OPINION OF ADVOCATE GENERAL LÉGER

delivered on 13 March 1997 *

1. The Pretura Cirondariale di Roma, in its capacity as an employment tribunal, has requested this Court to interpret a number of Community provisions concerning the application of social security schemes to migrant workers, [1] in the light of Article 48 of the EC Treaty. It asks in particular whether periods of unemployment completed in one Member State (Germany) should be taken into account when calculating the reference period for the purpose of acquisition of entitlement to invalidity benefits in another Member State (Italy).

2. I will suggest that the Court should rule against such periods being taken into account in the case submitted to it but, before doing so, I will first define the legal and factual context of the case.

Relevant national provisions

Italian legislation

3. Under Italian law the acquisition of entitlement to invalidity allowance presupposes, in addition to acknowledgement of the invalidity, that the following cumulative insurance and contribution conditions are satisfied: [2]

— at least five years must have elapsed since the person concerned joined the insurance scheme;

— that person must have paid, or have had credited in his favour, at least 260 weekly contributions (five years of pensionable service);

* Original language: French.

1 — Article 9a of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416), as introduced with retrospective effect by Council Regulation (EEC) No 2332/89 of 18 July 1989 (OJ 1989 L 224, p. 1); Article 15(1)(f) of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71 (OJ, English Special Edition 1972 (I), p. 159).

2 — See Article 4 of Law No 222 of 12 June 1984 concerning revision of the rules on invalidity pension (GURI No 165 of 16 June 1984), which refers to the conditions laid down by Article 9(2) of Royal Decree-Law No 636 of 14 April 1939, which became Law No 1272 of 6 July 1939 [which was replaced by Article 2 of Law No 218 of 4 April 1952 (GURI No 89 of 15 April 1952, ordinary supplement)], as amended by Law No 222, cited above.

— finally, at least 156 weekly contributions (three years of pensionable service) must have been paid or credited during a reference period of five years preceding his application for benefit.

4. As regards the taking into account of periods of unemployment, Article 4 of Law No 218, cited above, provides that:

'... periods in respect of which the ordinary allowance in respect of compulsory unemployment insurance is paid shall be regarded as contribution periods for the purposes of entitlement to pension and of the amount of pension'.

German legislation

5. Under German legislation [3] the person insured is entitled to an invalidity pension if he is unable to carry on his occupation and:

— he has paid three years' compulsory contributions during the five years last preceding the onset of the invalidity, and

— he completed the general contribution period before the onset of the invalidity.

6. The reference period of five years prior to the onset of the invalidity is extended by notional contribution periods, [4] although the period during which the worker was registered on unemployment lists in Germany and drew benefit from bodies governed by public law, whilst giving rise to a notional contribution for calculating the pension, [5] merely allows extension of the reference period for the purposes of the minimum contribution required for recognition of entitlement.

Distinction between the two schemes

7. Thus, the way in which account is taken of periods during which the person concerned received unemployment benefits differs widely between the one scheme and the other.

3 — Sozialgesetzbuch (hereinafter 'SGB'), Book VI [BGBl. III 860, as amended by the Gesetz zur Reform der gesetzlichen Rentenversicherung (Law on the Reform of Statutory Old-Age Insurance) of 28 December 1989 (BGBl. IS.2261)].

4 — Paragraph 43, SGB.

5 — Paragraph 58, SGB.

8. Under the Italian scheme those periods are regarded as *contribution periods* for the purposes of entitlement to social security benefits.

9. Under the German scheme the periods in question constitute *grounds for extending* the reference period for calculating the minimum insurance requirement.

Factual and procedural context

10. Mr Iurlaro, who is of Italian nationality, was initially insured in Italy from 1954 to 1956. He then lived and worked without interruption in Germany, and, as from May 1983, went through a period of unemployment in respect of which benefit was paid by the German social security system and which continued until 31 December 1991. [6]

11. On 18 October 1989, suffering from an infirmity which reduced his working capacity by more than two-thirds, Mr Iurlaro applied to the Istituto Nazionale della Previdenza Sociale ('the INPS') for the Italian invalidity pension. [7]

12. That application was refused for failure to comply with one of the conditions laid down by the Italian legislation concerning contributions. The INPS took the view that no contribution had been paid during the five years preceding the application, that reference period extending from 18 October 1984 to 18 October 1989.

