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

Commissioner stated, in accordance with the Court's rulings in Case 108/75 *Balsamo* v *Institut National d'Assurance Maladie-Invalidité* [1976] ECR 375 and Case 41/77 *The Queen* v *National Insurance Commissioner* ex parte *Warry* [1977] ECR 2085.

The Insurance Officer decided that Mr Coppola did not satisfy the medical requirement for the grant of invalidity benefit in the United Kingdom. He had not shown that he was incapable for work that he could reasonably be expected to do by reason of specific disease or bodily or mental disablement. Mr Coppola appealed to a local tribunal, which obtained and considered medical reports from Italy, but upheld the Insurance Officer's decision. Mr Coppola appealed further to the Social Security Commissioner.

The latter has not yet reached any decision on the question whether Mr Coppola satisfied the medical requirement for the grant of invalidity benefit. He takes the view that Mr Coppola's claim to the DHSS should be (and has been) treated as a claim for sickness benefit or invalidity benefit, whichever is appropriate. He also takes the view, on the materials before him, that the medical conditions for British sickness benefit were satisfied at least for the period from 30 March to 15 May 1975, when Mr Coppola was in hospital or convalescent, and also for the period from 22 to 26 June 1976. Nevertheless, the Social Security Commissioner states that under the law of the United Kingdom alone, Mr Coppola would not be entitled to sickness benefit for any period after the date of his claim, since he had not satisfied the contribution conditions. There are two such conditions. First, the claimant must have paid contributions to a specified extent: this Mr Coppola has done. Second, he must have paid or been credited with a sufficient number of contributions in a preceding period, which period was at the material time known as a "contribution year". The contribution year used in considering Mr Coppola's claim was the period from 4 June 1973 to 2 June 1974. In that period Mr Coppola had paid or been credited with only 10 contributions. This was less than the minimum number of contributions necessary for payment of sickness benefit even at a reduced rate. The Social Security Commissioner considered therefore, that unless contributions made or credited in Italy can be taken into account for the purpose of determining whether Mr Coppola satisfied the United Kingdom's contribution conditions, his claim must fail.

It appears to have been argued on behalf of Mr Coppola that he could succeed in his claim to invalidity benefit in the United Kingdom because Article 18 (1) of Regulation No 1408/71 compelled the DHSS to take into account contributions made or credited in Italy. That Article, as substituted by Council Regulation No 2864/72 of 19 December 1972 (Official Journal, English Special Edition, 31. 12. 1972, p. 15), reads 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 periods of insurance, employment or residence shall, to the

extent necessary, take account of periods of insurance, employment or residence completed under the legislation of any other Member State as if they were periods completed under the legislation which it administers."

Against this, it was argued on behalf of the Insurance Officer that in the circumstances of the case the DHSS was not a "competent institution" within the meaning of Article 18 (1). It was contended that for the purposes of Chapter 1 of Regulation No 1408/71, which includes Article 18, the only institution which is to be regarded as competent for the purpose of the right claimed is the institution with which the worker is insured at the time of the claim.

It was in view of the difference of opinions expressed on the meaning of the term "competent institution" in Article 18 and its application in the present case that the Social Security Commissioner drafted his first three questions. They are set out in full in the Report for the Hearing and I do not repeat them. They essentially ask the Court to explain the application of the term "competent institution" as it appears in that article.

When construing Article 18 it is important to have regard, first, to Article 1 (o) of the regulation which, so far as relevant, provides that "competent institution" means:

(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;

and, second, to Article 13 which provides general rules for the determination of the legislation applicable and in particular that "A worker to whom this regulation applies shall be subject to the legislation of a single Member State only".

It thus seems clear that, for the purposes of a claim, a worker is taken as insured with only one institution; and that is the institution with which he was insured at the time he applies for benefit, which will be the institution of the Member State in whose territory he was employed and to whose legislation he was subject at the time of the application; or, if he has ceased to be employed, the Member State in which he was last employed and to whose legislation he was last subject. If there is an institution with which he is so insured at the time of the application for benefit, so that Article 1 (o) (i) applies, there is no need to consider Article 1 (o) (ii) which in any event is only applicable where the individual or his family are only disqualified from benefit because they are not resident in the Member State concerned.

