that purpose they introduced a system of aggregation of all the periods of employment which may thus be taken into account for the purpose of acquiring and retaining the right to benefits of the same kind in different Member States and for the purpose of calculating the amount of such benefits. But the purpose of those texts is not to determine the conditions for the withdrawal of such benefits and they cannot have that effect.

Article 40 (4) of Regulation No 1408/71 must therefore be interpreted as meaning that "the decision ... concerning the degree of invalidity" to which that provision refers covers exclusively a decision recognizing invalidity and not a decision establishing that there is no invalidity at a later date.

In Case 232/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour du Travail [Labour Court], Mons, for a preliminary ruling in the case pending before that court between

MARGHERITA BACCINI

and

OFFICE NATIONAL DE L'EMPLOI [National Employment Office] (ONEM)

concerning the interpretation of Regulation (EEC) No 1408/71 of the Council 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; codified version: Official Journal 1980, C 138, p. 1) and Regulation No 574/72 laying down the procedure for implementing Regulation No 1408/71 (Official Journal, English Special Edition 1972 (I), p. 159),

THE COURT (Third Chamber)

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

Advocate General: P. VerLoren van Themaat
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to 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

Mrs Baccini, an Italian national, worked first in Italy and then in Belgium. In Belgium she received an invalidity allowance.

The Istituto Nazionale della Previdenza Sociale [National Welfare Institution, hereinafter referred to as "the Italian institution"] was notified of the decision of the Institut National d'Assurance Maladie-Invalidité [National Sickness and Invalidity Insurance Institution, hereinafter referred to as "the Belgian institution"] recognizing Mrs Baccini's invalidity. Thereupon, having regard to the terms of Article 40 (4) of Regulation No 1408/71, which states that:

"A decision taken by an institution of a Member State concerning the degree of invalidity of a claimant shall be binding on the institution of any other Member State . . .",

the Italian institution granted Mrs Baccini an apportioned Italian invalidity pension, which was calculated by aggregating the Italian and Belgian insurance periods.

Having become fit for work again in Belgium, Mrs Baccini thus regained her right under Belgian legislation to unemployment benefit, which she received from 28 April to 4 June 1975 and again from 1 September 1977.

However, the fact that the Italian invalidity pension continued to be paid to Mrs Baccini constituted, under the third paragraph of Article 141 of the Royal Decree of 20 December 1963 on employment, as amended on 11 September 1969, a legal presumption of incapacity for work which excluded any entitlement to unemployment benefit. By decision dated 8 December 1978, taken on the basis of that provision, the director of the regional office of the Office National de l'Emploi [National Employment Office] at La Louvière withdrew Mrs Baccini's entitlement to unemployment benefit and directed that she should repay the sums which he considered she had improperly received.

Mrs Baccini instituted proceedings against that decision before the Tribunal du Travail [Labour Tribunal], Charleroi, and then brought proceedings by way of appeal before the Cour du Travail [Labour Court], Mons, which, by judgment of 3 April 1981, in substance asked the Court of Justice:

"First, whether Article 51 of the EEC Treaty and Regulations Nos 1408/71 and 574/72 must be interpreted in such a way that is in accordance with the aims of the Treaty to refuse a migrant worker unemployment benefit pursuant to rules of national law against the overlapping of benefits in a State in which he is no longer recognized as unfit for work on the ground that he is in receipt of an apportioned invalidity pension from another Member State which has been determined with regard to the Community regulations;

Secondly, if the answer to that question is affirmative, whether that situation is not itself the result of the enjoyment of the invalidity pension under Regulation No 1408/71 so that the regulation does not provide the security specified by Article 51 of the Treaty and is contrary to the objectives of the Treaty."

