On those grounds,

THE COURT,

in answer to the questions referred to it by the Landessozialgericht für das Land Nordrhein-Westfalen by order of 8 December 1978, hereby rules:

Article 45 (1) 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 is not applicable so as to determine the existence or non-existence of an obligation to effect insurance laid down by national legislation.

Kutscher Mackenzie Stuart Pescatore

Sørensen O'Keeffe Touffait Koopmans

Delivered in open court in Luxembourg on 12 July 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 4 JULY 1979 [1]

Mr President,
Members of the Court,

Article 1 (1) of the German Gesetz über eine Rentenversicherung der Handwerker [German Law on insurance of craftsmen] of 8 September 1960 (Bundesgesetzblatt I, p. 737) provides that "where registered craftsmen have paid contributions in respect of a compulsorily insurable occupation or activity for less than 216 calendar months, they

1 — Translated from the German.

shall be covered by pensions insurance for employed persons".

Bruno Brunori, the plaintiff in the main action, an Italian born in 1932, had his name entered on 19 September 1975 by the Chamber of Crafts, Cologne, on the register of craftsmen as a self-employed master stonemason and sculptor in stone, but from 1 September 1976 again became an employed person. He states that before his entry on the register he made 47 monthly contributions to Italian pensions insurance and compulsory contributions for 185 calendar months to German pensions insurance as evidenced by the insurance records.

By notice dated 30 January 1976 from the Landesversicherungsanstalt Rheinprovinz [Regional Social Insurance Office for the Rhine Province] he was informed that he was subject to compulsory insurance under the Law on insurance of craftsmen.

The plaintiff appealed against this notice claiming that his Italian contributions should be added to his German contributions in determining whether insurance was compulsory. Article 45 (1) of Regulation (EEC) 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) must, he claims, be applied to way of analogy.

Article 45, as amended by Regulation (EEC) No 2864/72 of the Council of 19 December 1972 (Official Journal 1972 No L 306, p. 1) reads as follows:

"An institution of a Member State whose legislation makes the acquisition, retention or recovery of the rights to benefits conditional upon the completion of insurance periods or periods of residence shall take into account, to the extent necessary, insurance periods or periods of residence completed under the legislation of any Member State as though they had been completed under the legislation which it administers."

The Landesversicherungsanstalt Rheinprovinz on the other hand takes the view that when calculating the 216 monthly contributions the Italian insurance contributions must be left out of account, because Article 45 (1) of Regulation (EEC) No 1408/71 provides that insurance periods completed at home and abroad are to be aggregated only for the acquisition, retention or recovery of the rights to benefits, but not for the purpose of deciding as to the obligation to effect social insurance.

The plaintiff's objection and subsequent application to the court were both dismissed and the plaintiff then appealed to the Landessozialgericht Nordrhein-Westfalen which, by order dated 8 December 1978, stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

"1. Is Article 45 of Regulation (EEC) No 1408/71 of the Council, which governs the taking into consideration of insurance periods completed in other Member States for the acquisition, retention or recovery of the right to benefits, also to be applied by analogy to the existence of the obligation to effect social insurance?

2. When deciding the question of the obligation to insure, which is laid down in the first sentence of Article 1 (1) of the Handwerkerversicherungsgesetz and which ceases to apply only when there are 216

monthly insurance contributions, are Italian insurance contributions also to be added to the German insurance contributions or not?"

The written and oral observations of the Commission which are against a direct application or an application by way of analogy of Article 45 of Regulation No 1408/71 in determining the obligation to effect insurance have fully convinced me.

It is proper to ask whether that regulation applies at all to the plaintiff. The definition of worker in the regulation (cf. Article 2 (1) in conjunction with Article 1 (a) (i)) makes the existence of insurance a prior condition to the application of the regulation to the plaintiff in the main action. The latter is however seeking to rely on that provision in order to claim that he is not liable to compulsory insurance. If there were no liability to compulsory insurance, as for example if on aggregating the periods of insurance the total of 216 calendar months were exceeded, it would in turn lead to the regulation's not being applicable to the plaintiff during the time he was self-employed.

Apart from the question of the personal scope the material scope of Article 45 of the said regulation indicates that it does not apply to the present case.

The article requires the institution of a Member State whose legislation makes the acquisition, retention or recovery of the rights to benefits conditional upon the completion of insurance periods or periods of residence to take into account such periods completed under the legislation of another Member State. The intention of the Community legislature in aggregating the periods taken into account by the various domestic laws is to secure the acquisition and maintenance of claims and not to remove the liability to compulsory insurance. The subject-matter of the main proceedings is, as we have seen, not the assertion of a claim, but on the contrary the satisfying of the conditions under Article 1 (1) of the Handwerkerversicherungsgesetz for the cessation of liability to compulsory insurance. From this I draw the conclusion that the provision cannot be applied even by way of analogy to the present facts.

Further, as we have heard from the Landesversicherungsanstalt Rheinprovinz the aim of the German insurance for craftsmen is in the context of pensions insurance for workers to secure for self-employed craftsmen a basic insurance with the period of compulsory insurance limited to 18 years. Whether periods of insurance abroad can satisfy the requirement of sufficient basic insurance in the same way as domestic periods of insurance can in consequence be determined only by the national court applying municipal law. Like the Commission I fail to discern any co-ordinating provisions of Community law. Under Article 5 of the EEC Treaty the national court is however bound to interpret municipal law in a way compatible with the Community.

I therefore propose that the questions should be answered as follows:

Article 45 of Regulation No 1408/71 provides that insurance periods completed under the legislation of another Member State shall be taken into account for the acquisition, retention or recovery of rights to benefits. It is neither directly nor by way of analogy applicable in reckoning the periods of insurance to determine liability to compulsory insurance.

There is no provision of Community law which, in determining liability to compulsory insurance under Article 1 (1) of the German Handwerkerversicherungsgesetz, requires the aggregation of insurance contributions made in other Member States with German insurance contributions.