3. Where national legislation makes affiliation to a social security scheme conditional on prior affiliation by the person concerned to the national social security scheme, Regulation No 1408/71 does not compel Member States to treat as equivalent insurance periods completed in another Member State and those which must have been completed previously on national territory.
Consequently, Article 9 (2) of Regulation No 1408/71 must be construed as meaning that it does not require a social insurance institution of a Member State to take into account periods of insurance completed under the legislation of another Member State when the worker concerned has never paid, in the first Member State, the contribution required by law in order to create his status as an insured person under the legislation of that Member State.

In Case 70/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundessozialgericht [Federal Social Court] Kassel for a preliminary ruling in the action pending before that court between

TAMARA VIGIER

and

BUNDESVERSICHERUNGSANSTALT FÜR ANGESTELLTE [Federal Insurance Office for Clerical Staff], Berlin

on the interpretation of the Community rules applicable in the field of social security,

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore, Lord Mackenzie Stuart and T. Koopmans (Presidents of Chambers), A. O'Keeffe, G. Bosco, A. Touffait, O. Due and U. Everling, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

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 written procedure

The plaintiff in the main action, Mrs Tamara Vigier, was born on 8 July 1922 in Jena, Germany. She left Germany in March 1933 at the age of 10.

The plaintiff is a victim of persecution within the meaning of Article 1 of the "Bundesentschädigungsgesetz" [Federal Compensation Law] and she has received compensation for loss of educational opportunities.

Mrs Vigier lives and works in France and is affiliated to the French social security system. On 17 December 1975 she applied to the defendant institution for authorization to pay retroactively voluntary contributions for invalidity and old-age insurance under Article 10 a (2) of the "Gesetz zur Regelung der Wiedergutmachung nationalsozialistischen Unrechts in der Sozialversicherung" [German Law on the reparation of injustice perpetrated under National Socialism in the field of social insurance], hereinafter referred to as "the Reparation Law".

Article 10 a of the Reparation Law provides:

"(1) Victims of persecution who have completed an insurance period of at least 60 calendar months and who before the commencement of the persecution paid voluntary contributions for at least 12 months, may, on application, in derogation from the provisions of Article 1418 of the Reichsversicherungsordnung [Insurance Code] and Article 140 of the Angestelltenversicherungsgesetz [Clerical Staff Insurance Law], pay contributions retroactively for periods between 1 January 1933 and 8 May 1945 or until such time as they again come within the scope of this Law, though not beyond 31 December 1955, in so far as those periods do not fall before the attainment of the age of 16 years or after attainment of the age of 65 years and are not already covered or deemed to be covered by contributions, unless the period of persecution is already, or should be, taken into account in an insurance scheme governed by public law or in a scheme governed by the legal principles applicable to civil servants.

(2) Paragraph (1) applies correspondingly to victims of persecution who have completed an insurance period of at least 60 calendar months and who, by a decision which is final or which can no longer be challenged, have been granted compensation under Article 116 or Article 118 of the Bundesentschädigungsgesetz for loss of educational opportunities within the meaning of that Law or who began to suffer persecution within 12 months after their education ended."

The defendant refused Mrs Vigier's application on the ground that she did not satisfy the conditions laid down by the Reparation Law for the retroactive payment of contributions. It maintained that that Law applied only to insured persons who were victims of persecution within the meaning of Article 1 of the said Law, that is to say, those who had paid at least one contribution (voluntary or compulsory) to a German institution

providing invalidity and old-age insurance. An insured person could be authorized to pay voluntary contributions retroactively under Article 10 a (2) of the Reparation Law only if he had completed a qualifying insurance period of 60 calendar months.

Mrs Vigier's application to the Sozialgericht [Social Court] Berlin and her appeal to the Landessozialgericht [Higher Social Court] Berlin were dismissed.

In her appeal on a point of law to the Bundessozialgericht [Federal Social Court] the plaintiff argues *inter alia* that the judgment appealed against proceeds upon a misapplication of Article 9 (2) of Regulation No 1408/71.

Article 9 (2) of Regulation No 1408/71 provides:

"Where, under the legislation of a Member State, admission to voluntary or optional continued insurance is conditional upon completion of periods of insurance, the periods of insurance or residence completed under the legislation of another Member State shall be taken into account, to the extent required, as if they were completed under the legislation of the first State."