In its judgment of 23 March 1982 (Case 79/81 [1982] ECR 1063), the Court, in answer to the questions submitted to it by the Cour du Travail, Mons, ruled:

"Article 51 of the EEC Treaty, Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community and Regulation No 574/72 fixing the procedures for implementing that regulation must be interpreted as meaning that where, under the national legislation of a Member State, the right of a migrant worker to unemployment benefit depends on his fitness for work and such fitness for work has been accepted by the competent authorities of the said Member State, those authorities may not refuse the worker in question unemployment benefit on the ground that he is in receipt in another Member State of an aggregated and apportioned invalidity pension determined in accordance with Community rules."

On the basis of that preliminary ruling by the Court of Justice, the Cour du Travail, Mons, considering that the Office National de l'Emploi was precluded from applying Article 141 of the Royal Decree of 20 December 1963 by relying on the fact that Mrs Baccini was in receipt of an Italian invalidity benefit, annulled the contested administrative decision by judgment of 3 September 1982 on the ground that it was erroneously adopted on the basis of that provision.

The Cour du Travail then declared that, having annulled an administration decision, it had to substitute its own decision for that unlawfully adopted by the competent administrative body. For that purpose, it examined Mrs Baccini's entitlement to unemployment benefit in the light of Article 146 of the Royal Decree of 20 December 1963, which provides:

"1. If the workers referred to in Article 145 (workers entitled to a pension before reaching 65 years for men and 60 years for women) are in actual receipt of a pension the daily rate of which is lower than the daily rate of unemployment benefit ... increased by 40% ... they shall be entitled to unemployment benefit in an amount equal to the difference between the said rate and the daily rate of pension but not exceeding the amount of unemployment benefit ...

2. ... without prejudice to Article 142 (1) shall apply to an unemployed person who is entitled to:

(1) ...

(2) ...

(3) ... (Royal Decree of 11 September 1969, Article 2) a benefit granted under a foreign sickness and insurance scheme on account of incapacity for work of less than 50% not caused by an accident at work or occupational disease."

According to the Cour du Travail, it was clear from the facts of the case that the action had arisen because the Italian authorities had not withdrawn the apportioned benefit.

The Cour du Travail considered that, altough it was not for it to give a ruling on the lawfulness of the decision of the Italian authority, it had a duty to consider whether Mrs Baccini was entitled to rely upon Article 146, cited above, and thus to determine indirectly whether, having regard to the terms of Article 40 (4) of Regulation No 1408/71, the Italian benefit had been wrongly paid.

For that purpose, in the same judgment of 3 September 1982, the Cour du Travail decided to refer the following question to the Court of Justice for a preliminary ruling:

"For the purposes of the European Community legislation, does the decision 'concerning the degree of invalidity of a claimant', any 'multinational' effects of which are governed by Article 40 (4) of Regulation No 1408/71, include a decision that there is no invalidity taken after a decision has established invalidity? Does not the decision 'concerning the degree of invalidity' refer as much to a decision that there is no invalidity as to a decision establishing invalidity? Is not Article 40 (4), which is expressed in general terms and appears under the heading 'General provisions', wider in scope than Article 44 of the implementing regulation, No 574/72? Must not Article 40 (4) be interpreted in accordance with logic and reason in the light of the doctrine of the 'acte contraire' or 'parallélisme des formes' (see Aubry and Drago's *Traité du Contentieux Administratif,* 1962, paras 1058 to 1081) so as to compensate for any lacunae in the Community legislation which might give rise to situations little short of absurd, such as that at present before this court?"

The order making the reference was lodged at the Court Registry on 8 September 1982.

Following the additional measures of inquiry requested by the Court in connection with Case 79/81 *Baccini* v *Office National de l'Emploi,* the Italian invalidity pension was withdrawn with effect from 1 February 1981 by a decision of the Italian authorities of 22 May 1981. It should also be noted that Regulation No 2793/81 of 17 September 1981 (Official Journal 1981, L 275, p. 1) terminated the concordance between Italian and Belgian legislation on conditions relating to the degree of invalidity.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by Mrs Baccini, represented by D. Rossini, a member of the Associazione Christiane Lavoratori Italiani, Brussels, Social and Legal Department for Migrant Workers; by the Office National de l'Emploi, represented by Léon Goffin of the Brussels Bar; and by the Commision of the European Communities, represented by its Legal Adviser, Jean Amphoux, assisted by Francis Herbert of the Brussels Bar, acting as Agents.

