In Case 150/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Social Security Commissioner for a preliminary ruling in the proceedings pending before him between

LUIGI COPPOLA

and

INSURANCE OFFICER,

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),

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Lord Mackenzie Stuart and Y. Galmot, Judges,

Advocate General: Sir Gordon Slynn
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 accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. Mr Luigi Coppola, an Italian national, was insured in Italy from 1952 to 1958 as a general worker. From

11 October 1960 to 12 August 1973, he worked in the chemical industry in the United Kingdom and paid contributions to the social security scheme in that country. On his return to Italy he worked for a period as a building labourer and was insured as such under the Italian social security scheme.

Mr Coppola fell ill and on 30 November 1974 applied for an invalidity pension in Italy. In 1976 an Italian invalidity pension was awarded to him with effect from 1 December 1974 on the basis of partial invalidity.

Mr Coppola spent from 30 March to 15 May 1975 and from 22 to 26 June 1976 in hospital convalescing.

2. His claim for Italian invalidity benefit was treated in accordance with the relevant Community provisions as being also a claim for benefit in the United Kingdom. Mr Coppola's file was therefore passed to the United Kingdom authorities to enable them to decide on his application.

The Insurance Officer considered that Mr Coppola did not satisfy the medical conditions as to the degree of invalidity — which are different from those laid down by Italian law — for the award of an invalidity pension under United Kingdom law. He decided that Mr Coppola was not entitled to a United Kingdom invalidity pension. Following an appeal by Mr Coppola to the local tribunal, that decision was upheld after a further medical report. Mr Coppola made a further appeal to the Social Security Commissioner.

3. The Social Security Commissioner considered that the application had to be regarded in the United Kingdom not only as an application for invalidity benefit but also as one for sickness benefit. In fact, applications made in the United Kingdom do not usually specify which of the two benefits is being claimed and benefit is awarded as appropriate, since under United Kingdom law a worker must in the first place be awarded sickness benefit for a period of 168 days before he can claim an invalidity pension.

As regards the sickness benefits, the Social Security Commissioner considered that in any event for the first of the two periods from 30 March to 15 May 1975 and from 22 to 26 June 1976 during which Mr Coppola was in hospital or convalescent, the medical conditions for the award of sickness benefits in the United Kingdom were satisfied. The question whether or not sickness benefit was payable depended therefore, according to the Social Security Commissioner, on whether Mr Coppola satisfied both the contribution conditions for entitlement under United Kingdom law to sickness benefit.

In order to satisfy the first condition, the claimant must actually have made contributions to a specified extent. It is not in doubt that Mr Coppola satisfied that condition at all relevant times.

In order to satisfy the second condition, the claimant must have paid or have been credited with a sufficiency of contributions during a period prior to the application for benefit, known at that time as a "contribution year". In this case, the relevant contribution year was the period from 4 June 1973 to 2 June

1974. During that contribution year, Mr Coppola had paid or been credited with a number of United Kingdom contributions lower than the minimum for entitlement to sickness benefit.

Consequently, the Social Security Commissioner considered that unless the contributions paid by or credited to Mr Coppola in Italy were taken into account pursuant to the provisions of Regulation No 1408/71 of the Council of 14 June 1971 and in particular pursuant to Article 18 thereof, which provides for the aggregation of periods of insurance, he did not satisfy the second contribution condition referred to above. On the other hand, if the Italian contributions did qualify to be taken into account he would be entitled to sickness benefit, at least at a reduced rate, for the periods in question.

As regards the invalidity benefit, which under United Kingdom legislation is independent of the duration of the periods of insurance, the Social Security Commissioner considered that Mr Coppola would be entitled thereto provided that he had fulfilled the relevant medical conditions for 168 days in a period of interruption of employment and if his incapacity for work continued beyond those 168 days. In that regard, the Social Security Commissioner envisaged on the one hand the possibility of the application of Article 18 of Regulation No 1408/71 so that the contribution conditions for the grant of the United Kingdom sickness benefit would be sastisfied and, on the other hand, the possibility of the application of Article 40 (3) of Regulation No 1408/71, as amended by Council Regulation No 2595/77 of 21 November 1977 (Official Journal 302, p. 1), so as to take Italian sickness benefit into consideration for the purposes of the relevant period of 168 days. In the second case, the result would be the payment of United Kingdom invalidity benefit at a lower rate after aggregation and apportionment in accordance with Article 46 of Regulation No 1408/71.