13. The plaintiff disputes that assessment. He relies on the German provisions in support of his claim that the period of unemployment in Germany in respect of which benefit was paid should have been taken into account, thereby neutralizing that period and causing the reference period used to determine the existence of the minimum insurance condition to commence at an earlier date.

14. Relying on Articles 15(1)(f) of Regulation No 574/72 and 9a of Regulation No 1408/71, cited above, Mr Iurlaro brought an action before the Pretore di Roma for a declaration that the necessary condition for

6 — Save for a period between 15 August 1984 and 1 October 1984, during which Mr Iurlaro has said, in reply to a question by the Court, that he drew sickness benefits.

7 — The INPS states that Mr Iurlaro unsuccessfully made a similar claim before the competent institution in Germany, and that the proceedings before the German courts in respect of that refusal are still pending (p. 2, paragraph 1 of the French translation of its observations).

recognition of his entitlement to invalidity allowance had been fulfilled.

15. The national court considers that the scope of each of the Community provisions cited needs to be clarified, since Article 9a of Regulation No 1408/71 seems to imply a condition that the legislation of both countries must provide for the neutralization of specified periods, 'excluding a situation such as that in the present case, where that possibility is provided for in only one of the two Member States'. [8]

16. It therefore requests the Court of Justice to interpret '... Article 15(1)(f) of Regulation No 574/72 and Article 9a of Regulation No 2332/89, in the light of Article 48 of the Treaty establishing the EEC, in order to ascertain whether Article 4 of Law No 222/1984 should be so applied as to extend the reference period for the recognition of entitlement to invalidity pension where a worker has been in receipt of unemployment benefit in another Member State (in this case Germany) in which such extension is provided for and, if so, whether such extension should be subject to conditions'.

17. Before considering that question, which I will approach from two angles, I think it will be useful to give a brief account of the Community provisions on social security for workers moving within the Community, laid down by Regulation No 1408/71, and Regulation No 574/72 which lays down the detailed rules for its application.

Relevant Community legislation

18. Within the Community, there are social security schemes in existence which not only differ sharply from one Member State to another, but which the Community rules that have been introduced make no claim to supplant.

19. Each Member State retains its own competence in the field of social security, in accordance with Article 117 et seq. of the Treaty, and in particular remains free to determine the conditions for affiliation to the various social security schemes. The Court of Justice has, moreover, consistently reaffirmed this basic principle:

'... The Court has consistently held that the Member States remain competent to define

8 — Order for reference, p. 6 of the French translation.

the conditions for granting social security benefits ...'. [9]

20. Nevertheless, divergences arising from the diversity of the schemes in force can constitute an obstacle to the principle of freedom of movement for workers. Workers might hesitate to exercise that fundamental right if they were not assured that it would not entail harmful consequences for them as regards their social security cover. That is why Article 51 of the EC Treaty provides for the adoption of 'such measures in the field of social security as are necessary to provide freedom of movement for [migrant] workers'.

21. It was thus out of a concern to eliminate the obstacles and to encourage free movement that Regulation No 1408/71, and then the further legislation laying down the detailed rules for its application, were adopted in accordance with the objectives set out in Article 51. However, in view of the competence, referred to above, retained by the Member States, those provisions merely aim to provide for the '*coordination*, not the *harmonization*, of the legislations of the Member States'. [10]

22. The Court of Justice has therefore incessantly pointed out that 'the regulations did not set up a common scheme of social security, but allowed different schemes to exist, creating different claims on different institutions against which the claimant possesses direct rights by virtue either of national law alone or of national law supplemented, where necessary, by Community law'. [11]

23. That coordination, which is thus aimed at eliminating the negative effects which national legislation might produce when a worker crosses a frontier, is centred on four basic principles. Those principles, as expressed in general terms below, are also reaffirmed for nearly all the risks governed by Regulation No 1408/71:

— the principle that the legislation of only one Member State shall be applicable; [12]

— the principle of equality of treatment between nationals and non-nationals; [13]

9 — Joined Cases C-88/95, C-102/95 and C-103/95 *Martínez Losada* v *INEM* [1997] ECR I-869, paragraph 43. See also Case C-12/93 *Drake* [1994] ECR I-4337, paragraph 27.

