JUDGMENT OF THE COURT (First Chamber)
11 March 1986 *

In Case 28/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the cour d'appel de Douai for a preliminary ruling in the proceedings pending before that court between

Alexandre Deghillage, residing at Frameries (Belgium),

and

Caisse primaire d'assurance maladie de Maubeuge (France)

on the interpretation of Article 86 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),

THE COURT (First Chamber)

composed of: R. Joliet, President of Chamber, G. Bosco and T. F. O'Higgins, Judges,

Advocate General: C. O. Lenz
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

Mr Deghillage, the applicant in the main proceedings, during the oral procedure, by himself,

the Government of the French Republic, during the oral procedure, by R. Abraham, acting as Agent,

the Commission of the European Communities, by its Legal Adviser, J. Griesmar,

* Language of the Case: French.

after hearing the Opinion of the Advocate General delivered at the sitting on 23 January 1986,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By judgment of 21 December 1984, which was received at the Court on 1 February 1985, the cour d'appel [Court of Appeal], Douai (France), referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 86 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.

2 That question was raised in proceedings pending before that court between Alexandre Deghillage and Caisse primaire d'assurance maladie de Maubeuge [Local Sickness Insurance Fund, Maubeuge] following the latter's rejection of Mr Deghillage's application for a pension in respect of an occupational disease.

3 Mr Deghillage, a Belgian national, worked in France from March 1942 to December 1948, in Belgium from January 1949 to April 1958 and again in France from April 1958 to 30 November 1981; his work exposed him to noise liable to damage his hearing.

4 On 12 September 1980 Mr Deghillage underwent an initial audiogram to ascertain whether he was suffering from an audiometric deficiency. It is not indicated in the documents before the Court whether that audiogram was carried out in France or in Belgium. Mr Deghillage underwent a second audiogram in Belgium on

3 December 1981, three days following his early retirement pursuant to the implementation of collective redundancies for economic reasons.

5 On 14 January 1982 Mr Deghillage submitted an application for a pension in respect of an occupational disease to the Fonds des maladies professionnelles de Bruxelles [Occupational Diseases Fund, Brussels, hereinafter referred to as 'the Belgian Fund'] to which he appended a medical certificate dated 12 December 1981 stating — on the basis of the aforementioned audiogram of 3 December 1981 — that he was suffering from deafness induced by trauma.

6 It appears from the documents before the Court that, under Belgian law, such a medical certificate would have been sufficient evidence of the existence of the occupational disease in respect of which a pension was sought.

7 On 28 February 1983 the Belgian Fund rejected the application as inadmissible on the ground that the applicant had most recently been exposed to the risk in the territory of another Member State. It was not until 5 April 1983 that the Belgian Fund forwarded the application to the Centre de sécurité sociale des travailleurs migrants [Social Security Centre for Migrant Workers], Paris, with a view to the settlement by the competent French institutions of the claimant's rights to a pension in respect of an occupational disease. The application was forwarded pursuant to the first sentence of Article 86 of Regulation No 1408/71, which provides that a claim which should have been submitted within a specified period to a social security institution of one Member State is admissible if it is submitted within the same period to a corresponding institution of another Member State. In that event the latter institution is obliged under the second sentence of Article 86 to forward the claim without delay to the competent institution.

8 The Caisse primaire d'assurance maladie de Maubeuge, to which the application was forwarded on 28 April 1983, rejected the claim on the ground that the conditions laid down by the relevant French legislation, in particular those set out in Table No 42 of Decree No 81/507 of 14 May 1981 concerning the recognition of occupational diseases induced by noise, had not been satisfied. Table 42 provides that 'an irreversible bilateral audiometric deficiency which ceases to deteriorate once exposure to the risk ceases' must be confirmed, after an initial examination, by a further audiometric examination conducted three weeks to one year after exposure to the harmful noise has ceased. Since Mr Deghillage ceased to be exposed to the risk on 30 November 1981, the second audiogram, which he underwent on 3 December 1981, did not fulfil that condition.

9 After appealing unsuccessfully against that decision, first to the commission des recours gracieux [Appeals Board] and subsequently to the commission de première instance de sécurité sociale [Social Security First Instance Appeals Board], Valenciennes, Mr Deghillage appealed to the cour d'appel de Douai, which, by judgment of 21 December 1984, stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'Pursuant to Article 86 of Regulation (EEC) No 1408/71, what consequences must be drawn from the fact that the Belgian institution to which the claim was submitted was late in forwarding it to the French institution?'