The Social Security Commission considered that the dispute pending before him raised a number of questions of Community law and he therefore decided to refer the following questions to the Court for a preliminary ruling under Article 177 of the EEC Treaty:

"1. Whether a claimant for contributory sickness benefit in any Member State is entitled under Article 18 (1) of Council Regulation (EEC) No 1408/71 to require the competent institution of that Member State to take account of insurance periods completed under the legislation of another Member State:

(i) in every case; or

(ii) only if he is at the time of his claim subject [to] the legislation of the first mentioned Member State within the meaning of Article 13 of the above regulation; or

(iii) only if the competent institution of the first mentioned Member State is an institution with which the claimant is insured at the time of his application for benefit within the meaning of Article 1 (o) (i) of the above regulation; or

(iv) only if the competent institution of the first mentioned Member State is such an institution as is

mentioned in (iii) or is an institution from which the claimant is entitled or would be entitled to benefits if he or a member of his family were residing in the territory of that Member State within the meaning of Article 1 (o) (ii) of the said regulation; or

(v) only in such other circumstances as may be indicated by the Court.

2. If the answer to question 1 is in the terms of (ii), whether a worker who has been employed successively in two or more Member States before becoming incapable of work is to be treated during such incapacity for the purposes of Article 13 of the said regulation as subject only to the legislation of the Member State in which he was first employed or of the Member State in which he is resident or of some other and, if so, what Member State;

3. If the answer to question 1 is in the terms of (iii) or (iv) thereof, whether a claimant for contributory sickness benefit is to be treated for the purpose of the said Article 1 (o) (i) as insured with an institution:

(i) only if on the occurrence of the contingency of sickness at that time his contributions in the Member State of the institution are such that by virtue of those contributions alone he satisfies the contribution conditions for sickness benefit either at the full rate or at some reduced rate; or

(ii) if alternatively on the occurrence at that time or at some later time of any other contingency against which he is insured under the same scheme with that institution he or members of his family would by virtue of his contributions in such Member State alone satisfy the contribution contributions for such benefit; or

(iii) in such other circumstances as may be indicated by the European Court of Justice.

4. Whether a claimant who is entitled to invalidity benefit in a Member State without recourse to the provisions of Articles 45 and 46 relating to aggregation and apportionment but only as the result of his making title to sickness benefit with the aid of Article 18 (with or without recourse to Article 40 (3)) of the said regulation is liable by virtue of Article 46 (3) of that regulation to have such benefit adjusted or whether the said Article 46 (3) is invalid in so far as it would otherwise subject such benefit to such adjustment."

4. The decision making the reference was received at the Court Registry on 13 May 1982.

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 Insurance Officer, represented by Miss Ann V. Windsor, Senior Legal Assistant in the Department of Health and Social Security, by the Council of the European Communities, represented by John Carbery, Adviser in the Legal Department of the Council, and by the Commission of the European Communities, represented by John Forman, a member of its Legal Department.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided by order of 13 October 1982 to assign the case to the Third Chamber pursuant to Article 95 of the Rules of Procedure and to open the oral procedure without any preparatory inquiry.

II — Observations of the parties

1. Observations of the Insurance Officer

The Insurance Officer emphasizes, by way of a preliminary observation, that each of the various provisions relating to aggregation of insurance periods contained in Articles 18, 38, 45, 64 and 72 of Regulation No 1408/71 must be looked at in the context of the specific benefit to which it relates. Since the definition of the "competent institution" in Article 1 (o) of Regulation No 1408/71 does not exclude the possibility that more than one institution, and consequently more than one Member State, may be competent at any given time, it is therefore imperative to have regard to the objective criteria as determined by the regulation. Whilst in the case of long-term benefits two or more Member States will normally be responsible concurrently for the payment of a benefit, short-term benefits should be claimed in only one Member State. By contrast with the provisions of Chapter 3 of Title III (old-age and death (pensions)) which apply by analogy to Chapter 2 (invalidity), it is implicit from the structure of the provisions in Chapter 1 (sickness and maternity benefits) that there is only one competent institution at any given time. The wording of Article 16 of Regulation No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation No 1408/71, shows clearly that, for the implementation of Article 18 of Regulation No 1408/71, only the institution to which the worker is affiliated at the time of the claim is competent. Regard should also be had in that respect to the provisions of Section 5 of Chapter 1 concerning pensioners which specify which of the Member States in question should be solely responsible for paying sickness benefit.