10 — Case C-340/94 *De Jaeck* v *Staatsecretaris van Financiën* [1997] ECR I-461, paragraph 18, emphasis added. See also the consistent case-law of the Court, for example in Case C-297/92 *INPS* v *Baglieri* [1993] ECR I-5211, paragraph 17, and Joined Cases C-45/92 and C-46/92 *Lepore and Scamuffa* v *ONP* [1993] ECR I-6497, paragraph 34).

11 — Case 100/78 *Rossi* v *Caisse de compensation pour allocations familiales des régions de Charleroi et Namur* [1979] ECR 831, paragraph 13, confirmed, for example, by Case 733/79 *Caisse de compensation pour allocations familiales des régions de Charleroi et Namur* v *Laterza* [1980] ECR 1915, paragraph 8, Case 807/79 *Gravina* v *Landesversicherungsanstalt Schwaben* [1980] ECR 2205, paragraph 7, and Case 232/82 *Baccini II* [1983] ECR 583, paragraph 17.

12 — Article 13(1) of the regulation provides: '... persons to whom this Regulation applies shall be subject to the legislation of a single Member State only'.

13 — Article 3(1) of the regulation provides: '... persons resident in the territory of one of the Member States to whom this Regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State'.

— the principle of the conservation of acquired rights; [14]

— the principle of the retention of rights in the course of acquisition, also referred to as the principle of the aggregation of insurance periods. [15]

24. Those rules, and the principles underlying them, are applicable in this case.

25. In the first place, the benefit applied for falls within the scope *ratione materiae* of Regulation No 1408/71, since, in the words of Article 4(1) of that regulation, 'This Regulation shall apply to all legislation concerning the following branches of social security: ... (b) invalidity benefits ...'.

In that respect, amongst the provisions specific to that category of benefits, Chapter 2 of Title III of Regulation No 1408/71 envisages two groups of cases for which different rules are laid down. The regulation takes account of the fact that, where invalidity is concerned, two types of legislation exist in the Member States: those under which the amount of benefits is independent of the duration of periods of insurance (Articles 37 to 39), and those under which the amount of the invalidity benefit depends on the duration of insurance periods (Article 40). Considering the nature of the Italian legislation on the matter, it can be seen at the outset that only the provisions of Article 40 are applicable to the situation of the applicant in the main proceedings.

26. His case also falls within the scope *ratione personae* of Regulation No 1408/71, Article 2(1) of which refers to '... employed or self-employed persons who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States ...'. Since 'employed person' for the purposes of the regulation is to be understood solely by reference to the social security scheme that is applicable to him, [16] it follows that, in order to come within the scope of Regulation No 1408/71 *ratione personae*, it is sufficient for a national of a Member State to be, or to have been, subject to a social security scheme of one or more Member States, which is the case here.

27. After those introductory remarks, I turn now to the question referred by the national court. I shall begin by considering whether the INPS's refusal of invalidity benefit to Mr Iurlaro, on the ground that one of the requirements of the Italian legislation was

14 — Article 51(b) of the Treaty provides: 'The Council shall ... adopt such measures in the field of social security as are necessary ... to secure for migrant workers ... payment of benefits to persons resident in the territories of the Member States'.

15 — I shall return to this principle in the course of my further argument.

16 — Article 1(a) of the regulation.

not met, was a proper one having regard to the need to comply with the principle that insurance periods are to be aggregated. Only then will I examine the question as formulated, concerning the 'exportation', for the purposes of determining the reference period in Italy, of the 'neutralization' under German law of periods of unemployment for which benefit is paid.

