a notional retirement pension rate.

5. Whether paragraph (2) of the said Article 46 applies in cases where the calculation under paragraph (1) of Article 46 yields the answer 0.

6. Whether the said Articles 18 and 46 can be applied in combination where a claim for sickness benefit in a Member State depends on the calculation of a notional retirement pension rate.

7. If the answers to Questions 4 and 6 are both Yes, whether the claimant is entitled to the higher of the two results.

4. The Community law provisions to which reference is made in these questions may be summarized as follows:

(a) Article 7 (2) of Regulation No 1612/68 provides that a worker who is a national of a Member State shall, in the territory of another Member State, enjoy "the same social and tax advantages as national workers".

(b) Article 3 of Regulation No 1408/71 prescribes equal treatment for the persons resident in the territory of one of the Member States to whom that regulation applies, on the one hand, and the nationals of that Member State, on the other hand, as far as concerns obligations and benefits "under the legislation of any Member State".

(c) Article 18 (1) of Regulation No 1408/71 provides that "The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to [sickness and maternity] benefits conditional upon the completion of insurance periods or periods of employment or residence shall, to the extent necessary, take account of insurance periods or periods of employment or residence completed under the legislation of any other Member State as if they were periods completed under the legislation which it administers".

(d) Article 46 of the same regulation governs the award of old age and death pensions. Paragraph (1) of that article deals with the case of a worker who satisfies the conditions for entitlement to benefits without application of the provisions of Article 45 relating to the aggregation of qualifying periods being necessary, whilst paragraph (2) thereof applies to the case where he has to invoke the provisions of Article 45.

The order making the reference was received at the Court Registry on 16 July 1979.

The claimant died on 8 September 1979. By a letter of 10 October 1979 the National Insurance Commissioner informed the Court that he still considered it necessary for a ruling to be given on the questions referred to it.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the defendant in the main action, represented for this purpose by G. S. Kerrigan, Senior Legal Assistant, Solicitor's Office, Department of Health and Social Security, and by the Commission of the European Communities, represented for this purpose by J. Forman, a member of its Legal Department, acting as Agent.

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 an order of 21 November 1979 the Court decided in accordance with Article 95 of the Rules of Procedure to assign this case to the Third Chamber of the Court.

II — Written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice

A — The observations of the Insurance Officer, the defendant in the main proceedings

The Insurance Officer first calls attention to the fact that his main contention before the National Insurance Commissioner was that the competent institution, within the meaning of Article 1 (o) of Regulation No 1408/71, is not that of the United Kingdom since the claimant was not insured under British legislation and that his alternative contention was that none of the provisions of Regulation No 1408/71 allowed the claimant to assert that she has satisfied the conditions to which cash sickness benefits are made subject under national law.

He goes on to state that this case raises problems of insurance and the correlative entitlement to pay contributions carrying the right to benefits. Since these matters are reserved under domestic law to the Secretary of State who has the power to take decisions, the Insurance Officer makes specific reservations as to the relevance of questions 1, 2 and 3 as far as concerns the problems which the National Insurance Commissioner is called upon to resolve.

The principal issue raised by Question 1 would seem to be whether Community law leads to the conclusion that a worker, who has paid contributions under the leigislation of one Member State but is not (or no longer) insurable in a second Member State under the legislation of that second Member State, is nevertheless to be treated in that second State, from the date when he works there, as insured for the purpose of satisfying the conditions imposed by that legislation for the right to pay contributions to an insurance scheme.

According to the Insurance Officer this question must be answered in the negative. He submits in the first place that the right claimed cannot be derived from Article 7 (21) of Regulation No 1612/68. That provision does not apply to social security benefits because such benefits are not "social advantages" within the meaning of the said Article 7.

The provision of Community legislation applicable to the subject of Question 1 — which relates to social security — is more properly Article 3 of Regulation No 1408/71, which lays down in the field of social security the fundamental principle of non-discrimination on grounds of nationality referred to in Article 7 of the EEC Treaty. It is for consideration therefore whether Article 3 requires a Member State to treat a worker who has been insured under the legislation of another Member State as insured under its own legislation.

