claimant may claim benefits under the legislation specified by that article.

5. Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Article 8 of Regulation No 574/72.

Touffait Pescatore Due

Delivered in open court in Luxembourg on 22 May 1980.

A. Van Houtte
Registrar

A. Touffait
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 27 MARCH 1980 [1]

Mr President,
Members of the Court,

1. In this reference for a preliminary ruling an interpretation is sought not only of two 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, but also, and from various aspects, Article 8 of Regulation No 574/72 of the Council of 21 March 1972 which fixes the procedure for implementing the first-mentioned regulation. Moreover, a question is raised as to the validity of that article, doubts having been cast on its conformity with Article 51 of the EEC Treaty.

The facts may be summarized as follows.

Mrs Margaret Walsh, the claimant in the main proceedings, commenced employment in the United Kingdom and became insured as from 21 July 1967 under the British national insurance scheme. During the period between August 1973 and January 1974 she worked in Ireland and paid the prescribed insurance contributions to the Irish insurance authorities. Thereafter

1 — Translated from the Italian.

she returned to the United Kingdom, where she was employed from January until October 1974 at which time she again removed to Ireland. She was still in Ireland when she bore a child, on 31 July 1975, but on 21 August following she returned to England and on 3 October 1975 applied to the British national insurance authorities (the Insurance Officer) for payment of maternity allowance on the basis of the contributions which she had paid.

The British authorities refused her application on the ground that there was no justification for the delay in making it. The claimant lodged an appeal against that refusal with the local tribunal in Liverpool, which, by decision of 3 March 1976, upheld the adverse decision of the Insurance Officer. Mrs Walsh then lodged an appeal (dated 26 May 1976) with the National Insurance Commissioner. By order of 11 September 1979 the Commissioner stayed the proceedings and requested the Court of Justice to give a preliminary ruling on a series of questions of interpretation. They are concerned with, first, the meaning of the term "worker" which occurs in Regulations Nos 1408/71 and 574/72 of the Council, thereafter with Article 8 of Regulation No 574/72 from the point of view of the conditions for its application and, finally, with Article 86 of Regulation No 1408/71 relating to the forwarding of claims for insurance benefits from the authorities of one Member State to those of another Member State.

2. In the first question the Commissioner asks the Court "whether a person who satisfies the contribution conditions of one Member State (in this case the United Kingdom) for entitlement to maternity allowance (in this case at a reduced rate) throughout the period for which maternity allowance is claimed in that State is a 'worker' for the purpose of (a) Regulation (EEC) No 1408/71 and (b) Regulation (EEC) No 974/72, notwithstanding that during that period she has paid no contributions and is not liable to pay contributions".

It is appropriate to state in this regard that Mrs Walsh claimed maternity allowance in the United Kingdom for the birth, which took place in Ireland, relying on the fact that she had previously worked in the United Kingdom and had thus accumulated a sufficient number of weekly contributions to give her an entitlement to maternity allowance, albeit at a reduced rate (as appears, *inter alia,* from the decision of the Secretary of State for Social Services dated 24 August 1978 annexed to the order making the reference). However, there remains open the problem of deciding whether the status of worker, within the meaning of the Community regulations cited above, applies to a person in that position, in relation to a period in which she has not paid and was not obliged to pay insurance contributions.

The term "worker" is defined in Article 1 (a) (ii) of Regulation No 1408/71 as including, *inter alios,* any person "who is compulsorily insured for one or more of the contingencies covered by the branches of social security dealt with in this regulation, under a social security scheme for all residents or for the whole working population if such person can be identified as an employed person by virtue of the manner in which such

scheme is 'administered or financed . . .". The same meaning applies also for the purpose of Regulation No 574/72, Article 1 (c) of which states that the definitions in Article 1 of Regulation No 1408/71 have the meaning assigned to them in that article. The observations of the Commission and those of the British national insurance authorities have correctly stressed that, under the formula referred to above, it is not necessary that the person be compulsorily insured at the time at which the contingency covered by the insurance arises. From that it may be held that the status of worker applies also to one who has paid compulsory insurance contributions prior to the date of that contingency, as has occurred in the present case.