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.

Pursuant to Article 95 (1) and (2) of the Rules of Procedure, the Court, by order of 19 January 1983, decided to assign the case to the Third Chamber.

II — Summary of the observations submitted to the Court

In the view of *Mrs Baccini,* who refers to the opinion of Mr Advocate General VerLoren van Themaat in Case 79/81, it is clear from the case-law of the Court of Justice that the application of Community regulations may not result in the withdrawal of rights acquired under the legislation of a Member State. Thus the application of Article 40 (4) of Regulation No 1408/71 may not entail the loss of entitlement to a pension if the national legislation by virtue of which it is paid guarantees its grant for a period longer than that provided for by the legislation of another Member State.

According to Mrs Baccini, in this case account should be taken of the fact that the risks of invalidity and unemployment materialized in Belgium and that the decision establishing that she was no longer unfit for work was taken by the Belgian authorities.

Mrs Baccini considers that the solution of the dispute now depends exclusively on a question of national law which is a matter for the national court alone. That question concerns the amount of the benefits to be awarded and raises the issue whether the Belgian unemployment benefit may be recieved in addition to the apportioned Italian invalidity pension, in total or within the limits laid down in the first paragraph of Article 146 of the Royal Decree of 20 December 1963.

The *Office National de l'Emploi,* having set out the facts of the dispute, the procedure prior to the first reference to the Court of Justice for a preliminary ruling and the reasons for the second reference, stresses that according to the terms used by the Council the provisions of Article 40 of Regulation No 1408/71 are general provisions.

In the view of the Office National de l'Emploi, it follows directly from that characteristic that, when Article 40 (4) of Regulation No 1408/71 provides that "a decision taken by an institution of a Member State concerning the degree of invalidity of a claimant shall be binding on the institution of any other Member State concerned", it is referring to any decision concerning the degree of invalidity of a migrant worker, whether that decision is positive or negative.

In the opinion of the Office National de l'Emploi, that interpretation seems to be borne out by two factors: on the one hand, the text of Article 40 (4) itself, which makes no distinction between a positive or negative decision of the authorities of the competent State and, on the other, the principle of the "parallélisme des compétences", laid down by the French Conseil d'État [State Council] in judgments cited in particular by Aubry and Drago in *Traité du Contentieux Administratif* (1962, paragraph 1058), a work to which the Cour du Travail refers. Thus the Conseil d'État stated that where a text does not indicate the authority empowered to adopt the 'acte contraire' to a certain measure, that is to say the measure by

which it is amended or revoked, such power must be attributed to the authority authorized to adopt the initial measure."

In the opinion of the Office National de l'Emploi, there are no objective grounds for considering that under Article 40 (4) of Regulation No 1408/71 the institution of one Member State is bound by a decision taken by an institution in another Member State only if the purpose of that decision was to declare that there was invalidity. It adds that, if such an interpretation were accepted, the migrant worker would be able to recieve unemployment benefit because of his fitness for work and in addition, in respect of the same period, an invalidity pension because of his unfitness for work, which had in fact ended. Such social security advantages would result in the migrant worker being accorded more favourable treatment than the national worker contrary to Article 7 of the Treaty.

The Office National de l'Emploi proposes that the Court of Justice give the following answer to the question submitted for a preliminary ruling:

"The decision referred to in Article 40 (4) of Regulation No 1408/71 of the Council covers both a decision establishing invalidity and a decision establishing that the invalidity has ended."

The *Commission*, after setting out the Court's decision in Case 79/81 and the reasons which underlie the second reference for a preliminary ruling, states that before answering the questions submitted by the Cour du Travail it is necessary to make certain preliminary remarks concerning first, the provisions of Belgian law which the Cour du Travail is seeking to apply, secondly, certain of the grounds for the reference for a preliminary ruling and, finally, whether there has been a misuse of procedure.