Article 3, like the whole of Regulation No 1408/71, must be interpreted within the framework and bounds of Article 51 of the Treaty. The subject-matter of that

latter provision is the aggregation of qualifying periods completed in several Member States for the purposes of the acquisition and retention of the right to, as well as the calculation of, benefits, but it is not directed to questions of insurance or entitlement to pay contributions, which are matters solely within the province of national legislation. This is the specific aim of Article 13 of Regulation No 1408/71, paragraph (2) whereof provides that a worker shall be subject to the legislation of the State of employment, so that the question whether a person is insured or insurable under the legislation of a Member State must be determined in accordance with the provisions of that legislation.

He also submits that there is no principle of territoriality which requires Member States, in the absence of any Community law provision to the contrary, to treat facts occurring in another Member State as equivalent to facts occurring in its own territory (cf. judgment of 28 June 1978 in Case 1/78, *Patrick Christopher Kenny* v *Insurance Officer* [1978] ECR 1489 and judgment of 9 July 1975 in Case 20/75, *Gaetano d'Amico* v *Landesversicherungsanstalt Rheinland-Pfalz* [1975] 1 ECR 891). Where the legislation of one Member State makes the right to be insured under a social insurance scheme and to pay contributions when over the pensionable age conditional upon insurance in that State before pensionable age, that condition may not be deemed to be satisfied by insurance in another Member State under the legislation of the latter. That is not discriminatory because the provisions of national legislation would apply equally to nationals of the United Kingdom. Therefore the Court's reply to the first question should be that Article 3 of Regulation No 1408/71 does not entitle a worker who is over pensionable age to pay contributions in a Member State where the conditions imposed by the legislation of that State are not fulfilled.

With reference to Question 2 the Insurance Officer's observation is that it is a question of national law and that the Court, acting within the framework of Article 177 of the Treaty, has no jurisdiction to interpret the national law of a Member State or to pronounce upon its application in relation to Community law.

Within reference to Question 3 he submits that Article 1 (o) (i) of Regulation No 1408/71 provides that "competent institution" means the institution with which the person concerned is insured at the time of the application for benefit. In the context of Articles 18 and 46 of that regulation the "competent institution" must be the one with which the person concerned is insured for the purposes of the benefits to which each of those articles applies, that is to say sickness and maternity benefits in the case of Article 18 and old-age and death benefits in the case of Article 46. The Insurance Officer also refers to a passage in the Opinion of Mr Advocate General Warner in Case 103/75, *Walter Th. Aulich* v *Bundesversicherungsanstalt für Angestellte* [1976] 1 ECR 709, to the effect that "where the provisions of those Chapters use the concept of 'benefit', they refer to benefits to be granted on the occurrence of the specific risk to which the Chapter in question relates". He also submits that the philosophy underlying Regulation No 1408/71 is that in the case of contri-

butory short-term benefits a person is covered by the legislation of a Member State for a particular benefit only if he has paid contributions in that State towards that benefit. The answer to the third question should therefore be in the negative.

With reference to Questions 4, 5, 6 and 7 the Insurance Officer contends that Article 18 (sickness and maternity) of Regulation No 1408/71 has no application where entitlement to sickness benefit in a Member State does not depend on the satisfaction of the contribution conditions for sickness benefit but is derived from the right to a retirement pension. In such a case it is Articles 45 and 46 (old-age pensions) which are the relevant applicable provisions, even in the matter of sickness benefit.

Article 46, and in particular paragraph (2) thereof, which is the sole provision which may be taken into consideration in this case, is directed only to determining the amount of benefit payable by each Member State. Article 45 determines entitlement. In the dispute which led to the main action that provision cannot be relied on because the claimant is not a person who has been subject to the legislation of two or more Member States and accordingly not a person to whom Chapter 3 of Regulation No 1408/71 applies.

The Insurance Officer therefore submits that the answers to Questions 4 and 6 should be in the negative and the answer to Question 5 in the affirmative, so that there is no need to answer Question 7.

B — Observations of the Commission

According to the Commission, Regulation No 1408/71 merely coordinates the different social security schemes of the Member States but does not harmonize them, with the result that the national schemes remain applicable in each of the Member States, subject nevertheless to observance of the principles of Community law such as equality of treatment (Article 7 of the EEC Treaty and Article 3 (1) of Regulation No 1408/71), the obligation to aggregate periods and to allow benefits to be exported (Article 51 of the EEC Treaty and the relevant provisions of Regulation No 1408/71).