In support of that interpretation there may be cited Article 2 of Regulation No 1408/71 on the "persons covered". That article, in paragraph (1), lays down that the regulation "shall apply to workers who are or have been subject to the legislation of one or more Member States . . .". The use of the past tense ("have been") means that even those who are not paying compulsory contributions at the time of the occurrence of the contingency covered by the insurance may be regarded as workers, provided, of course, that they have contributed at an earlier period. I would add that if one were to favour a narrower construction of the term "worker" by making that status subject to the condition that the person be still paying compulsory contributions, Regulation No 1408/71 could not apply to pensioners or the unemployed. That result is obviously unacceptable since both categories are expressly taken into account by the regulation (Article 25 *et seq.*).

The terms of the question do not appear different if account is also taken of Annex V to Regulation No 1408/71 (Special procedures for applying the legislation of certain Member States) in the text as amended and supplemented by the Act of Accession and in particular Point I (United Kingdom) paragraph 1. It is there provided that "all persons required to pay contributions as employed workers shall be regarded as workers for the purposes of Article 1 (a) (ii) of the regulation". In its judgment of 29 September 1976 in Case 17/76 *Brack* v *Insurance Officer* [1976] ECR 1492 the Court has already had occasion to state that that provision "is thus intended to ensure that Article 1 (a) (ii) is applied broadly in that it makes it clear that any person who is required to pay contributions as an employed person can be identified as such by virtue of the manner in which the British system is administered or financed in the sense of the first indent" of that subparagraph (paragraph 11 of the decision). It appears to me that that judicial precedent is not in the least in conflict with the interpretation which I have earlier advanced; indeed, the Court, far from attributing to the said rule in Annex V a restrictive meaning or the character of an exception to Article 1 (a) (ii) of the regulation, held that it constituted solely a clarification of the content of the latter subparagraph.

The fact that the concept of worker, as thus defined in Regulation No 1408/71, does not require that payment of compulsory contributions be still continuing at the time when the contingency covered by the insurance occurs is supported indirectly by the judgment of the Court of 12 October 1978 in Case 10/78 *Belbouab* v *Bundesknappschaft* [1978] ECR 1915. In that judgment it is laid down that the status

of being a national of a Member State must subsist during the periods in which the person concerned was actually employed and paid the relevant contributions thereby acquiring corresponding entitlements, and not at the time at which the insurance benefit is claimed. To my mind, that statement reflects the same reasoning as the interpretation of the concept of worker which I favour in both cases, indeed, the concern is to judge whether the conditions upon which entitlement to insurance benefits depends are satisfied and to that end reference must be made to the period in which employment was being pursued and not to the time at which the person concerned claims his entitlement.

3. The second to fifth questions all concern Article 8 of Regulation No 574/72 which is headed "Rules applicable in the case of overlapping of rights to . . . maternity benefits under the legislation of several Member States". According to that article, "if a worker . . . is entitled to claim maternity benefits under the legislation of two or more Member States, those benefits shall be granted *exclusively* under the legislation of the Member State in whose territory the confinement took place . . .". In the second question the National Insurance Commissioner asks the Court "Whether a worker who satisfies the contribution conditions for maternity benefit (either at the full or at a reduced rate) under the legislation of two or more Member States (in this case those of the United Kingdom and the Republic of Ireland) is to be regarded, for the purpose of Article 8 of Regulation (EEC) No 574/72 as 'entitled to claim maternity benefits' under those legislations:

(a) whether or not such worker falls to be disqualified for receipt of such benefits under the legislation of one or more of such Member States on the ground of delay in claiming or on other grounds; or

(b) only if the claim of such worker would in fact succeed under the legislation of all such Member States."

In my opinion, the correct alternative is that indicated under head (b): it is justified by the *ratio* of the Community principle against overlapping which finds expression, *inter alia,* in the said Article 8. It is to be noted that under that principle a person may not receive two or more insurance benefits from different Member States for the same contingency and for the same period. For the principle to come into operation it is necessary, of course, that there should be an overlapping of benefits to be removed, that is to say, a worker who is actually in the position of claiming a double entitlement. If, on the other hand, a worker were theoretically in the position of obtaining for the same period two benefits by virtue of two different systems but if, as a matter of fact, he had lost one of those two entitlements (for example by not having presented his claim in time to the competent authority, which the legislation conferring the entitlement penalizes by forfeiture) the worker will have no entitlement other than the insurance benefits provided under the other legislation. In such cases, the operation of the rule against overlapping ceases: the result is determined outside the said rule of Article 8. Therefore, by reasoning *a contrario,*

Article 8 is applicable only where a possible claim by a worker who satisfies the contribution conditions for entitlement to maternity allowance within the terms of the laws of both Member States would actually have a positive result under the legislation of both.