First, the Commission is surprised that the Cour du Travail, having annulled the contested administrative decision on the ground that it was based on the third paragraph of Article 141 of the Royal Decree of 20 December 1963, should seek to apply Article 146 of that decree.

According to the Commission, the third paragraph of Article 141, in providing that the worker is to be considered unfit for work if he is in receipt of a foreign invalidity benefit for incapacity for work of 50% or more, lays down one of the conditions for entitlement to Belgian unemployment benefit. Article 146, on the other hand, lays down detailed rules relating to the overlapping of Belgian unemployment benefit and foreign invalidity benefits the grant of which does not preclude entitlement to Belgian unemployment benefit. That is the case if the incapacity for work is less than 50%.

In the Commission's opinion, in so far as it is established, on the one hand, that the invalidity pension is granted in Italy only in the case of incapacity for work of at least two-thirds and, on the other, that Mrs Baccini's incapacity for work was assessed by the Belgian authorities at more than 66%, Article 146 of the Royal Decree of 20 December 1963 does not seem to be applicable to this case.

According to the Commission, the question whether the maintenance of the Italian benefit is lawful can be determined only on the basis and by reference to the provisions of Community law. If that question is answered in the affirmative, Community law, as the Court stated in Case 79/81, does not permit the withdrawal of the Belgian benefit. If it is answered in the negative, Article 146 of the Belgian

Royal Decree seems to be inapplicable for the reasons stated above.

The Commission's second preliminary observation is that the fact that the Belgian authorities "considered it necessary" to inform the Italian institution that Mrs Baccini was no longer unfit for work does not necessarily represent a "wide" interpretation of Article 40 (4), but may be explained by the provision made in the Community legislation for the exchange of information between the authorities of the various Member States concerned.

The final preliminary observation refers to the fact that, according to the grounds set out in the judgment making the reference, the decision of the Court of Justice ought to enable the Belgian court "indirectly to determine ... whether the Italian benefit has been wrongly paid". Since the purpose of the reference for a preliminary ruling has been described in this way, the Commission argues that two questions should be considered: first, whether the legislation of one Member State may be challenged by relying upon Community law before a court in another Member State and, secondly, whether the Court of Justice has jurisdiction to give a ruling in the framework of proceedings for a preliminary ruling on the compatibility of national rules with Community rules where the application of national law, indirectly called in question by the court making the reference, does not normally fall within its jurisdiction. According to the Commission, the Court of Justice answered the first question in its judgments of 11 March 1980 in Case 104/79 *Foglia* v *Novello* [1980] ECR 745, and of 16 December 1981 in Case 244/80 *Foglia* v *Novello* [1981] ECR 3045, and more especially in paragraph 24 of the second *Foglia* judgment. As to the second question, the Commission, after stating that in its view there is no factor indicating a misuse of the procedure provided for in Article 177, such as for example the absence of any real dispute which might lead the Court not to give a ruling, stresses that in the Court's judgment of 20 February 1973 in Case 54/72 *FOR* v *VKS* [1973] ECR 193, the Court answered a question on the interpretation of Article 95 of the Treaty which had been submitted by an Italian court in relation to German taxation.

In answer to the questions submitted by the Cour du Travail, the Commission considers that according to the text, context and object of Article 40 (4), the "decision ... concerning the degree of invalidity" to which that provision refers covers solely the decision which establishes the invalidity and gives rise to the right to payment of benefits.

Article 40 of Regulation No 1408/71 lays down rules on entitlement to invalidity benefits and on the grant thereof for workers who are simultaneously subject to type A legislation (legislation based on risk) and type B legislation (legislation based on the duration of periods of insurance). In the Commission's opinion, it necessarily follows from the object of Article 40 that Article 40 (4) refers to the decision by which invalidity is established.