The first question to be settled is whether Mrs Coonan, the claimant in the main action, is a worker for the purposes of the application of Community social insurance legislation. Having regard to Article 13 of Regulation No 1408/71 it is necessary for the purpose of applying Regulation No 1408/71 to this case to refer in the first place to the definition of a worker contained in Article 1 (a) (ii) of that regulation, supplemented by paragraph 1 of Annex V, point I, as amended by Article 3 (2) (a) of Council Regulation (EEC) No 1517/79 of 16 July 1979 (Official Journal L 185 of 1979, p. 1). However, since according to section 6 (1) (b) of the Social Security Act 1975 no primary class 1 contribution by the employed earner was payable by anyone in the claimant's situation the latter could not be compulsorily insured in respect of cash sickness benefit. However, it appears that the claimant could and had to pay contributions in respect of insurance against industrial injuries pursuant to the National Insurance (Industrial Injuries) Act 1965

and that she was insured (Section 2 (1) (a) and Section 50 (1) of the Social Security Act 1975) for that category of benefits. In these circumstances the question arises as to whether during the period in question she does not have to be treated as a "worker" for the purposes of the application of Article 1 (a) (i) of Regulation No 1408/71 as far as concerns industrial injuries benefits and whether the effect of this is not that she has the same status for the purposes of the application of the provisions of the said regulation relating to sickness benefits. Thus it is necessary to know whether the concept "worker" has been used in each case solely in relation to the particular category of benefits in question or whether it has to be accepted that any person who is a "worker" in relation to one category of benefits is automatically a worker in relation to all the others.

In the view of the Commission there is no need to answer this question, because Regulation No 1408/71 does not compel a Member State to insure nationals of the other Member States where the nationals of that State have no right to be insured under their national legislation. Neither Article 3 of Regulation No 1408/71, nor Article 7 (2) of Regulation No 1612/68, nor for that matter any other Community law provision can affect that situation, since none of those provisions can create rights under national law if those rights are not already vested in the nationals of the Member State in question (cf. judgment of 12 July 1979 in Case 266/78, *Bruno Brunori* v *Landesversicherungsanstalt Rheinprovinz* [1979] ECR). The fact that a mistake has occurred — as appears to have happened in this case when the claimant was allowed to contribute to the National Insurance Scheme — in the application of national law has no effect on the application of Community law.

With reference to Article 18 of Regulation No 1408/71 the Commission points out that the word "benefits" in paragraph (1) of that article can apply only to sickness and maternity benefits, since the article relates solely to those benefits.

It also points out that the British legislation which has to be taken into consideration in this case does not make the acquisition of the right to sickness benefit conditional, as far as concerns persons in the same position as that of the claimant in the main action, on the completion of periods of insurance, residence or employment; that legislation makes the acquisition of the right to sickness benefit conditional on the existence of the right to a Category A retirement pension under Section 28 of the Social Security Act 1975. Consequently Article 18 has no relevance to the outcome of the main action.

With reference to Article 45 (1) of Regulation No 1408/71 relating to aggregation of qualifying periods in relation to old-age pension insurance the Commission points out that the combined provisions of paragraph 17 (1) of point I of Annex V to Regulation No 1408/71, as amended by Article 3 (2) (h) of the above-mentioned Regulation No 1517/79, in conjunction with the provisions of Schedule 3, Part I, section 5 of the Social Security Act 1975, indicate that Great Britain takes into account insurance periods or periods of residence completed under the legislation of the other Member States for the

purpose of the acquisition of the right to a pension under its own laws. The contributions paid in Ireland by the claimant in the main action may therefore be taken into account by the competent British authorities. However, since it appears that the claimant cannot pay any contributions in Great Britain the following question arises: with what might such insurance in Ireland be combined? Having regard to the provisions of Article 1 (r) of Regulation No 1408/71 that question, as far as Great Britain is concerned, must be answered by a decision of the Secretary of State for Social Services. If the latter were to come to the conclusion that it was not possible to become affiliated to the old-age pension insurance scheme in the United Kingdom in a case such as this, the taking into account of periods completed abroad, even if that is accepted in principle and could create entitlement in a Member State, applying the provisions of Article 46 (2) would be of no help at all. In fact the equation resulting from aggregation and apportionment would still be equal to zero as far as any benefits in the United Kingdom are concerned. It is therefore impossible to interpret the combined provisions of Articles 45 (1) and 46 (2) of Regulation No 1408/71 as obliging a Member State to pay a pension to a person who has not even been insured under the social security scheme of the said Member State.