In the absence of any proviso under Part C, paragraph 8 (b), of Annex V to Regulation No 1408/71 it follows from the principle of equality of treatment enunciated in Article 3 of Regulation No 1408/71 that all persons who belong to the insurance scheme of one Member State also belong to the German insurance scheme.

By order of 19 December 1979 the Bundessozialgericht stayed proceedings and requested the Court to give a preliminary ruling on the following questions:

"1. Must Article 4 (1) of Regulation (EEC) No 1408/71, whereby that regulation applies to legislation concerning 'branches of social security', be construed as meaning that entitlement to pay contributions retroactively under the Law on the reparation of injustice perpetrated under National Socialism in the field of social insurance (Reparation Law) of 22 December 1970, in the version of 27 June 1977 (Bundesgesetzblatt 1970 I, p. 1846 and Bundesgesetzblatt I 1977, p. 1040), comes within the scope of that regulation, in so far as the victims of persecution must be regarded as workers within the meaning of Article 1 (a) of Regulation (EEC) No 1408/71?

If the answer is in the affirmative, does that special right to pay contributions retroactively form part of a benefit scheme within the meaning of Article 4 (4) of Regulation (EEC) No 1408/71, thus excluding the applicability of the regulation?

2. If Regulation No 1408/71 is applicable:

does Article 9 (2) thereof apply to the insurance period of 60 months required under Article 10 a of the Reparation Law in so far as a person's status as an insured person (and thus as a victim of persecution) under Article 1 (1) of the Reparation Law is thereby created?"

The Bundessozialgericht proceeded on the basis of the following considerations:

1. It considers that there is doubt as to whether the German rules on the reparation of injustice perpetrated under National Socialism in the field of social insurance come within the scope of Regulation No 1408/71 as defined by Article 4 (1) and (4) of that regulation.

The Reparation Law, which contains special provisions applying to a particular group of persons, seeks to redress injustice perpetrated under National Socialism in the field of social insurance. As a law on compensation, its purpose is to deal with a national problem with which the EEC Treaty is not concerned.

2. It expresses doubts as to whether the provisions of the Reparation Law belong to the special schemes within the meaning of Article 4 (4) of Regulation No 1408/71, which are expressly excluded from the scope of the regulation.

   On the other hand, the provisions of the Reparation Law are connected with the kinds of benefit referred to in Article 4 (1) of the EEC regulation, inasmuch as they govern legal relationships connected with those benefits.

3. If Regulation No 1408/71 were to be held applicable in relation to the Reparation Law, in particular Article 10 thereof, it is not clear whether as a result of Article 9 (2) of the regulation the total 60-month period of previous insurance, including the contribution required under Article 1 (1) of the Reparation Law making it possible to acquire the status of insured person, may be replaced by contributions to the invalidity and old-age insurance scheme of another Member State of the EEC.

The order making the reference was received at the Court Registry on 8 April 1980.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by Mrs Tamara Vigier, represented by Rechtsanwälte Hammerschmid and Orthmann, Cologne, by the Bundesversicherungsanstalt für Angestellte, represented by Mr Michaelis, and by the Commission of the European Communities, represented by its Legal Adviser, N. Koch, acting as Agent.

On 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.

II — Written observations submitted to the Court

Mrs Vigier submits that the provisions of the Reparation Law cannot form part of the special schemes referred to in Article 4 (4) of Regulation No 1408/71. On the contrary, they are an integral part of German social security law. Consequently, Article 9 (2) of that regulation must be applied to Article 10 a (2) of the Reparation Law.

There is no foundation for the doubts expressed by the Bundessozialgericht as to whether, in view of the arrangement and objectives of the provisions of the Reparation Law, the scheme for the reparation of injustice perpetrated under National Socialism in the field of social insurance in Germany comes within the scope of Regulation No 1408/71. Whilst the provision of compensation for National Socialist injustices is, at federal level, the responsibility of the Federal Minister for Finance, the rules on the reparation of National Socialist injustice in the field of social security are a matter for the Federal Minister for Labour and Social Affairs. Moreover, the provisions concerning the reparation of injustice in the field of social insurance have the same aim as Regulation No 1408/71, namely the improvement of the position in connexion with social insurance by means of the elimination of disadvantages arising from a person's choice of his place of residence within the EEC.