Any other result would be inconsistent with Article 13 of the regulation (the purpose of which is to avoid any plurality or purposeless overlapping of contributions and liabilities which would result from the simultaneous or alternate application of several legislative systems (Case 50/75 *Caisse de Pension des Employés Privés* v *Massonet* [1975] ECR 1473 at p. 1482). It would also be inconsistent with Council Regulation No 574/72 of 21 March 1972 (Official

Journal, English Special Edition 1972, p. 159), which provides in Article 17 for the supply of a certificate to "the competent institution" and states in Article 93 (1) that the amount of certain benefits "shall be refunded by the competent institution to the institution which provided the said benefits".

Whether a person is so insured for the benefit referred to in Regulation No 1408/71 is largely a matter for the national legislation: but in deciding whether conditions for benefit are satisfied, regard must be had to the provisions of that regulation, e.g. Article 18 for sickness benefit, Articles 38 and 40 for invalidity benefit.

In the present case on the findings of the Social Security Commissioner, it seems clear that the applicant was insured with the Italian authorities on 30 November 1974, in whose Member State he was employed, or was last employed, and not at that date with the DHSS, so that the DHSS is not capable of being a competent institution within the meaning of Article 1 (o) (i). Since by virtue of Articles 10 and 19 of Regulation No 1408/71 which suspends the provisions of the United Kingdom legislation disqualifying a person from receipt of benefit during absence from the United Kingdom, and since in any event the applicant is not being refused benefit because absence disqualifies him, there is no question of the DHSS being an institution within the meaning of Article 1 (o) (ii) of the regulation.

Accordingly, it is in my opinion sufficient to reply to the first three questions substantially in the terms suggested by the Commission, viz:

"When 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 with which he is insured at the time of the application for benefit 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 background to his fourth question, the Commissioner points out that, even if Mr Coppola fails to meet the contribution conditions for United Kingdom sickness benefit, but satisfies the medical conditions for an award of sickness benefit for 168 days in a period of interruption of employment, he will still derive some title to United Kingdom invalidity benefit by virtue of Article 40 (3) of Regulation No 1408/71 which covers the case of a worker who, while subject to the legislation of one Member State (e. g. Italy) seeks invalidity benefit in another Member State (e. g. the United Kingdom) where entitlement is conditional upon prior entitlement to sickness benefit: Case 41/77 *Warry* [1977] ECR 2085. The benefit so payable will in this case be lower than that which would have been paid if Mr Coppola had satisfied the contribution conditions for United Kingdom sickness benefit (taking into account contributions made in Italy) because of the provisions of Article 46 (3).

The Social Security Commissioner asks as his fourth question "whether a

claimant who is entitled to invalidity benefit in a Member State without recourse to the provisions of Article 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 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". For the reasons already given, it seems to me that there is in this case no question of making title to sickness benefit in the United Kingdom with the aid of Article 18 and in any event that article does not apply to invalidity benefit. Title to invalidity benefit can be obtained only by recourse to Article 40 (3).

In my view the answer to the question posed is yes. Given that the invalidity benefit would become due, upon the hypothesis posed by the Commissioner, only by virtue of Community law, the principle in Case 24/75 *Petroni* v *ONPTS* [1975] ECR 1149, which prohibits the imposition of any limitation on the overlapping of benefits which would lead to a diminution of the rights which the persons concerned already enjoy in a Member State by virtue of national law alone, does not apply.

For these reasons I am of the opinion that the questions posed by the Social Security Commissioner should be answered as follows:

1. When a claimant for sickness benefit in a particular Member State is employed in that Member State, it is the competent institution of that Member State with which he is insured at the time of the application for benefit, which is required, to the extent necessary, to take account of periods of insurance previously completed in another Member State: Article 18 of Regulation No 1408/71 is not addressed to that other Member State.

2. An invalidity benefit obtained other than by recourse to aggregation and apportionment under Articles 45 and 46 of Regulation No 1408/71, in consequence of an award of sickness benefit under Article 40 (3) thereof, may validly be reduced in accordance with the provisions of Article 46 (3) thereof.