Such an interpretation of Article 8 appears to me to be fully warranted as a matter of logic. Indeed, were we to adopt the view that Article 8 must apply even where there is no actual double entitlement, then an insured person who, on procedural grounds, has lost her entitlement to maternity allowance in the State in which confinement took place, would then be unable to claim it under the legislation of the other State which, however, gives him a similar entitlement. It is clear that to provide for such result, which would be seriously prejudicial to the interests of the worker, would mean accepting that Community law on social security may place the worker in a worse position than he would have been in on the basis of the law of one Member State alone. That suffices to show that the view mentioned above is erroneous and must be rejected.

A further argument in support of the point of view which I have advanced may be based on the approach followed by the Court in interpreting Article 76 of Regulation No 1408/71, that is to say, the rule against overlapping of family allowances. That article states that "entitlement to ... family allowances ... shall be suspended if, by reason of the pursuit of a professional or trade activity, ... family allowances are also payable under the legislation of the Member State in whose territory the members of the family are residing". In that context also the problem has arisen of whether the rule against overlapping operates only where there is an actual duplication of entitlement; and the Court in its judgment of 20 April 1978 in Case 134/77 *Ragazzoni* v *Assubel* [1978] ECR 963 stressed that the rule may operate only where benefits are actually payable in both States. To the same effect may also be cited the judgment of 6 March 1979 in Case 100/78 *Rossi* v *Caisse de Compensation pour Allocations Familiales* [1979] ECR 831.

4. The third question is concerned with the meaning to be given to the expression "the legislations of two or more Member States" which occurs in the said Article 8 of Regulation No 574/72. The National Insurance Commissioner wishes to know whether that expression "is to be regarded as (a) including or (b) excluding the regulations of the European Economic Community".

In my opinion, Counsel for the Commission and the Insurance Officer are right in submitting in their observations that, in the context of the Community regulation on social security, the expression "the legislations of the Member States" also includes Community regulations.

At first sight, that view is contradicted by the well-known distinction which is drawn between Community law and the laws of the Member States. However, it is necessary to take into account the fact that Community regulations have their binding, general and immediate effect in the same field as that in which the laws

of the Member States operate and that the personal rights given to individuals by those laws are added to those which flow, in favour of the same persons, from Community rules. Accordingly, the advantages of insurance benefits are often the result of what is provided by both national laws and Community provisions operating together.

On the other hand, if, in the name of the formal distinction between the two legal systems, the suggested interpretation were rejected we should be faced, in regard to the overlapping of national insurance benefits, by an unreasonable situation. Indeed, it is impossible to see upon what ground overlapping must be regarded as permissible when produced by Community rules and must, on the other hand, be ruled out whenever its origins lie in national provisions alone. It appears to me that Community principles in matters of social security lead in the opposite direction and, indeed, that it is above all where the entitlement to benefits in relation to different States exists by virtue of Community regulations, and in particular the system of aggregating contributions, that it is possible to see the need to correct such a result, which is so widely favourable to the worker, by preventing him from being able to obtain the same benefit twice over and thus to derive excessive advantage from Community rules.

The answer suggested is in accordance with the case-law of the Court. The judgment of 7 November 1973 in Case 51/73 *Bestuur der Sociale Verzekeringsbank* v *Smieja* [1973] ECR 1213 has indeed already had occasion to make clear, with reference to Regulation No 3 of the Council and Regulation No 1408/71 that the phrase "legislation of one or more Member States" which occurs in Article 10 (1) of both regulations refers to "national legislation as it is after the rules of Community law ... have been incorporated in it".

5. In the fourth question the National Insurance Commissioner asks the Court "Whether, in the case of a worker who is entitled to claim maternity benefits under the legislation of two or more Member States within the meaning of Article 8 of Regulation (EEC) 574/72, the provision of that article that those benefits shall be granted exclusively under the legislation of the Member State in whose territory the confinement took place (in this case the Republic of Ireland) operates to exclude the claimant from obtaining maternity benefits in Member States where the confinement did not take place (in this case the United Kingdom):

(a) only in respect of the period for which the claimant is entitled to claim maternity benefits under the legislation of the Member State where the confinement took place; or

(b) in respect of all maternity benefits in relation to that confinement in those Member States where the confinement did not take place."