That interpretation is confirmed by Annex IV to Regulation No 1408/71, which relates to the concordance between the legislation of Member States on conditions relating to the degree of invalidity, established on the basis of

"schemes administered by Member States' institutions who have taken a decision recognizing the degree of invalidity".

The interpretation proposed by the Commission is supported by the fact that Article 40 of Regulation No 574/72, which expressly refers to Article 40 (4) of Regulation No 1408/71 and governs the determination of the degree of invalidity, is one of the provisions contained in Chapter 3 of Title IV of Regulation No 574/72 on the submission and investigation of claims for benefits. That is a result of the fact that the coordination provided for by Regulation No 1408/71 covers only the case in which there is entitlement to benefits of the same kind in more than one Member State. Within the limits of that objective, Article 40 (4) is intended to accelerate the award of invalidity pensions by avoiding differences in the assessment of the situation of the worker concerned.

According to the Commission, it follows from the object of the Community rules that they do not cover the case of a decision which, by establishing that there is no longer incapacity for work, constitutes the basis for a decision altering or withdrawing invalidity benefit or refusing entitlement to a benefit of a different kind.

The Commission considers that the principle of "parallélisme des compétences" contained both in Belgian and in French administrative law cannot invalidate the interpretation of Article 40 (4) which it puts forward, inasmuch as under that principle the authority empowered to adopt a given administrative measure has jurisdiction to amend that measure or adopt a contrary measure, whereas the question for a preliminary ruling refers to the legal effects of a decision of the Belgian authorities by which they determined that the invalidity which they had previously acknowledged no longer existed.

The Commission adds — although this does not affect the answers to be given to the Cour du Travail — that the Belgian institution was bound to inform the Italian institution both of the decision recognizing invalidity (Article 40 (4) of Regulation No 1408/71) and of the decision withdrawing the benefit (Article 49 of Regulation No 574/72).

The Commission suggests that the Court, in reply to the questions referred to it by the Cour du Travail, Mons, should rule that "Article 40 (4) of Regulation No 1408/71 must be interpreted as covering exclusively a decision recognizing invalidity and not a decision determining that there is no invalidity at a later date."

III — Oral procedure

At the sitting on 3 March 1983 oral argument was presented for the Office National de l'Emploi by Léon Goffin of the Brussels Bar and for the Commission of the European Communities by its Legal Adviser, Jean Amphoux, assisted by Francis Herbert of the Brussels Bar, acting as Agents.

The Advocate General delivered his opinion at the same sitting.

Decision

1 By a judgment dated 3 September 1982, which was received at the Court on 8 September 1982, the Cour du Travail [Labour Court], Mons, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty questions on the interpretation 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; codified version: Official Journal 1980, C 138, p. 1) and Regulation No 574/72 of the Council laying down the procedure for implementing Regulation No 1408/71 (Official Journal, English Special Edition 1972 (I), p. 159).

2 Three questions arose in the course of a dispute between Mrs Baccini, an Italian national, and the Office National de l'Emploi [National Employment Office], Belgium, on the application of provisions of the Royal Decree of 20 December 1963 on employment and unemployment, as amended on 11 September 1969, concerning the calculation of the amount of Belgian unemployment benefit where that benefit overlaps with an invalidity pension granted under the sickness and invalidity insurance scheme of another Member State.

3 The details of that dispute, which gave rise to a first reference for a preliminary ruling by the Cour du Travail, Mons, are the following: after Mrs Baccini's admission in 1973 to the Belgian invalidity pension scheme, the Istituto Nazionale della Previdenza Sociale [National Social Welfare Institution, hereinafter referred to as "the Italian institution"], taking into account, in accordance with the provisions of Regulation No 1408/71, the decision which the Belgian Institut d'Assurance Maladie-Invalidité [National Sickness and Invalidity Insurance Institution, hereinafter referred to as "the Belgian institution"] communicated on that subject on the liaison forms provided for by Regulation No 574/72, granted to Mrs Baccini with effect from 1 August 1974 an apportioned Italian invalidity pension, calculated by aggregating the Italian and Belgian periods of insurance.