10 It is clear from the grounds of the judgment requesting a preliminary ruling that the question is not concerned with the admissibility of a claim erroneously submitted to a social security institution in a Member State whose legislation is not applicable under Article 57 (1) of Regulation No 1408/71. In reality what the national court wishes to establish is whether the fact that a claim for benefits was late in being forwarded by a social security institution in one Member State to its counterpart in another Member State can affect the claimant's position in relation to one or other of those institutions, in particular where, owing to the belated transmission of the claim, the claimant is no longer able to satisfy the substantive conditions laid down by the legislation of the Member State which is under a duty to pay him the benefits, as in the case of Mr Deghillage.

11 The Government of the French Republic and the Commission of the European Communities point out in their observations that the aforementioned Article 86 is solely a procedural rule and no penalty is imposed for failure to comply therewith, so that the only answer which may be given on the basis of that provision, namely that belated transmission does not affect the admissibility of the claim, would not correspond to the real scope of the question referred to the Court.

12 The Commission also suggests that, in view of the Court's continuing concern that national courts should be fully informed of the scope of Community law, the Court should supplement the question submitted to it by referring to other provisions of Community law which enable an answer to be given to the problem facing the national court.

13 Since the Court may, if need be, reformulate a question which has been referred to it so as to furnish the national court with all those elements of Community law which will enable it to give judgment on the dispute before it, it is appropriate to construe the question submitted by the national court as seeking to ascertain whether, in the case of the belated transmission of a claim, any provisions of Community law other than Article 86 of Regulation No 1408/71 may be applicable for the purpose of determining the claimant's legal position with regard to his right to benefits from social security institutions.

14 In order to answer this question it is important to establish whether a diagnosis that a person is suffering from an occupational disease which was duly made in one Member State must be recognized in another Member State for the purposes of the award of benefits.

15 In that connection regard must be had in particular to Article 57 (2) of Regulation No 1408/71, which provides that 'if under the legislation of a Member State the granting of benefits in respect of an occupational disease is subject to the condition that the disease in question was first diagnosed within its territory, such condition shall be deemed to be fulfilled if the disease was first diagnosed in the territory of another Member State'. That is the situation in the case of Mr Deghillage who was duly diagnosed in Belgium as having an occupational disease but is subject to French law as regards the award of benefits.

16 Under Article 57 (2), which derogates from Article 57 (1) according to which benefits are to be awarded exclusively under the legislation of the Member State which is under a duty to provide them, a diagnosis made in another Member State must be taken into account for the purposes of the recognition of an occupational disease, even if under the legislation of the first-named Member State diagnoses made abroad are not recognized.

17 The obligation to recognize a diagnosis made in another Member State that a person is suffering from an occupational disease implies that the competent authorities of the State which is under a duty to pay the benefits are not entitled to raise objections to the fact that such a diagnosis was made in accordance with another Member State's legislation. A procedure duly carried out in one Member

State resulting in a diagnosis that a person is suffering from an occupational disease cannot be required to conform to the rules of another Member State's legislation, especially since, at the time when that diagnosis is made in the case of persons who have been employed in more than one Member State, like Mr Deghillage, the Member State which will have to pay the sickness benefits has not yet been determined.

18 The question submitted by the national court must therefore be answered as follows: a diagnosis that a person is suffering from an occupational disease must be recognized by the Member State which, by virtue of Article 57 (1) of Regulation No 1407/71, is under a duty to pay the benefits, even if that diagnosis was made in another Member State and in accordance with its legislation.

Costs

19 The costs incurred by the Government of the French Republic and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber)

in answer to the question referred to it by the cour d'appel de Douai, by judgment of 21 December 1984, hereby rules:

A diagnosis that a person is suffering from an occupational disease must be recognized by the Member State which, by virtue of Article 57 (1) of Regulation (EEC) No 1407/71, is under a duty to pay the benefits, even if that diagnosis was made in another Member State and in accordance with its legislation.

Joliet Bosco O'Higgins

Delivered in open court in Luxembourg on 11 March 1986.

P. Heim
Registrar

R. Joliet
President of the First Chamber