The Commission is of the opinion that it is appropriate to give the Insurance Officer the following comprehensive answer:

"Neither Regulation No 1612/68, nor Regulation No 1408/71, nor any other Community law provision can confer on the nationals of other Member States the right to be insured or pay contributions pursuant to the social security scheme of a Member State whose nationals do not enjoy any such right."

III — Oral procedure

The defendant in the main action, represented by Mrs G. S. Kerrigan, Senior Legal Assistant at the Department of Health and Social Security, and the Commission of the European Communities, represented by its Agent, J. Forman, presented oral argument at the sitting on 24 January 1980.

The Advocate General delivered his opinion at the sitting on 14 February 1980.

Decision

1 By an order of 10 July 1979, received at the Court of Jusctice on 16 July 1979, the National Insurance Commissioner referred to the Court, pursuant to Article 177 of the EEC Treaty, a number of questions on the interpretation of Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475) and also of various provisions of Regulation (EEC) 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).

2 Those questions have been referred to the Court in connexion with a dispute between Mrs Coonan, an Irish national, and a local social security officer in the United Kingdom on the question whether, and, if so, under what conditions, a national of a Member State — in this case of Ireland — who, after being employed in that Member State, came to the United Kingdom and worked there before he had reached pensionable age in his country of origin but after he had reached pensionable age in the United Kingdom, is entitled in that second Member State to the cash sickness benefits provided for workers under its social security legislation.

3 The legislation in force in the United Kingdom does not grant him such entitlement. In fact if a worker continues to be employed as such beyond pensionable age, under that legislation he is entitled thereafter to cash sickness benefits only if he would have been entitled to a particular kind of retirement pension under national legislation in the event of his ceasing to work.

Since that entitlement to a retirement pension can derive only from affiliation to a national social security scheme during the period prior to retirement it necessarily follows that a person, whether of United Kingdom or foreign nationality, who, before reaching pensionable age, has never completed qualifying periods in that Member State or who has completed only an insufficient number of qualifying periods in that State to be entitled to a retirement pension, does not fulfil that condition. If that person continues to work in the United Kingdom he cannot therefore claim, in the event of illness, to receive the cash sickness benefits which the legislation awards to workers.

4 That situation could be remedied only if affiliation in another Member State before pensionable age in the United Kingdom were treated as equivalent to affiliation in the latter Member State. The issue between the parties to the dispute amounts in substance to the question whether or not Community law, and in particular Regulation No 1612/68 or Regulation No 1408/71,

provides for such equivalence. It is with a view to resolving the problem stated in this way that the various questions have been referred to the Court for a preliminary ruling.

5 The first question asks whether "in the case of a worker who is a national of one Member State [in this case the Republic of Ireland] in which she is under pensionable age and where she had paid social welfare contributions towards sickness and other benefits is entitled on entering on employment as an employed earner in another Member State, namely the United Kingdom, where she is over pensionable age, to pay the same full social security contributions towards sickness and other benefits in that other Member State as a national of that other Member State who is resident there and who entered on employment and paid full insurance contributions there while under pensionable age and has continued to pay such contributions while over pensionable age either by virtue of

(a) Article 7 (2) of Regulation (EEC) No 1612/68 or

(b) Article 3 of Regulation (EEC) No 1408/71 or

(c) some other provision of the EEC legislation".

6 It should first of all be noted that the principal aim of Regulation (EEC) No 1612/68 of 15 October 1968 is to ensure that in each Member State workers from the other Member States receive treatment which is not discriminatory by comparison with that of national workers by providing for the systematic application of the rule of national treatment as far as all conditions of employment and work are concerned. It is not the purpose of that regulation to create rights by virtue of insurance periods completed in another Member State if such rights, in the case of the nationals of the host State, do not derive from national provisions. There are therefore no grounds for having recourse to the provisions of Regulation No 1612/68 in a case such as this.

7 As far as Regulation No 1408/71 is concerned the first question amounts in substance to asking whether that regulation gives a worker in the claimant's

situation the right to be affiliated to the social security scheme of the Member State to which he goes to work for the first time, even though he is refused that right on the basis of national provisions alone.