4 Having become fit for work again in Belgium, from 28 April to 4 June 1975 and again from 1 September 1977, Mrs Baccini was granted unemployment benefit in that country.

5 Relying upon the fact that the Italian invalidity pension continued to be paid to Mrs Baccini and that under the third paragraph of Article 141 of the Royal Decree of 20 December 1963, as amended, there was therefore a legal presumption of incapacity for work which excluded any entitlement to unemployment benefit, the director of the regional office of the Office National de l'Emploi at La Louvière on 8 December 1978 withdrew Mrs Baccini's unemployment benefit and directed that she should repay the sums improperly received.

6 The Cour du Travail, Mons, before which Mrs Baccini appealed against a judgment of the Tribunal du Travail [Labour Tribunal], Charleroi, decided by judgment of 3 April 1981 to refer to the Court two questions on the interpretation of Article 51 of the EEC Treaty and of Regulations Nos 1408/71 and 574/72.

7 In its judgment of 23 March 1982 (Case 79/81 [1982] ECR 1063), the Court answered those questions by ruling:

"Article 51 of the EEC Treaty, Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community and Regulation No 574/72 fixing the procedures for implementing that regulation must be interpreted as meaning that where, under the national legislation of a Member State, the right of a migrant worker to unemployment benefit depends on his fitness for work and such fitness for work has been accepted by the competent authorities of the said Member State, those authorities may not refuse the worker in question unemployment benefit on the ground that he is in receipt in another Member State of an aggregated and apportioned invalidity pension determined in accordance with Community rules."

8 On the basis of that preliminary ruling, the Cour du Travail on the one hand annulled the contested administrative decision on the ground that it was erroneously adopted on the basis of the third paragraph of Article 141 of the Royal Decree of 20 December 1963 and on the other hand examined Mrs Baccini's right to receive unemployment benefit again on the basis of Article 146 of the same Royal Decree, which provides:

"1. If the workers referred to in Article 145 are in actual receipt of a pension the daily rate of which is lower than the daily rate of unemployment

benefit ... increased by 40% ... they shall be entitled to unemployment benefit in an amount equal to the difference between the said rate and the daily rate of pension but not exceeding the amount of unemployment benefit ...

2. ... without prejudice to Article 142, paragraph (1) shall apply to an unemployed person who is entitled to:

(1) ...

(2) ...

(3) ... (Royal Decree of 11 September 1969, Article 2) a benefit granted under a foreign sickness and insurance scheme on account of incapacity for work of less than 50% not caused by an accident at work or occupational disease."

9 The Cour du Travail, Mons, considered that in order to determine the applicability of Article 146 to this case, it had to ascertain whether, having regard to the terms of Article 40 (4) of Regulation No 1408/71, Mrs Baccini was lawfully entitled to the Italian benefit. For that purpose, it referred the following question to the Court for a preliminary ruling:

"For the purposes of the European Community legislation, does the decision 'concerning the degree of invalidity of a claimant', any 'multinational' effects of which are governed by Article 40 (4) of Regulation No 1408/71, include a decision that there is no invalidity taken after a decision has established invalidity? Does not the decision 'concerning the degree of invalidity' refer as much to a decision that there is no invalidity as to a decision establishing invalidity? Is not Article 40 (4), which is expressed in general terms and appears under the heading 'General provisions', wider in scope than Article 44 of the implementing regulation, No 574/22? Must not Article 40 (4) be interpreted in accordance with logic and reason in the light of the doctrine of the 'acte contraire' or 'parallélisme des formes' (see Aubry and Drago's *Traité du Contentieux Administratif,* 1962, paras 1058 to 1081) so as to compensate for any lacunae in the Community legislation which might give rise to situations little short of absurd, such as that at present before this court?"

10 During the procedure before the Court, the Commission stressed that Mrs Baccini's incapacity for work had been assessed at more than 50% and that consequently Article 146 of the Royal Decree of 20 December 1963 did not seem to be applicable to the situation in this case. It followed, according to the Commission, that the question, which was submitted, according to the terms of the judgment making the reference, in order to ascertain whether that provision of national law might be applied to Mrs Baccini, was not relevant.