According to Mrs Vigier, the main obstacle to a decision in her favour has been the Bundessozialgericht's doubts on the question whether, as well as applying to insurance periods on which entitlement to benefits is based, Article 9 (2) of Regulation No 1408/71 also applies to periods of prior insurance which create the relationship between the social insurance scheme and the insured person and thus the status of insured person. Mrs Vigier maintains that Article 9 (2) must not be construed narrowly to the effect that it does not apply to a contribution which first creates the status of insured person: the golden rule of interpretation recognized in international law is that the words used are presumed to mean what they say.

In view of that rule, compelling reasons would have to be advanced in order to justify deviating from the terms of that provision and to explain why it is necessary to adopt a narrow construction to the effect that the contribution which creates the status of insured person cannot be replaced by a corresponding payment in another Member State. No such reasons exist. On the contrary, a narrow construction of Article 9 (2) would entail the very disadvantages, already referred to, which Regulation No 1408/71 seeks to avoid and would be contrary to the principle of equality of treatment laid down in Article 3 of Regulation No 1408/71.

Finally, Mrs Vigier draws the Court's attention to the consequences of a narrow construction of Article 9 (2). The failure to pay the German contribution required in order to be entitled to pay retroactively voluntary contributions for invalidity and old-age insurance was caused by persecution. The consequences of that persecution would be perpetuated if retroactive payment were prevented.

In view of the nature of the German legislation in question in this case and in order to avoid the perpetuation of the consequences of the National Socialist regime, Mrs Vigier submits that the insurance period of 60 months, required for entitlement to pay contributions retroactively, including the single contribution which is required to create the status of insured person, may also be completed by corresponding contributions paid in other Member States.

The *Bundesversicherungsanstalt für Angestellte* states that the provisions of the Reparation Law must be regarded as legislation within the meaning of Article 1 (j) of Regulation No 1408/71, since they amend or supplement *inter alia* certain provisions of the Reichsversicherungsordnung [Insurance Code], the Angestelltenversicherungsgesetz [Clerical Staff Insurance Law] and the Reichsknappschaftsgesetz [Law on invalidity and old-age insurance for miners]. According to the declaration made by the Federal Republic of Germany, those laws come within the scope of Regulation No 1408/71.

The provisions of the Reparation Law confer upon the persons concerned rights which are not dependent on any discretionary assessment of their personal situation and needs. It is therefore a question of statutory provisions which belong to the field of social security within the meaning of Article 51 of the Treaty and Article 1 (j) of Regulation No 1408/71. Those rules concern only a section of persons covered by social insurance in Germany, namely those who as victims of National Socialist persecution have suffered prejudice in the

field of social insurance. But the fact that its scope is limited in this way does not prevent the Reparation Law from forming part of the general law on social security, for it is not unusual in German legislative practice for rules which apply only to a particular category of insured persons to be dealt with in a special law.

Under the Reparation Law the link between the victims of National Socialist persecution and the German pension insurance scheme derives from the payment of one contribution to a German invalidity and old-age insurance institution. In respect of that condition, which concerns a person's status as a victim of persecution, neither Article 9 (2) of Regulation No 1408/71 nor any other provision of Community law puts periods of insurance or residence in other Member States on a par with German contributions. The Bundesversicherungsanstalt submits that the social security law of the Community does not in principle have any bearing on the general legal status which a Member State attributes to particular categories of persons in the area covered by national legislation. Consequently, the defendant in the main action supports the opinion expressed by the Bundessozialgericht to the effect that Article 9 (2) of Regulation No 1408/71 must be construed narrowly as meaning that it does not affect a contribution which creates a person's status as an insured person.

The *Commission* observes that the question whether Regulation No 1408/71 applies to the plaintiff's rights under Article 10 a (2) of the Reparation Law is determined by reference not only to the provisions defining the matters covered by the regulation, but also to those which define the persons covered thereby. The plaintiff must be a "worker" within the meaning of Article 2 (1) and Article 1 (a) of that regulation. In terms of Article 1 (a) the plaintiff's status as a worker depends on her status as an insured person under a social security scheme. The conditions of affiliation are a matter for the national provisions of each Member State (Case 110/79 *Coonan* [1980] ECR 1445). The main action concerns the applicability of the regulation to a right claimed under German legislation and the plaintiff's status as a worker must therefore be judged from the point of view of German social security law. Thus in the absence of affiliation to the German social security scheme the plaintiff is not a worker within the meaning of the regulation for the purpose of the possible application of the internal provisions of German law.