With regard more particularly to *the first question,* the Insurance Officer is of the opinion that the only definition of "competent institution" which is relevant for the purposes of Article 18 of Regulation No 1408/71 is the definition in Article 1 (o) (i). The question whether a person is "insured" within the meaning of that provision depends on whether or not he was liable to pay contributions to the social security scheme administered by the institution in question immediately before the contingency concerned arose or during such contingency. It would be reasonable to extend the meaning of "the institution with which the person concerned is insured" so as to include the institution to which he was last liable to pay contributions in respect of such risk.

Under United Kingdom legislation, a person is regarded as being "insured" so long as he is covered for a contingency based on contributions previously paid as an employed person. However, in the context of Article 1 (o) (i), "insured" must be construed as having the same scope as the concept of a person's being "subject to the legislation of a single

Member State" embodied in the general provisions of Article 13 of Regulation No 1408/71. Regardless of where he resides, a worker is subject to the legislation of the Member State in which he is working. This principle is important to enable a distinction to be drawn between Article 1 (o) (i) and Article 1 (o) (ii) and to avoid enabling a person to claim a benefit from several institutions, which would all be obliged to apply the aggregation provisions. Accordingly, the word "insured" in Article 1 (o) (i) must be given a restrictive interpretation.

The Insurance Officer therefore considers that the first question should be answered in the sense of subparagraph (iii) of that question.

In view of that answer, it is unnecessary to answer the *second question.* However, if an answer to that question were necessary, the Insurance Officer considers that where a worker has been employed in two or more Member States before becoming incapable of work, he remains subject to the legislation of the Member State where he was last employed and liable to pay contributions where that legislation so requires.

As regards the *third question,* the Insurance Officer considers that if the word "insured" is interpreted in the context of Article 1 (o) (i) of Regulation No 1408/71 as having the same scope as the concept of a person's being subject to the legislation of a single Member State, the question whether a person is to be treated as "insured" in that sense is a question of fact. The question must be asked whether that person is registered with and liable to pay contributions to that institution in respect of his present employment. Article 18 of Regulation No 1408/71 in such circumstances requires the competent institution to take account of qualifying contributions in other Member States.

As regards question 3 (ii), the Insurance Officer considers that if a Member State determines the effect of a particular affiliation according to the nature of a particular risk, a person may be regarded as "insured" in the context of certain provisions of Regulation No 1408/71 and not in the context of other provisions. But none of this can affect the application of Article 1 (o) (i) since it cannot result in making a person subject to the legislation of a Member State if he is not in fact so subject.

In reply to the third question, a person is therefore to be regarded as being insured with an institution within the meaning of Article 1 (o) (i) of Regulation No 1408/71, in respect of a particular benefit, if he last paid contributions in respect of that benefit under the legislation administered by that institution.

As regards the *fourth question,* the Insurance Officer observes first of all that where a worker has been subject successively to legislation of type B in one Member State (in this case Italy) and to legislation to type A in another Member State (in this case the United Kingdom), Article 46 of Regulation No 1408/71 should normally be applied.

Where a United Kingdom institution is competent because at the time of the claim for a benefit the worker is

employed in the United Kingdom and registered and paying contributions, if sickness benefit is claimed and it is necessary to aggregate periods of insurance completed in another Member State, subsequent entitlement to an invalidity pension which does not depend on completion of insurance periods and which is payable at a standard rate in accordance with Section 14 of the Social Security Pensions Act 1975 is not distinguished from entitlement to an invalidity pension following a claim to sickness benefit where it was not necessary to aggregate periods of insurance completed in another Member State. The benefit which is awarded in those circumstances is regarded as an autonomous benefit which, following the Court's judgment in Case 24/75 *Petroni* v *ONPTS* [1975] ECR 1149, would not be subject to reduction.