8 Neither Article 18 nor Article 46 of Regulation No 1408/71 provides the answer to that question. Those provisions in fact govern the aggregation of qualifying periods and the effects thereof, the first as far as concerns sickness benefits, the second as far as concerns old-age and death benefits, in the case of a person who is or has been affiliated as a worker to the national social security scheme in one Member State, when, on the other hand, he has also completed qualifying periods in another Member State. They do not govern the preliminary question of ascertaining the conditions under which a national of a Member State may or must be affiliated to the social security scheme of another Member State where he is an employed person.

9 That preliminary question is governed by Articles 1 (a) and 3 of Regulation (EEC) No 1408/71.

10 On the one hand, according to Article 1 (a) "workers" means:

"(i) subject to the restrictions set out in Annex V, any person who is insured, compulsorily or on an optional continued basis, for one or more of the contingencies covered by the branches of a social security scheme for employed persons;

(ii) 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 if such person:

— can be identified as an employed person by virtue of the manner in which such scheme is administered or financed, or

— failing such criteria, is insured for some other contingency specified in Annex V under a scheme for employed persons either compulsorily or on an optional continued basis".

11 On the other hand, according to Article 3 (1) of the said regulation:

"Subject to the special provisions of this regulation, persons resident in the territory of one of the Member States to whom this regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State".

12 The effect of those two provisions when read together is that it is for the legislature of each Member State to lay down the conditions creating the right or the obligation to become affiliated to a social security scheme or to a particular branch under such a scheme provided always that in this connexion there is no discrimination between nationals of the host State and nationals of the other Member States. The Court acknowledged in its judgment of 12 July 1979 in Case 266/78 *Brunori* [1979] ECR that national legislatures are competent in this field.

13 Consequently if national legislation makes affiliation to a social security scheme or to a particular branch under that scheme conditional in certain circumstances on prior affiliation by the person concerned to the national social security scheme Regulation No 1408/71 does not compel Member States to treat as equivalent insurance periods completed in another Member State and those which were completed previously on national territory.

14 The second question asks in substance whether the fact that a person has for a certain period of time been affiliated by mistake to a social security scheme entitles that person to the benefits provided for by the relevant legislation, where the error has come to light at the very time when those benefits are being claimed, while the purpose of the third question is to establish whether the fact that a person in the claimant's position has been compulsorily affiliated to the industrial injuries scheme through the competent institution *ipso facto* entails his affiliation through the competent institution in respect of the other social security benefits.

15 The outcome of the foregoing considerations is that the answers to be given to the second and third questions are also governed by national law, provided only that distinction is made between nationals of the host State and those of the other Member States. No provision of Regulation No 1408/71 forbids Member States to determine the effects of a particular affiliation according to the nature of the risks to be covered or the benefits to be provided.

16 The replies given above mean that the fourth, fifth, sixth and seventh questions relating to Articles 18 and 46 of Regulation No 1408/71 no longer require to be answered.

17 Since the question whether persons in the situation of the claimant may derive a right to be affiliated from the provisions of the Reciprocal Agreement concluded between Ireland and the United Kingdom on 29 March 1960 and the Agreement between Ireland and the United Kingdom of 14 September 1971 on social security has been raised during the proceedings before the Court of Justice, it is necessary to state that it is for the national court or tribunal to ascertain whether the conditions for implementing those agreements are present in the dispute before it and whether one or other of those agreements deals with the right to be affiliated to the social security scheme of the United Kingdom in a case such as that of the claimant.

Costs

18 The costs incurred by the Commission of the European Communities, which has 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 appeal pending before the National Insurance Commissioner the decision as to costs is a matter for the National Insurance Commissioner.

On those grounds,

THE COURT (Third Chamber)

in answer to the questions referred to it by the National Insurance Commissioner, London, by an order dated 10 July 1979, which was registered at the Court on 16 July 1979, hereby rules:

1. **Articles 1 (a) and 3 of Regulation (EEC) 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 must be interpreted as meaning that it is for the legislature of each Member State to lay down the conditions creating the right or the obligation to become affiliated to a social security scheme or to a particular branch under such a scheme provided always that in this connexion there is no discrimination between nationals of the host State and nationals of the other Member States.**

2. **No provision of Regulation No 1408/71 forbids Member States to determine the effects of an erroneous affiliation. Nor is there anything to prevent Member States from providing for different social security schemes involving special conditions for affiliation according to the nature of the risks to be covered or the benefits to be provided.**

Kutscher Mertens de Wilmars Mackenzie Stuart

Delivered in open court in Luxembourg on 24 April 1980.

A. Van Houtte
Registrar

H. Kutscher
President