It is true that the view may be taken that for the purpose of applying French legislation on social insurance the plaintiff is to be regarded as a worker within the meaning of Article 1 (a) of the regulation. However, that status as a worker is of no significance for the internal law of another Member State in which the plaintiff has never worked.

The Commission considers that the benefits under the Reparation Law should be regarded as social security benefits within the meaning of Article 4 of Regulation No 1408/71.

A right to reparation is conferred by the Reparation Law on insured persons who have suffered prejudice in the field of accident insurance and invalidity and old-age insurance as a result of National Socialist persecution. To that end, in respect of the statutory invalidity and old-age insurance it allows victims of persecution to obtain continued insurance and to pay contributions retro-

actively. Thus in this type of case the reparation provided by the Reparation Law consists in giving persons an opportunity to acquire entitlement to benefits which it was not possible to obtain as a result of persecution. Those compensatory benefits form an integral part of pension benefits in the general scheme of social security benefits. The Reparation Law supplements existing legal provisions with particular provisions. It constitutes a part of the German legislation on social security. It confers upon the beneficiaries a legally defined right which is not dependent on any discretionary assessment of personal needs or situations. The regulation cannot be held to be generally inapplicable by virtue of Article 4 (4) thereof, because the provisions of the Reparation Law do not relate to social and medical assistance, to a benefit scheme for victims of war or to a special scheme for civil servants and persons treated as such. The Reparation Law therefore comes within the scope of Regulation No 1408/71. But it might be objected that the right given by that law to pay contributions retroactively does not concern the worker in his capacity as an insured person, but in his capacity as a victim of persecution and that the principles of the law on the free movement of workers within the Community cannot be transferred to the field of national law on compensation.

The decision therefore depends solely on the question whether the right to pay contributions retroactively under the Reparation Law relates to a social security benefit even though the aim pursued is the compensation of victims of persecution. The Commission answers that question in the affirmative because the right to pay contributions retroactively under the Reparation Law is closely connected to the scheme of statutory invalidity and old-age insurance by reason of the conditions governing it, its aim and its legal consequences. Admittedly, it is a question of reparation, but it is confined to the field of statutory invalidity and old-age insurance, to the persons who are affiliated to that insurance and to the replacement of lost or missed opportunities to acquire pension rights.

The function of Article 9 (2) is confined to the aggregation of insurance periods: it does not enable the status of insured person to be established.

Article 51 (a) of the Treaty requires the legislature to make arrangements to secure for migrant workers and their dependants aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries.

The status of insured person is the condition *sina qua non* for the application of the regulation. The acquisition of that status depends on the legal provisions of the Member States; it cannot be acquired by virtue of the assimilation of insurance periods completed in other Member States to insurance periods completed internally. Access to social insurance is given only by the internal law of the Member State concerned (Case 266/78 *Brunori* [1979] ECR 2705 and Case 110/79 *Coonan* [1980] ECR 1445).

In conclusion, the Commission considers that the questions submitted for a preliminary ruling may be answered as follows:

1. Article 9 (2) of Regulation No 1408/71 is applicable to entitlement to pay contributions retroactively under the German Law of 22 August 1949 on the reparation of injustice perpetrated under National Socialism in the field of social insurance, as

amended on 27 June 1977, in so far as the victims of persecution must be regarded as workers within the meaning of Article 1 (a) of that regulation. Affiliation to a social security scheme of the Federal Republic of Germany is decisive in that regard.

2. The right to pay contributions retroactively under the Reparation Law does not form part of a benefit scheme within the meaning of Article 4 (4) of Regulation No 1408/71, such as would exclude the applicability of the regulation.

3. Article 9 (2) of Regulation No 1408/71 applies to the insurance period of 60 months required under Article 10 a of the Reparation Law only in so far as a person's status as an insured person under Article 1 (1) of that Law is not thereby created.

III — Oral procedure

Mrs Tamara Vigier, represented by I. Hammerschmid of the Cologne Bar, and the Commission of the European Communities, represented by its Legal Adviser, N. Koch, acting as Agent, presented oral argument at the sitting on 18 November 1980.

The Advocate General delivered his opinion at the sitting on 10 December 1980.

Decision

1 By an order dated 19 December 1979, which was received at the Court on 4 March 1980, the Bundessozialgericht referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two 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).