The only cases where entitlement to United Kingdom invalidity benefit would not be regarded as having been acquired by virtue of national legislation alone are those in respect of which it had been necessary to have recourse to Article 40 (3) of Regulation No 1408/71. An invalidity pension would in such a case become payable under Article 46 (2) of the regulation and Article 46 (3) would be applicable.

The Insurance Officer therefore suggests that the fourth question should be answered in the sense that Article 46 (3) of Regulation No 1408/71 could apply only in cases where in order to acquire title to a benefit to which Article 46 applies, it is necessary, within the meaning of Article 51 (a) of the EEC Treaty, to have recourse to the arrangements for taking into account qualifying periods completed under the legislation of another Member State.

2. Observations of the Council

The Council emphasizes in the first place that its observations relate only to the fourth question and are intended to defend the validity of Article 46 (3) of Regulation No 1408/71.

According to the Council, entitlement to sickness benefits and invalidity benefits are separate rights even if under United Kingdom law a worker must first receive sickness benefits for a given period of time before he can qualify for an invalidity pension.

This case is different from the situation referred to in the judgment of the Court in Case 24/75 *Petroni* v *ONPTS* [1975] ECR 1149, according to which a worker cannot be deprived of rights to benefit to which he is entitled purely under national law without having recourse to the Community provisions since, as appears from the documents of reference in this case, Mr Coppola has no right to United Kingdom sickness benefits under United Kingdom legislation alone. Since Mr Coppola was last employed in Italy, it is for the Italian institution to take account of insurance periods or periods of employment or of residence completed under the legislation of any other Member State in accordance with

Article 18 of the regulation and to pay the resulting benefit.

As regards the invalidity benefits, Article 40 would appear to be pertinent in this case. In this context, Article 46 (3) provides that a beneficiary is not entitled to a benefit higher than the highest theoretical amount that would be payable by the competent institution if the worker had completed all his insurance periods or periods of residence under the law of that Member State. In appropriate cases, the benefit which a beneficiary may claim is reduced.

Although Article 46 (3) has been declared incompatible with Article 51 of the EEC Treaty to the extent to which it causes a diminution of the rights which the person concerned could enjoy in a Member State by virtue of the application of national legislation, that article is still valid where it operates to reduce a benefit which is acquired by means of aggregation. In the present case, Mr Coppola is entitled to a United Kingdom invalidity pension only by reason of the operation of Community law. No factor therefore is disclosed in this case to indicate that Article 46 (3) is invalid otherwise than to the extent stated by the Court in Cases 24/75 *Petroni* (cited above) and 26/76 *Strehl* [1977] ECR 211.

In conclusion, the Council considers that Article 46 (3) of Regulation No 1408/71 is valid except in the circumstances already referred to where it has been found invalid.

3. Observations of the Commission

The Commission emphasizes in the first place that the issues of sickness and invalidity benefits should be treated entirely separately, in the same way as is done in Regulation No 1408/71.

Article 18 (1) of Regulation No 1408/71 relating to the aggregation of periods of insurance, employment or residence, is to be found in the chapter dealing with *sickness benefits.*

There is nothing in paragraph (1) of that article which specifies which Member State is being required to comply with the instructions contained in the second half of that paragraph. Article 1 (o) of Regulation No 1408/71 contains a detailed definition of the "competent institution". That definition does not of itself provide an answer to the question as to the identity of the Member State to which Article 18 (1) refers. However, according to Article 13 (1) of Regulation No 1408/71, under Title II "Determination of the legislation applicable", a worker is subject to the legislation of a single Member State only, namely, according to paragraph (2) of that article, the legislation of the Member State in the territory of which the worker is employed. That provision of Article 13 must apply across the board unless expressly displaced by some other provision.