In order to appreciate the actual import of that question it is convenient to state certain of the facts of the main dispute. The legal systems to which regard must be had in this matter are those of Ireland and of the United Kingdom. Both of them grant a female worker a weekly maternity allowance on the occasion of a confinement but they award it for different periods of time: British law for a maximum period of 11 weeks prior to

the confinement and for seven weeks thereafter (see section 22 (2) of the Social Security Act 1975), Irish law for six weeks prior to the confinement and for six weeks thereafter (see Social Welfare Act 1952). Under both legal systems the grant of the allowance is conditional upon payment of insurance contributions of a specified minimum amount. Moreover, the claimant must lodge an application with the competent authority. In the present case, the application was presented to the British authorities on 3 October 1975 whereas the confinement had taken place on 31 August of the same year. It is not clear whether any application has been made to the Irish authorities.

The problem of general application which such a situation raises concerns the limits within which the rule against overlapping in Article 8 is intended to operate. It has been seen that according to that article the worker is entitled "exclusively" to the benefit provided by the legislation of the Member State in which confinement took place. Clearly, on each occasion on which two social security systems provide, in relation to the occurrence of a confinement, entitlement to benefits which differ in scope and if it is assumed that a worker is in a position to claim entitlement under the provisions of both systems, the mechanism of Article 8 will lead to the benefit which she may obtain being increased or reduced. In particular the allowance awarded by the law of the place of confinement may be higher or lower compared with that provided by the other legislation or it may be paid for a shorter or longer period. In the present case it has been seen how the principal difference between the British legislation and the Irish is concerned precisely with the period for which the allowance is granted: 18 weeks under British law and only 12 under Irish law. If Article 8 is construed literally it must be held that maternity benefits are always governed only by the legislation of the country in which the confinement took place, quite apart from the fact that that legislation may possibly be less favourable to the worker than other legislation which is also applicable to her. Mrs Walsh would then be automatically worse off by reason of the fact that she bore her child in Ireland.

In my opinion, the reasoning underlying Community rules on social security matters leads to the view that possible adverse effects for the worker are acceptable only if they are offset by advantages and do not put in jeopardy the aims of the Treaty. Applying that test, I think it may be stated that where an entitlement to specific benefits flows from Community law (in the sense that it does not exist on the basis of the legislation of a Member State alone) the provisions of Community law may, on the basis of objective criteria, make one national legal system applicable to the exclusion of the other, irrespective of the fact that, in individual cases, that may bring with it a disadvantage for workers as regards the amount or duration of the benefits. In regard to cases in which, but for Community rules, the worker would

not have any right to receive any allowance, it appears reasonable and in accordance with the criteria of Article 51 of the Treaty for the same Community rules to place possible limits to the entitlement of the worker by means of strict rules against overlapping. No disadvantage would, however, be acceptable in a case where the worker's entitlement to the larger benefits provided by the laws of a Member State other than that in which the contingency covered by the insurance arose is acquired under that law without recourse to Community rules.

That solution appears to me consistent with the approach of the case-law of the Court, which has repeatedly laid down the inviolability of rights acquired by individuals in social security matters on the basis of national legislation while accepting, on the other hand, the possibility that rights based on national legislation supplemented by Community rules on the aggregation of insurance contributions may be appropriately regulated. As of particular significance in this respect I would recall the judgments of 21 October 1975 in Case 24/75 *Petroni* v *ONPTS* [1975] ECR 1149; of 3 February 1977 in Case 62/76 *Strehl* v *Nationaal Pensioen Fonds voor Mijnwerkers* [1977] ECR 211; of 13 October 1977 in Case 112/76 *Manzoni* v *Fonds National de Retraite des Ouvriers Mineurs* [1977] ECR 1647; of 13 October 1977 in Case 22/77 *Fonds National de Retraite des Ouvriers Mineurs* v *Mura* [1977] ECR 1699 and of 13 October 1977 in Case 37/77 *Greco* v *Fonds National de Retraite des Ouvriers Mineurs* [1977] ECR 1711. It is worth recalling also that in the *Petroni, Strehl* and *Manzoni* judgments the Court was at pains to repeat that the aim of Articles 48 to 51 of the EEC Treaty "would not be attained if, as a consequence of the exercise of their right to freedom of movement, workers were to lose advantages in the field of social security guaranteed to them in any event by the laws of a single Member State". However "the Council in the exercise of the powers which it holds under Article 51 ... has the power, in conformity with the provisions of the Treaty, to lay down detailed rules for the exercise of rights to social benefits which the persons concerned derive from the Treaty" (paragraph 20 of the decision in the *Petroni* judgment).