Argument

The question whether the INPS properly refused to grant the applicant an invalidity allowance

28. I think it is necessary to dwell for a moment on the question whether in this case the principle that insurance periods are to be aggregated was properly applied, since mere reading of the documents produced during the written procedure could give rise to doubts on the matter.

29. That principle, which, as I have already said, underlies the Community rules on this matter, appears in Article 51(a) of the Treaty, which provides for the adoption by the Council, in the field of social security, of such measures as are necessary to provide freedom of movement for workers, particularly by making arrangements to secure for migrant workers:

'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'.

30. That principle is taken up by Article 9(2) of Regulation No 1408/71, which equates insurance periods completed under the legislation of any Member State with those completed under the legislation of the State in which benefit is sought.

In the words of this Court, 'the object of that provision is to guarantee that periods of insurance completed in different Member States are treated as equivalent so that the persons concerned can satisfy the condition of a minimum length of insurance periods where national legislation makes admission to a voluntary or optional continued insurance scheme subject to such a condition'. [17]

31. That principle is reaffirmed in respect of nearly all the risks governed by Regulation No 1408/71 and, specifically on the matter of

17 — *Baglieri*, cited above, paragraph 11.

invalidity, which is at issue here, in Article 40(1). [18]

32. The principle thus excludes the possibility that, whenever a worker begins a new insurance period in a Member State, he is regarded there as a newly-insured person. The institution of the Member State in which an invalidity benefit is applied for is required to take into account, in so far as may be necessary, periods completed by the migrant worker in any other Member State as if they were periods completed under the legislation which it administers, '... without discrimination as against other workers by reason of the exercise of his right to freedom of movement'. [19]

33. In this case, Mr Iurlaro's application for recognition of his entitlement to an invalidity pension was rejected on the ground that he did not fulfil the condition, laid down by Italian legislation, that the required number of contributions (three years of pensionable service) have been paid on his account during the reference period (five years preceding the application).

34. During those five years Mr Iurlaro benefited, during at least three of them, from the payment of unemployment benefit by the competent German institution.

35. For the purposes of calculating periods conferring entitlement to the benefit in question, Italian legislation, as has been seen, equates periods of unemployment with contribution periods.

36. In principle, therefore, under Italian legislation, Mr Iurlaro may claim to have complied with the condition the non-fulfilment of which had been raised in objection to his application. That objection appears, in the final analysis, to be motivated solely by the consideration that the condition in question was fulfilled under the legislation of a Member State other than Italy.

37. On the basis of those considerations alone, as set out in the order for reference, the refusal by the INPS would appear to be contrary to the abovementioned principle that insurance periods are to be aggregated.

38. The Court's reasoning in its judgment in *Lepore and Scamuffa* , cited above, concerning old-age pension, is in that respect entirely transposable to the present case. [20]

18 — By reference to the application by analogy of Article 45(1) of the regulation.

19 — Case 4/66 *Labots* v *Raad van Arbeid Arnhem* [1966] ECR 425, at 430.

20 — For an illuminating commentary on that judgment, see S. Van Raepenbusch: 'La sécurité sociale des personnes qui se déplacent à l'intérieur de la Communauté (mai 1992-avril 1994)', *Journal des tribunaux. Droit européen*, n° 10 (1994), p. 105.

In that judgment, the Court held that 'the requirements of freedom of movement' meant that, when calculating old-age pension, periods of invalidity had to be treated as periods of active employment, even where the applicable national legislation provided for such assimilation only where the incapacity for work arose at a time when the worker was employed in the Member State in question, and if, at the time the incapacity for work arose, he was in reality employed in another Member State.

It held that

'... it would be contrary to Articles 48 to 51 of the Treaty if, as a consequence of the exercise of their right to freedom of movement, migrant workers were to lose the advantages in the field of social security guaranteed to them by the laws of a single Member State; such a consequence might discourage Community workers from exercising their right to freedom of movement and would therefore constitute an obstacle to that freedom'.