Article 18 (1) must therefore be interpreted subject to Article 13 as referring to the Member State in which the worker is employed. If the legislation of that Member State makes the acquisition of a right to sickness benefit conditional upon the completion of periods of insurance, employment or

residence, the competent institution is bound to take account of such periods completed in other Member States in order to ensure that a claimant acquires a right to benefit.

That interpretation is supported by the provisions of Article 16 (3) of Regulation No 574/72 which deals with the procedures to be followed in the case of a claim for sickness benefit, and which refers to the existence of a "competent State" and "periods of insurance previously completed under the legislation of any other Member State". Those provisions reinforce the view that, in the case of a claim for sickness benefit, the legislation should be that of the last Member State in which the worker was employed and that the only periods to be taken into account are those "previously", and not those subsequently, completed.

According to the Commission, the answer to the first three questions must therefore be that, where a claimant for sickness benefit in a particular Member State is employed in that Member State, it is the competent institution in that Member State which is required, to the extent necessary, to take account of periods of insurance previously completed in another Member State; Article 18 (1) of Regulation No 1408/71 is not addressed to that other Member State.

As regards the *invalidity benefit* referred to in the fourth question, Chapter 2 of Title III of Regulation No 1408/71 (Invalidity) distinguishes between legislation under which the amount of invalidity benefit is independent of the duration of periods of insurance (Section 1) and legislation under which that amount depends on the duration of periods of insurance or of residence (Section 2). Section 2 also covers the case of a worker subject to both types of legislation. The latter section appears to be applicable in a case such as this one. Consequently, the provisions of Article 40 and those of Chapter 3 of Title III on aggregation and apportionment are applicable to the facts of the case.

In view of the different treatment of sickness and invalidity benefits under Regulation No 1408/71, Article 18 is not relevant to consideration of the Community provisions on invalidity benefit. It is rather the provisions of Article 40 (3) of Regulation No 1408/71 which are to be applied in such a case.

Accordingly, the reply to the fourth question should be that the interpretation of the provisions of Regulation No 1408/71 with regard to invalidity benefits does not depend on the interpretation of the provisions on sickness benefits. It is the appropriate provisions of Chapter 2 and, by reference, Chapter 3, and not Chapter 1 of Title III of Regulation No 1408/71, which are relevant to the consideration of invalidity benefits.

III — Oral procedure

At the sitting on 25 November 1982 oral argument was presented by the following: Ann V. Windsor for the Insurance Officer; John Carbery for the Council; and John Forman for the Commission.

The Advocate General delivered his opinion at the sitting on 16 December 1982.

Decision

1 By a decision received at the Court on 13 May 1982, the Social Security Commissioner referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty four questions on the interpretation of Articles 13, 18 and 40 and the validity of Article 46 (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 (Official Journal, English Special Edition 1971 (II), p. 416) with regard to invalidity and sickness benefits.

2 The questions were raised in proceedings concerned with the United Kingdom Insurance Officer's refusal to grant a United Kingdom invalidity pension to Luigi Coppola, a worker of Italian nationality residing in Italy.

3 From October 1960 to August 1973 Mr Coppola was employed in the chemical industry in the United Kingdom and paid contributions to the social security scheme there. On his return to Italy he worked for a period as a building labourer and was insured under the Italian social security scheme. He fell ill and on 30 November applied for an Italian invalidity pension which was awarded to him in 1976 with effect from 1 December 1974 on the basis of partial invalidity.

4 In accordance with Community legislation, the application for Italian invalidity benefit was passed to the United Kingdom authorities to enable them to consider whether Mr Coppola was entitled to United Kingdom invalidity benefit. However, the Insurance Officer considered that Mr Coppola did not satisfy the medical conditions as to the degree of incapacity for work laid down by United Kingdom legislation for the award of sickness or invalidity benefits. He therefore refused to grant him a United Kingdom invalidity pension. Following an appeal by Mr Coppola, that decision was upheld by the local tribunal after a further medical report.

5 The case was brought before the Social Security Commissioner who took the view that he had to consider not only whether Mr Coppola was entitled to invalidity benefit but also whether he was entitled to sickness benefit. Since consideration of Mr Coppola's entitlement to United Kingdom sickness and invalidity benefits raised certain questions of Community law, the Social Security Commissioner stayed the proceedings and referred a number of questions to the Court for a preliminary ruling concerning the relevant provisions of Regulation No 1408/71 of the Council.

