12 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT (Second Chamber)

in answer to the question submitted to it by the Belgian Cour de Cassation by judgment of 19 September 1977, hereby rules:

A period of employment completed under the legislation of a Member State other than that in which the competent institution is established, and defined or recognized as an insurance period under that legislation, is not subject to the condition laid down in Article 67 (1) *in fine* of Regulation No 1408/71.

Sørensen Mackenzie Stuart Touffait

Delivered in open court in Luxembourg on 15 March 1978.

A. Van Houtte
Registrar

M. Sørensen
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 9 MARCH 1978 [1]

Mr President,
Members of the Court,

1. The question raised by the Belgian Cour de Cassation is expressly stated to relate exclusively to Article 67 (1) of Regulation No 1408/71 of the Council of 14 June 1971. The request submitted to the Court of Justice is in substance for an interpretation of the scope of the condition which appears at the end of paragraph (1).

1 — Translated from the Italian

In order to clarify my explanation the relevant paragraph should be quoted in full:

"1. The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits subject to the completion of insurance periods shall take into account, to the extent necessary, periods of insurance or employment completed under the legislation of any other Member State, as though they were periods completed under the legislation which it administers, provided, however, that the periods of employment would have been counted as insurance periods had they been completed under that legislation."

2. The essential features of the present case are as follows: the person concerned, after a long period of employment in Italy as a domestic servant, was employed in Belgium for a short time in another capacity. She now claims that she is covered by unemployment insurance in Belgium and for that purpose, since she was employed for such a short period in Belgium, she requests that the two above-mentioned periods of work should be aggregated. It should be emphasized that in Belgium the law does not provide that domestic servants are insured against unemployment.

The Belgian Cour de Cassation evidently presupposed that the right to unemployment insurance is acquired in Belgium on the basis of a specified period of *insurance*. If, on the other hand, it had held that a mere period of *employment* as such was sufficient it would have referred to Article 67 (2) of Regulation No 1408 which concerns cases in which the acquisition of a right to social security benefits is subject, under the legislation of a Member State, to the completion of "periods of employment". On the foregoing basis the entire matter is reduced to establishing the scope of the condition laid down in Article 67 (1) *in fine*, namely that the periods of employment "would have been counted as insurance periods" had they been completed under the legislation (in the present case, Belgian legislation) applied by the competent social security institution.

3. It seems to me clear that this condition relates only to cases in which the competent institution must take into account, for the purposes of aggregation, simply periods of *employment* as such, which are not recognized as periods of insurance and which were completed under the legislation of another Member State.

In fact Article 67 (1) covers two cases: that where the competent institution takes account of periods of *insurance* completed under the legislation of another Member State and that where the institution takes account of periods of *employment* also completed under the legislation of another Member State. The final condition was drawn up with express reference to periods of employment alone; there is no condition which concerns periods of insurance.

The distinction between these two kinds of period stands out clearly in the present case since, as has been noted above, in Belgium time spent in domestic service Constitutes a period of employment but not of insurance and in Italy this was also the case prior to the promulgation and entry into force of Presidential Decree No 1403 of 31 December 1971. Thereafter, pursuant to that decree, domestic servants are included in the right to unemployment insurance and thus a period of domestic service completed in Italy has become a "period of insurance".

In this connexion it is relevant to recall what is stated in Article 1 (r) of Regulation No 1408/71: namely that the words "insurance periods" mean contri-

bution periods of periods of employment as defined or recognized as insurance periods by the legislation under which they were completed or considered as completed.

It is clear from that provision that when, under the law of the State in which the employment was exercised, a period of employment is also counted as a period of insurance, the characteristic of "period of insurance" takes precedence. Consequently, Article 67 (1) must be applied to the present case, having regard to the reference to "periods of insurance" and, on the other hand, disregarding the reference to "periods of employment" which, for the reasons which I have endeavoured to explain, must be understood only as periods of employment as such not entailing insurance. Consequently, the final condition contained in Article 67 (1) (which, I must reiterate, affects only periods of employment as such) has no incidence on the present case.

4. In conclusion, I suggest that the Court of Justice should deliver a ruling in the present case to the effect that:

"Article 67 (1) of Regulation No 1408/71, in pursuance of which a Member State must take into account a period of employment completed under the legislation of another Member State subject only to the condition that such period of employment would have been counted as an insurance period had it been completed under the legislation of the first Member State, is to be interpreted to mean that that condition does not apply where the period of employment is considered in the other Member State as an insurance period."