The Court went on to observe that

'... the prospect of a worker's losing, in one Member State, the right to have periods of invalidity treated as periods of insurance, which would occur if he went to work in another Member State, is likely, in certain circumstances, to discourage him from exercising his right to freedom of movement'. [21]

39. If regard is had solely to procedural documents lodged before the hearing, therefore, the question referred might not appear to be directly relevant. A proper application of Articles 48(2) and 51 of the Treaty would suffice; the Italian legislation would encroach upon the freedom of movement for migrant workers if it provided that only periods of insurance against unemployment completed on national territory could be regarded as relevant contribution periods for the purposes of social advantages, to the exclusion of similar periods completed on the territory of other Member States.

40. It would have to be concluded that Community law precluded the application of national legislation, such as that administered by the INPS, which did not assimilate periods of unemployment insurance completed in another Member State to those completed on its territory, for the purposes of calculating the minimum insurance requirement attached to the grant of the invalidity allowance.

41. However, the representatives of the INPS put forward at the hearing a consideration which is conclusive in this case. They

21 — Paragraphs 21 and 22.

explained that Italian legislation provides for the coverage of periods of unemployment for only a limited period, which may not exceed six months.

42. In that case, the line of reasoning set out above cannot apply.

43. Mr Iurlaro could benefit from the rule, laid down by the Italian legislation, assimilating periods of unemployment to contribution periods only in respect of a period not exceeding six months. The requirement for entitlement to a pension — evidence of three years' contributions during the reference period — would thus clearly not be fulfilled. The refusal of his claim by the INPS would therefore be justified.

44. Although, as Community law stands, Member States are free to enact rules favouring certain migrant workers, [22] Mr Iurlaro cannot, in the absence of such national provisions, be granted advantages additional to those which he would have been able to claim had he not exercised his right to freedom of movement, merely because he exercised that right.

45. As I have already mentioned, Community rules on social security envisage only the *coordination* of existing national systems. They do not in any way introduce an independent system for migrant workers. In that respect it would not be permissible for a migrant worker like Mr Iurlaro to derive advantage from a system that proved to be discriminatory to the detriment of non-migrant workers. The objective is not to allow the accumulation of the most favourable conditions for acquisition of entitlement to benefit laid down by the various national laws to which a migrant worker is successively subject, for the purpose of acquiring entitlement to pension.

46. That would, however, be the result if one were to disapply the rule on the maximum duration of coverage of periods of unemployment which is laid down in the Italian legislation.

47. It is in any case for the national court to satisfy itself of the existence and applicability of that rule from the point of view of national law and, if appropriate, to draw the conclusion set out above.

22 — Thus the Court held that: 'there is no rule prohibiting a Member State from granting nationals who have worked in a non-member country and then returned to their country of origin, where they no longer work, more favourable treatment than nationals who have worked in another Member State and subsequently find themselves in the same situation' (*Baglieri*, cited above, paragraph 18).

48. I shall now, as invited by the Pretore di Roma, examine the question whether Mr Iurlaro might, nevertheless, lay claim to an invalidity pension by requiring the INPS to apply the rule, known only to German legislation, that the period of insurance against unemployment completed by the person concerned in that other State is to be suspended for the purpose of extending the reference period.

The question of the 'exportation' of the 'neutralization' which is provided for solely by the German legislation

49. On that point, the national court asks whether it is relevant to apply two provisions of Community legislation, and requests an interpretation for that purpose. As will be seen, neither of those provisions may be invoked in this case.