In the present case, the order making the reference does not indicate clearly whether the entitlement claimed by Mrs Walsh in the dispute with the Insurance Officer also exists on the basis of British legislation alone and it is not for this Court to establish that point. However, so far as the entitlement due to the same worker on the basis of Irish legislation is concerned it appears that the insurance contributions paid by her in Ireland were not sufficient for her to acquire by virtue of Irish legislation alone any entitlement to maternity benefits. Consequently, Mrs Walsh would be able to claim maternity benefit from the Irish authorities only by virtue of the aggregation of insurance contributions laid down by Article 18 of Regulation No 1408/71.

In that state of affairs, it seems to me that it would be of assistance to the Commissioner were the Court to consider both the situation in which the benefits due to the worker under the law of a Member State other than that of the confinement have their source in the

national rules supplemented by the Community rules and the other situation in which the same benefits are founded solely upon national legislation. I consider that in the first case Article 8 must be construed as meaning that the legislation of the place of confinement is the only one which applies, irrespective of the fact that the two legal systems in question confer benefits of different worth and that the worker will receive the allowance which is smaller in amount. I would repeat that any possible disadvantage which this solution places upon the worker is only an apparent disadvantage, since it affects individual positions which, but for the Community regulations, could not even have arisen.

There remains the other case, that is, where the worker has an entitlement under legislation other than that of the place of the confinement, and on the basis of the former's provisions alone, to larger benefits than those provided by the legislation which applies under Article 8. Where that is the position, I think that precedence must be given to the preservation of rights acquired under the law of the other Member State. In the application of that principle, it is essential to compare the benefits conferred by the legislation of the place of confinement with those conferred by another legal system in the context of which the worker has built up entitlement to maternity benefits in order to ascertain whether the latter allowance is greater in amount. Where that is so, it must be recognized that the worker is entitled to obtain, in the State other than that of the confinement, the difference between the greater and the lesser benefits. That means that Article 8 is to be interpreted in the sense that the adverb "exclusively" does not prejudice rights already acquired under the national legislation of a single Member State other than that of the confinement.

The considerations put forward hitherto may be made supplemented having regard to the construction of Article 8 which I proposed in answer to the second question. I would recall what the subject-matter of that question gave me occasion to state, namely, that the rule against overlapping contained in Article 8 applies only when the worker has an actual entitlement to maternity benefits under the laws of one or more Member States concerned, or, in other words, when she is in the specific position of receiving those benefits in the framework of both systems. In keeping with that point of view, I consider that in cases in which the entitlement to benefit is governed by the operation of Community rules on the legislation of the Member State other than that in which the confinement took place (being cases which, as has been seen, may, in principle, involve the operation of the restriction in Article 8) the exclusive nature of the legislation of the State where the confinement took place cannot be asserted except as regards the period in which the person concerned may actually obtain maternity benefits from the authorities of that State. Where, on the other hand, the actual conditions

giving rise to the entitlement to insurance benefit do not occur, there would be no ground for fearing a case of overlapping and therefore imposing the restriction specified in Article 8.

6. The fifth question is concerned with the validity of Article 8 of Regulation No 574/72. The Commissioner entertains doubt whether that provision "to the extent to which it operates to exclude the claimant from obtaining maternity benefits in Member States where the confinement did not take place" may be regarded as invalid through being *ultra vires*. In essence, it is thereby suggested that the rule in question is incompatible with Article 51 of the EEC Treaty.

If the interpretation of Article 8 which I advanced in the preceding section is adopted, the doubt expressed by the Commissioner turns out to be unfounded. Indeed, it appears to me to be essential that the "exclusive" application of the legislation of the place of confinement should not prejudice rights acquired under the legislation of another Member State by virtue of its provisions and on the basis of contributions paid thereunder alone. In my opinion, Article 8 permits of such an interpretation and consequently the assumption of an infringement of Article 51 of the Treaty cannot be sustained.