11 According to well-established case-law, the Court may not in the framework of the procedure for a preliminary ruling give a ruling on the application of provisions of national law or on the relevance of the request for a preliminary ruling. In the framework of the division of jurisdiction between the national court and the Court of Justice laid down in Article 177 of the Treaty, it is indeed for the national court to assess, with full knowledge of the facts of the case, the relevance of questions of law raised by the dispute which has been brought before it and the necessity for a preliminary ruling in order to enable it to give judgment.

12 Article 40 (4) of Regulation No 1408/71 provides: "A decision taken by an institution of a Member State concerning the degree of invalidity of a claimant shall be binding on the institution of any other Member State concerned, provided that the concordance between the legislation of these States on conditions relating to the degree of invalidity is acknowledged in Annex IV." As the Court stated in its judgment of 23 March 1982, before the adoption on 17 September 1981 of Council Regulation No 2793/81 (Official Journal 1981, L 275, p. 1), which amended Regulation No 1408/71, Annex IV accepted the concordance between the Belgian and Italian legislation on conditions relating to the degree of invalidity.

13 In order to define the meaning and scope of Article 40 (4), it is necessary to interpret that provision by reference only to the Community regulations and to Articles 48 and 51 of the Treaty, which constitute their basis, their framework and their bounds.

14 It follows first from the actual terms of Article 40 of Regulation No 1408/71 that that provision lays down exclusively the rules on entitlement to invalidity

benefit for workers subject successively or alternately to type A legislation (legislation based on risk) and type B legislation (legislation based on the duration of periods of insurance). The wording of Annex IV to Regulation No 1408/71, to which Article 40 (4) refers, confirms that it is indeed the "decision recognizing the degree of invalidity" which is binding on the other Member States and is alone covered by Article 40 (4).

15 That interpretation of the text of Article 40 (4) is, secondly, confirmed by the context of that provision and required by the purpose of the Community regulations.

16 On the one hand, the provisions concerning invalidity benefits, contained in Chapter 3 of Title IV of Regulation No 574/72 laying down the procedure for implementing Regulation No 1408/81, lay down exclusively the rules on the submission and investigation of claims for benefit and do not lay down the conditions for the withdrawal of benefits.

17 On the other hand, in accordance with Articles 48 and 51 of the Treaty, Regulations Nos 1408/71 and 574/72 of the Council are in particular intended to prevent the migrant worker, as a result of his migration from one Member State to another, from losing the benefit of his periods of employment and thus being placed in a worse position than that in which he would have been if he had completed his entire career in only one Member State. For that purpose they introduced a system of aggregation of all the periods of employment which may thus be taken into account for the purpose of acquiring and retaining the right to benefits of the same kind in different Member States and for the purpose of calculating the amount of such benefits. But the purpose of those texts is not to determine the conditions for the withdrawal of such benefits, and they cannot have that effect.

18 It follows from the considerations set out above that the answer to the questions submitted by the Cour du Travail, Mons, should be that Article 40 (4) of Regulation No 1408/71 must be interpreted as meaning that "the

decision ... concerning the degree of invalidity" to which that provision refers covers exclusively a decision recognizing invalidity and not a decision establishing that there is no invalidity at a later date.

Costs

19 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable.

20 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, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the question referred to it by the Cour du Travail, Mons, by judgment of 3 September 1982, hereby rules:

Article 40 (4) of Regulation No 1408/71 must be interpreted as meaning that the "decision ... concerning the degree of invalidity" to which that provision refers covers exclusively a decision recognizing invalidity and not a decision establishing that there is no invalidity at a later date.

Everling Mackenzie Stuart Galmot

Delivered in open court in Luxembourg on 10 March 1983.

For the Registrar

H. A. Rühl

Principal Administrator

U. Everling

President of the Third Chamber