50. The first of those provisions is *Article 9a of Regulation No 1408/71*, which provides, under Title I (General Provisions) in relation to the *prolongation of the reference period*, that:

'*Where under the legislation of a Member State* recognition of entitlement to a benefit is conditional upon completion of a minimum period of insurance during a specific period preceding the contingency insured against (reference period) and *where the aforementioned legislation provides that the period during which the benefits have been granted under the legislation of that Member State* or periods devoted to the upbringing of children in the territory of that Member State *shall give rise to prolongation of the reference period, periods during which invalidity pensions* or old-age pensions or sickness benefits, unemployment benefits or benefits for accidents at work (except for pensions) *have been awarded under the legislation of another Member State* and periods devoted to the upbringing of children in the territory of another Member State *shall likewise give rise to a prolongation of the aforesaid reference period.*' [23]

51. That provision thus imposes an obligation, *on the Member State in which prolongation of the reference period is allowed*, also to take account, within that period, of periods during which certain benefits were awarded under the legislation of another Member State, without, it seems, requiring that those benefits should also have given rise to prolongation in that latter State.

That interpretation is confirmed by a reading of the third recital in the preamble to Regulation No 2332/89, cited above, which gives this reason for the insertion of Article 9a in the basic regulation: 'Whereas a *provision* should be introduced *permitting a Member State whose legislation provides for the*

23 — Emphasis added.

prolongation, by certain facts or circumstances, *of a reference period* preceding the occurrence of the risks insured against, during which a minimum period of insurance must be fulfilled, for the recognition of the right to a benefit, to take account of similar facts or circumstances occurring in another Member State for the aforementioned prolongation'. [24]

52. A mere reading of that provision is, it seems to me, sufficient to show that it does not apply to the case with which we are concerned.

53. What Article 9a ultimately constitutes is the application to the particular case of States whose legislation provides for the prolongation of the reference period of the principle, laid down in paragraph 2 of the preceding article, that insurance periods are to be aggregated. [25] Since Italian legislation lays down no such rule in respect of the benefits in question, [26] reliance on that provision serves no purpose in this case. [27] The most that can be said is that it would be different if the application for benefit had been made in Germany, since that State lays down the principle of prolongation of the reference period for the period in which the person concerned was covered against unemployment. [28]

54. Turning now to *Article 15 of Regulation No 574/72*, that provision appears under Title IV, concerning 'Implementation of the special provisions of the regulation [29] relating to the various categories of benefits' and constitutes Chapter 1, concerning 'General rules for the aggregation of periods'. It provides in paragraph 1(f):

'1. In the cases referred to in Articles 18(1), [30] 38, [31] 45(1) to (3), [32] 64 [33] and 67(1) and (2) [34] of the Regulation, aggregation of

24 — Emphasis added.

25 — In his Opinion in Case C-349/87 *Paraschi* v *Landesversicherungsanstalt Württemberg* [1991] ECR I-4501, Advocate General Tesauro saw it as a 'declaratory provision expounding the obligation of non-discrimination laid down by the Treaty' (point 15, second paragraph).

26 — The INPS has referred to certain periods, which alone are capable of being regarded as neutral, and thus capable of being taken into account for the prolongation of the reference period, provided for in Article 37 of Presidential Decree No 818 of 26 April 1957 (p. 3 of the French translation of its observations).

27 — Nor does Mr Iurlaro dispute that assessment: 'in so far as Italian legislation does not enact rules neutralizing periods of unemployment in respect of which benefit is paid, it does not appear that that provision can help to resolve the question at issue in this case' (point IX, paragraph 3 of his observations).

28 — Thus the Court of Justice held, concerning the conditions for entitlement to an invalidity pension, that it was incompatible with Community law for facts and circumstances allowing prolongation of the reference period not to be taken into account by a Member State which provides for that prolongation if they occur in another Member State (*Paraschi*, cited above, paragraphs 24 and 25).

29 — The regulation in question is Regulation No 1408/71.

30 — The provision concerning 'Aggregation of periods of insurance, employment or residence' in relation to *sickness and maternity* benefits.

31 — This provision concerns the 'Consideration of periods of insurance or of residence completed under the legislation to which an employed person or a self-employed person was subject for the acquisition, retention or recovery of the right to benefits' for the purposes of granting *invalidity* benefits to workers subject to *legislations under which the amount of benefits is independent of the duration of periods of insurance*.

32 — Concerning the 'Consideration of periods of insurance or of residence completed under the legislation to which an employed or self-employed person was subject, for the acquisition, retention or recovery of the right to benefits' in relation to *old age and death (pensions)*.