2 Those questions have been raised in the context of a dispute between the plaintiff in the main action, Mrs Tamara Vigier, who was born in Germany in 1922 but at present resides in France and possesses French nationality, and the Bundesversicherungsanstalt für Angestellte, a German social insurance institution, the defendant in the main action.

3 The plaintiff in the main action left Germany in 1933 at the age of 10. She is a victim of persecution within the meaning of Article 1 of the Bundesentschädigungsgesetz [Federal Compensation Law], and as such received compensation for loss of educational opportunities. She works in France and is affiliated to the French social security scheme.

4 Article 10 a of the Gesetz zur Regelung der Wiedergutmachung nationalsozialistischen Unrechts in der Sozialversicherung ("the Reparation Law") allows, subject to certain conditions and in respect of certain periods not extending beyond 31 December 1955, the retroactive payment of contributions by victims of persecution who have completed an insurance period of at least 60 calendar months and who, by a decision which is final or which can no longer be challenged, have been awarded compensation under Article 116 or Article 118 of the Federal Compensation Law for loss of educational opportunities.

5 Article 1 (1) of the Reparation Law provides that it applies to insured persons who are victims of persecution within the meaning of the Federal Compensation Law and have suffered prejudice in the field of social insurance as a result of the persecution.

6 From the order making the reference for a preliminary ruling it appears that in order to have the status of insured person under that provision the person concerned must have paid at least one contribution to the competent German institution.

7 In reliance on the aforesaid Article 10 a, Mrs Vigier applied to the defendant in the main action in December 1975 for authorization to make retroactive and voluntary payment of contributions to invalidity and old-age insurance. That application was dismissed on the ground that, as she did not have the status of insured person, Mrs Vigier did not satisfy the conditions laid down by the Reparation Law for the retroactive payment of contributions.

8 After the failure of her action in the Sozialgericht Berlin and her appeal to the Landessozialgericht Berlin, the plaintiff in the main action appealed on a point of law to the Bundessozialgericht. Her main argument was that the judgment appealed against rested on an incorrect application of Article 9 (2) of Regulation No 1408/71 of the Council. She submitted that by virtue of that provision insurance periods which she had completed in France should be taken into account as if they had been completed under the German legislation.

9 In those circumstances the Bundessozialgericht has submitted the following questions:

1. Must Article 4 (1) of Regulation (EEC) No 1408/71, whereby that regulation applies to legislation concerning "branches of social security", be construed as meaning that entitlement to pay contributions retroactively

under the Law on the reparation of injustice perpetrated under National Socialism in the field of social insurance (Reparation Law) of 22 December 1970, in the version of 27 June 1977 (Bundesgesetzblatt 1970 I, p. 1846 and Bundesgesetzblatt I 1977, p. 1040), comes within the scope of that regulation, in so far as the victims of persecution must be regarded as workers within the meaning of Article 1 (a) of Regulation (EEC) No 1408/71?

If the answer is in the affirmative, does that special right to pay contributions retroactively form part of a benefit scheme within the meaning of Article 4 (4) of Regulation (EEC) No 1408/71, thus excluding the applicability of the regulation?

2. If Regulation (EEC) No 1408/71 is applicable, does Article 9 (2) thereof apply to the insurance period of 60 months required under Article 10 a of the Reparation Law in so far as a person's status as an insured person (and thus as a victim of persecution) under Article 1 (1) of the Reparation Law is thereby created?

First question

10 In its order the Bundessozialgericht has expressed doubts as to whether the scheme for the reparation of injustice perpetrated by the National Socialist regime in the field of German social insurance comes within the scope of Regulation No 1408/71 and whether the effect of Article 9 (2) of that regulation is that in the case of nationals of Member States of the Community who reside outside the Federal Republic of Germany contributions paid in other Member States may be substituted for the entire period of 60 months of prior insurance required by Article 10 a of the Reparation Law, including therefore the contribution required by Article 1 (1) of that Law in order to have the status of insured person (which contribution must, under German law, be paid to the national invalidity and old-age insurance scheme).

11 According to the order making the reference, the provisions of the Reparation Law govern legal relationships which are indeed connected with the types of benefit referred to in Article 4 (1) of Regulation No 1408/71 but by reason of their special purpose (the compensation of a particular category of persons who have suffered persecution) it is not certain that they must be counted amongst the provisions adopted in order to deal with those types of benefit.