Sickness benefit

6 As regards sickness benefit, the Social Security Commissioner found that with respect to one or possibly two periods during which Mr Coppola was in hospital or convalescent, as shown by his file, namely from 30 March to 15 May 1975 and from 22 to 26 June 1976, the medical conditions regarding incapacity for work were satisfied. But Mr Coppola did not satisfy, merely by his contributions to the United Kingdom social security scheme during the period to be taken into account for that purpose, the contribution conditions laid down by United Kingdom legislation. The Social Security Commissioner nevertheless raised the question whether the contributions paid by Mr Coppola to the Italian social security scheme after his return to Italy might be taken into account by virtue of the provisions of Regulation No 1408/71 of the Council.

7 In that respect, the Social Security Commissioner refers to Article 18 (1) of Regulation No 1408/71 concerning the aggregation of insurance periods for sickness benefits, which provides as follows:

"The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits conditional upon the completion of insurance periods shall, to the extent necessary, take account of insurance periods completed under the legislation of any other Member State as if they were periods completed under its own legislation."

8 The first three questions submitted by the Social Security Commissioner are concerned essentially with the application of that article and more particularly with the question of determining which institution is competent to aggregate the insurance periods necessary for the award of sickness benefits in the case of a worker employed successively in two or more Member States and to what legislation such a worker is subject with regard to sickness benefits.

9 The term "competent institution" is defined in Article 1 (o) of Regulation No 1408/71 as meaning in particular:

"(i) the institution with which the person concerned is insured at the time of the application for benefit,

or

(ii) the institution from which the person concerned is entitled or would be entitled to benefits if he or a member or members of his family were resident in the territory of the Member State in which the institution is situated,

or

(iii) the institution designated by the competent authority of the Member State concerned."

10 That definition must be applied within the framework of Article 18 (1), in the light of the general rule contained in Article 13 of Regulation No 1408/71, with regard to determination of the applicable legislation. Article 13 (1) establishes the principle that "A worker to whom this regulation applies shall be subject to the legislation of a single Member State only". Article 13 (2) (a) provides that "a worker employed in the territory of one Member State shall be subject to the legislation of the State even if he resides in the territory of another Member State".

11 By virtue of that provision, and in the absence of contrary provisions referring to the particular type of benefit in question, only the legislation of the State in whose territory the worker is employed is therefore applicable. Although that provision does not expressly mention the case of a worker who is not employed when he seeks sickness benefit, it is appropriate to interpret it as meaning that, where necessary, it refers to the legislation of the State in whose territory the worker was last employed.

12 It follows from the fact that, by virtue of Article 13 (2) (a), the legislation of only one Member State is applicable, that the institution or institutions of a single Member State, namely the State in whose territory the worker is or was last employed, must be considered competent for the purpose of the application of Article 18 (1). That conclusion is moreover confirmed by Article 16 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) regarding the application of the provisions of Regulation No 1408/71 relating to sickness, and more particularly Article 18 of Regulation No 1408/71. By providing that a certified statement specifying the insurance periods completed previously under the legislation of other Member States must be issued by the institution or institutions of the Member State to whose legislation the worker was previously subject and must be submitted to the competent institution, that provision is manifestly based on the principle whereby the institution or institutions of the Member State in whose territory the worker is or was last employed are alone competent to aggregate insurance periods.

13 The answer to the first three questions submitted by the Social Security Commissioner must therefore be that only the competent institution or institutions of the Member State in whose territory the worker is or was last employed are competent to aggregate the insurance periods in accordance with Article 18 of Regulation No 1408/71 of the Council of 14 June 1971 and that only the legislation of that Member State is applicable to sickness benefit by virtue of Article 13 (2) (a) of that regulation.

Invalidity benefit

14 The fourth question seeks essentially to determine whether a Member State may, pursuant to Article 46 (3) of Regulation No 1408/71, validly reduce invalidity benefit due under its legislation following a period of incapacity for work during which the worker was granted benefit for that same incapacity, including benefit from another Member State, which is to be taken into consideration in accordance with Article 40 (3) of that regulation.