33 — Concerning the 'Aggregation of periods of insurance or residence' in relation to *death grants*.

34 — Concerning the 'Aggregation of periods of insurance or employment' in relation to unemployment.

periods shall be effected in accordance with the following rules:

...

(f) Where under the legislation of one Member State certain periods of insurance or residence are taken into account only if they have been completed within a specified time-limit, the institution which administers such legislation shall:

...

(ii) extend such time-limit for the duration of periods of insurance or residence completed wholly or partly within the said time-limit under the legislation of another Member State, where the periods of insurance or residence involved under the legislation of the second Member State give rise only to the suspension of the time-limit within which the periods of insurance or residence must be completed.'

55. Although that provision requires the competent institution of a Member State to which application is made for a pension to extend the reference period for the grant of that pension if the person concerned has benefited from periods of insurance or residence in another Member State where that prolongation is provided for, [35] its *scope is limited* to those cases which it refers to expressly. Those cases do not include that of Mr Iurlaro, which concerns invalidity allowance for workers subject exclusively to legislation under which the amount of the invalidity benefit depends on the duration of the insurance periods. That provision makes no reference to Article 40 et seq. of Regulation No 1408/71, which, by contrast, applies *inter alia* to the case of workers subject exclusively to legislation under which the amount of the benefits *does not depend* on the duration of the insurance periods.

56. Since neither of the two provisions referred to by the Pretore di Roma is applicable to this case, it is not possible to deduce from either of them an obligation on the part of the INPS to prolong the reference period, laid down by Italian legislation for calculating the minimum insurance requirement for acquisition of entitlement to an invalidity benefit, by means of the 'export' of the rule laid down by German legislation for the suspension of the period during which Mr Iurlaro drew unemployment benefit in that latter State, where no such rule exists in Italian law.

57. On a more general note, I would mention once again the freedom enjoyed by the

35 — The Court held in Joined Cases 116/80, 117/80, 119/80, 120/80 and 121/80 *Rijksdienst voor Werknemerspensioenen* v *Celestre* [1981] ECR 1737, paragraph 13, that: 'Regulation No 574/72 ... contains in Articles 15 and 46 provisions governing the overlapping of periods of insurance completed under the legislation of two or more Member States. Consequently, it is not permissible for the institution of a Member State to apply national rules for the aggregation and apportionment of periods of insurance which are less favourable to the worker than those contained in the regulation'.

various Member States in laying down conditions for the acquisition of entitlements in social security matters. In the absence of Community harmonization, those States are in particular free not to provide for grounds for the prolongation or neutralization of the relevant periods, provided there is no discrimination under Article 48(2) of the Treaty.

58. I must again stress the fact that Mr Iurlaro cannot rely on an independent system for migrant workers which would allow such persons to accumulate, for the purpose of acquiring entitlement, all the most favourable conditions of the various Member States to whose legislation they were successively subject.

59. Nor, moreover, have Mr Iurlaro's legal rights been curtailed in any way by the exercise of his right to free movement. He has not, it is true, acquired any new right to the grant of an invalidity benefit (although the aim of the rules is not *per se* to benefit migrant workers). Nor, however, has he been deprived of a right which would have been his if he had stayed in his country of origin. And that is the essential objective of the Community rules on the matter.

Conclusion

60. On the basis of the considerations set out above, I suggest that the reply to the question referred by the Pretura Circondariale di Roma should be as follows:

Neither Article 15(1)(f) of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, nor Article 9a of Council Regulation (EEC) No 1408/71, as introduced with retrospective effect by Council Regulation (EEC) No 2332/89 of 18 July 1989, nor Articles 48(2) and 51 of the EC Treaty preclude the refusal by a Member State (in this case the Italian Republic) to take into account the period during which a worker who applies for the grant of an invalidity pension drew unemployment benefit in another Member State (in this case Germany) as a ground for prolonging the reference period for the grant of the pension applied for, where that ground for prolongation exists under the legislation of the second Member State but not under its own legislation.