12 The defendant in the main action submits that by virtue of the rules laid down therein the provisions of the Reparation Law must be regarded as legislation within the meaning of Article 1 (j) of Regulation No 1408/71, since they amend or supplement *inter alia* certain provisions of the Reichsversicherungsordnung [Insurance Code], the Angestelltenversicherungsgesetz [Clerical Staff Insurance Law] and the Reichsknappschaftsgesetz [Law on invalidity and old-age insurance for miners]. According to the declaration made by the Federal Republic of Germany pursuant to Article 5 of the regulation those laws come within the scope of the regulation.

13 Further, it is clear that by reason of its subject-matter the Reparation Law cannot be classed as legislation dealing with social assistance or with the special schemes referred to in Article 4 (4) of the regulation. The provisions of the Reparation Law bestow upon persons concerned — if they satisfy the conditions laid down therein — rights which are not dependent on any discretionary appraisal of their personal situation and needs. Thus it is a question of legal provisions falling within the scope of social security within the meaning of Article 51 of the Treaty and Article 1 (j) of the regulation.

14 The Court considers this view to be correct. It is clear from the papers in the case that although the Reparation Law has the appearance of a *lex specialis* it does not seek to establish an independent scheme of compensation. The provisions of the Reparation Law merely constitute rules supplementing or adjusting the general provisions in the field of social insurance.

15 Whilst it is true that the Reparation Law is not included in the declaration made by the Federal Republic of Germany pursuant to Article 5 of Regulation No 1408/71 (legislation and schemes referred to in Article 4 (1), to which the regulation applies), that circumstance is not decisive. The fact that a domestic law is not mentioned in the declaration made by a Member State does not mean that that law must be deemed to lie outside the scope of the regulation.

16 Legislation, such as the Reparation Law, which forms part of the body of law governing the social insurance of workers in a Member State and which makes no provision for a discretionary assessment of the personal situation and needs of the individual concerned, comes within the scope of Regulation No 1408/71 and is not excluded by virtue of the provisions of Article 4 (4) of that regulation.

Second question

17 Article 9 (2) of Regulation No 1408/71 provides that where, under the legislation of a Member State, admission to voluntary or optional continued insurance is conditional upon completion of periods of insurance, the periods of insurance or residence completed under the legislation of another Member State shall be taken into account, to the extent required, as if they were completed under the legislation of the first State.

18 From the order making the reference it appears that the legislation in question applies only to insured persons who are victims of persecution within the meaning of the Federal Compensation Law, and to their surviving relations, and that in order to have the status of insured person it is necessary to have paid at least one contribution as a worker to a German social insurance institution.

19 According to the case-law of the Court, in particular its judgment of 24 April 1980 in Case 110/79 *Coonan* [1980] ECR 1445, where national legislation makes affiliation to a social security scheme conditional on prior affiliation by the person concerned to the national social security scheme, Regulation No 1408/71 does not compel Member States to treat as equivalent insurance periods completed in another Member State and those which must have been completed previously on national territory.

20 Consequently, the reply to the second question should be that Article 9 (2) of Regulation No 1408/71 must be construed as meaning that it does not require a social insurance institution of a Member State to take into account periods of insurance completed under the legislation of another Member State when the worker concerned has never paid, in the first Member State, the contribution required by law in order to create his status as an insured person under the legislation of that Member State.

Costs

21 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main 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,

in answer to the questions referred to it by the Bundessozialgericht by order of 19 December 1980, hereby rules:

1. **Legislation, such as the German Reparation Law, which forms part of the body of law governing the social insurance of workers in a Member State and which makes no provision for a discretionary assessment of the personal situation and needs of the individual concerned, comes within the scope of Regulation (EEC) No 1408/71 of the Council and is not excluded by virtue of Article 4 (4) of that regulation.**

2. **Article 9 (2) of Regulation (EEC) No 1408/71 must be construed as meaning that it does not require a social insurance institution of a Member State to take into account periods of insurance completed under the legislation of another Member State when the worker concerned has never paid, in the first Member State, the contribution required by law in order to establish his status as an insured person under the legislation of that Member State.**

Mertens de Wilmars Pescatore Mackenzie Stuart Koopmans O'Keeffe

Bosco Touffait Due Everling

Delivered in open court in Luxembourg on 27 January 1981.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President