7. The sixth and final question is concerned with the interpretation of Article 86 of Regulation No 1408/71. In terms of that provision "any claim, declaration or appeal which should have been submitted, in order to comply with the legislation of one Member State, within a specified period to an authority, institution or tribunal of that State shall be admissible if it is submitted within the same period to a corresponding authority, institution, or tribunal of another Member State. In such a case the authority, institution, or tribunal receiving the claim, declaration or appeal shall forward it without delay to the competent authority, institution or tribunal of the former State . . .". The Commissioner asks the Court whether those provisions apply "in the case of a claim which should have been, but has not been, submitted, in order to comply with the legislation of one Member State (in this case the Republic of Ireland), within a specified period to an authority, institution or court of that State but has been submitted, outside that period, to a corresponding statutory institution or court of another Member State (in this case the Department of Health and Social Security, London, United Kingdom)".

As is correctly observed on behalf both of the Commission and of the Insurance Officer, that question in truth concerns not only the manner of submitting the application but also the power to decide upon its admissibility after the expiry of a time-limit laid down by the legislation of another Member State. In other words, it appears that the Commissioner wishes to know whether a claim presented to the authority of a State other than that under the legislation of which the benefit is to be granted is to be examined from the point of view of its admissibility (for example, as regards time-limits) by the same authority as that to which it was presented — with the result that, if it is held to be inadmissible,

it will not be forwarded to the authority charged with awarding the benefit — or whether the checking of its admissibility is a matter only for that latter authority with the result that the forwarding for which the first is responsible must take place in every case.

I am of the opinion that the second alternative is the correct one. From the point of view of wording, Article 86 is confined to providing the right to submit claims to an authority other than that of the Member State under whose legislation the benefit is to be granted and it stipulates, as a condition for their admissibility, that the application should be made within the same period of time as that specified by the latter legislation and be made to an authority "corresponding" to that which is competent under that legislation. That, however, does not imply any power on the part of the authority to which the application is made to decide upon its admissibility. Nor would it be reasonable to recognize in that authority a duty going beyond mere forwarding of the document: indeed, if any other interpretation were to be adopted it would have to be accepted that the authority receiving the application has the exceptional power of adjudicating upon its admissibility in terms of the legislation of another State. However, exactly because of its being of an exceptional nature, such a power would have to be expressly conferred but, in this regard, nothing is said in Article 86.

8. I therefore conclude by suggesting that the Court answer the questions framed by the National Insurance Commissioner by order of 11 September 1979 in the following manner:

(1) A person who is entitled to insurance benefits on the basis of contributions previously paid compulsorily must be regarded as "a worker", within the meaning of Regulations Nos 1408/71 and 574/72, even where that person is no longer paying such contributions at the time at which the contingency covered by the insurance occurs and the benefits are claimed.

(2) Article 8 of Regulation No 574/72 must be interpreted to mean that it applies only where the worker has an actual entitlement to maternity benefits under the laws of the two (or more) Member States concerned.

(3) The phrase "legislations of two or more Member States" occurring in Article 8 of Regulation No 574/72 must be understood as also including the provisions of Community regulations.

(4) Article 8 of Regulation No 574/72 must be interpreted as meaning that it excludes the right of the worker to obtain maternity benefits on the basis of the legislation of a Member State other than that in which the

confinement took place only if the right to those benefits which is accorded to the worker by the laws of both the Member States is founded, as regards the said State, on the Community principle of the aggregation of insurance contributions. In that case also, the law of the State in which the confinement took place receives exclusive application only in regard to the period for which the person concerned may actually obtain maternity benefits from the authorities of that State. On the other hand, where, under the legislation of a Member State other than that of the confinement, the worker has acquired an entitlement to maternity benefit on the basis of that legislation alone and to that extent outside the system of aggregation, she is entitled, in addition to the benefits provided by the legislation of the place of confinement, to such difference as may exist between the benefits awarded to her under the legislation of the other Member State and those due to her under the legislation of the place of confinement.

(5) Article 8 of Regulation No 574/72, construed in the terms above indicated, may not be regarded as being contrary to Article 51 of the EEC Treaty.

(6) Article 86 of Regulation No 1408/71 must be interpreted to mean that where any claim, declaration or appeal has been submitted to an authority, institution or tribunal of a Member State other than that under whose legislation the benefit must be paid, that authority, institution or tribunal has no power to adjudicate upon the admissibility of the claim, declaration or appeal concerned. That power lies exclusively with the authority, institution or tribunal of the Member State under whose legislation the benefit is to be granted and to which the claim, declaration or appeal must in any event be forwarded.