15 When asking that question, the Social Security Commissioner has in mind the judgment of the Court of 21 October 1975 in Case 24/75, *Petroni* [1975] ECR 1149, according to which Article 46 (3) of Regulation No 1408/71 is incompatible with Article 51 of the Treaty to the extent to which it imposes a limitation on the overlapping of two benefits acquired in different Member States by a reduction in the amount of a benefit acquired under national legislation alone.

16 As is apparent from the decision making the reference, even if it is assumed that the medical conditions prescribed by United Kingdom legislation are satisfied, no entitlement to invalidity benefit would arise in this case by virtue of United Kingdom legislation alone since Mr Coppola did not satisfy the condition laid down by that legislation for entitlement to invalidity benefit, namely receipt of United Kingdom sickness benefit for a period of 168 days. However, as regards legislation which makes the award of invalidity benefit subject to the condition that the person concerned must have received sickness benefit for a specified period, Article 40 (3) of Regulation No 1408/71 provides that where a worker who was subject to legislation of that kind suffers incapacity for work followed by invalidity while subject to the legislation of another Member State, account is to be taken of any period during which, under the legislation of that other Member State, he received in respect of such incapacity for work or in respect of invalidity following such incapacity cash sickness benefits or continued to receive his wage or salary or invalidity benefit. It is therefore only by virtue of that provision that Mr Coppola might be entitled to United Kingdom invalidity benefit.

17 The entitlement to invalidity benefit which may result from the application of Article 40 (3) of Regulation No 1408/71 is not a right conferred on a worker by virtue of the national legislation of a Member State alone. It is a right conferred on him, in accordance with Community law, by reason of the taking into account of periods completed under the legislation of another Member State. It follows that any reduction, in such a case, of the benefits provided by any of the competent institutions pursuant to Article 46 (3) is not contrary to Article 48 to 51 of the EEC Treaty.

18 It is therefore necessary to reply that invalidity benefit due under the legislation of a Member State following a period of incapacity for work during which the worker received benefit in respect of that incapacity, including benefit from another Member State, which is to be taken into account pursuant to Article 40 (3) of Regulation No 1408/71 may, where appropriate, be validly reduced pursuant to Article 46 (3) of that regulation.

Costs

19 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber)

in reply to the questions referred to it by the Social Security Commissioner, hereby rules:

1. **Only the legislation of the Member State in whose territory the worker is or was last employed is applicable with regard to sickness benefit by virtue of Article 13 (2) (a) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971. The competent institution or institutions of the Member States are competent to aggregate the insurance periods pursuant to Article 18 of that regulation.**

2. **Invalidity benefit due under the legislation of a Member State following a period of incapacity for work during which the worker received benefits in respect of that incapacity, including benefit from**

another Member State, which is to be taken into account pursuant to Article 40 (3) of Regulation No 1408/71 may, where appropriate, be validly reduced pursuant to Article 46 (3) of that regulation.

Everling Mackenzie Stuart Galmot

Delivered in open court in Luxembourg on 12 January 1983.

P. Heim
Registrar

U. Everling
President of the Third Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 16 DECEMBER 1982

My Lords,

This case was referred to the Court by a Social Security Commissioner in London, Mr J. G. Monroe, for a preliminary ruling on the interpretation and validity of Articles 18 (1) and 46 (3) of Council Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, (Official Journal, English Special Edition 1971, p. 416).

It appears from the reference and from the observations of the Insurance Officer appointed under the United Kingdom legislation that the claimant is an Italian national born in Italy in 1931. He was insured in Italy from 1952 to the end of 1958; worked for 11 months in the Federal Republic of Germany and was insured in the United Kingdom from 11 October 1960 to 12 August 1973. He returned to Italy where he was insured from February 1974. He fell sick in Italy and claimed Italian invalidity benefit on 30 November 1974. This was granted with effect from 1 December 1974, on the basis of partial invalidity. As he had been insured both in the United Kingdom and in Italy, a notice of his claim in Italy was given to the Department of Health and Social Security in London (hereinafter called the "DHSS") which treated it as a claim for British benefit. This was done, the