JUDGMENT OF THE COURT (Fifth Chamber)

2 June 1994 *

In Case C-428/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Østre Landsret, Denmark, for a preliminary ruling in the proceedings pending before that court between

Deutsche Angestellten-Krankenkasse (DAK)

and

Lærerstandens Brandforsikring G/S

on the scope of Article 93(1) 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, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6),

* Language of the case: Danish.

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, D. A. O. Edward, G. C. Rodríguez Iglesias, F. Grévisse (Rapporteur) and M. Zuleeg, Judges,

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

after considering the written observations submitted on behalf of:

— the defendant in the main proceedings, by Mikael Rosenmejer, of the Copenhagen Bar,

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of the Economy, and Claus-Dieter Quassowski, Regierungsdirektor in that ministry, acting as agents,

— the Greek Government, by Vasileios Kontolaimos, Deputy Legal Adviser in the State Legal Service, and Ioannis Chalkias, legal representative of the State Legal Service, acting as Agents,

— the Commission of the European Communities, by Anders Christian Jessen and Maria Patakia, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the plaintiff in the main proceedings, represented by Jeffrey P. Galmond, of the Copenhagen Bar, the defendant in the main proceedings, the Greek Government and the Commission, represented by Dimitrios Gouloussis, Legal Adviser, and Anders Christian Jessen, acting as Agents, at the hearing on 3 March 1994,

after hearing the Opinion of the Advocate General at the sitting on 14 April 1994,

gives the following

Judgment

1 By order of 17 December 1992, received at the Court on 23 December 1992, the Østre Landsret (Eastern District Court) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty four questions on the interpretation of Article 93 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, as codified by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6, hereinafter 'the regulation').

2 Those questions were raised in proceedings between Deutsche Angestellten-Krankenkasse ('DAK'), a German social security institution, and Lærerstandens Brandforsikring G/S ('LB'), a Danish insurance company which *inter alia* writes motor insurance policies, concerning the recoupment of sums paid by DAK following an accident in Denmark to the daughter of its insured, Andrea Edith Leipelt.

3 Mrs Leipelt's daughter was the victim of a road accident on 5 October 1986 caused by a Danish motorist who was insured against third party liability by LB. She was in hospital in Denmark from 5 to 8 October 1986 and was then transported to Germany, where she stayed in hospital from 8 October to 9 November 1986.

4 DAK paid the entire cost of the hospital treatment and the transport, namely DKR 6 600 for the stay in hospital in Denmark, DKR 712.48 for the transport from Denmark to Germany and DM 8 188.95 for the stay in hospital in Germany.

5 DAK brought proceedings against LB before the Københavns Byret (District Court, Copenhagen) and, on appeal, the Østre Landsret for reimbursement of the sums it had paid. It based its claims on the rights of the victim, to which it claimed to have been subrogated under Paragraph 116 of Part X of the Sozialgesetzbuch (German Social Security Code, hereinafter 'SGB X').

6 Under Paragraph 116 of the SGB X:

'An insurer or institution responsible for social security shall be subrogated to rights under other statutory provisions to compensation for damage, to the extent that, as a result of the event giving rise to the damage, it has to pay social security benefits which serve to make good damage of the same kind and relate to the same period of time as the compensation payable by the party causing the damage.'

7 LB argued that such proceedings were blocked by Paragraph 17(1) and Paragraph 22(2) of the Lov om Erstatningsansvar, Law No 228 of 23 May 1984, as amended (Danish Law on liability for damages, hereinafter 'the Danish law').

8 Paragraph 17(1)(1) of the Danish law provides that:

'Benefits under the social legislation, including unemployment benefits, medical assistance, pensions under the social pension legislation and benefits under the Law on industrial injury insurance to which an injured party or a survivor is entitled cannot form the basis for a recoupment action against the party liable for the damage.'

Paragraph 22(2) of that law provides that:

'In the case of life assurance, accident or sickness insurance or other personal insurance, the company has no claim against the person liable for damage, whatever the nature of the insurance.'

9 DAK counter-argued that the subrogation which it had the benefit of under German law had to be recognized by the Danish courts, by virtue of Article 93 of the regulation.

10 The Østre Landsret thereupon considered the scope of that article and whether the Danish law could be applied to the proceedings before it.

11 In those circumstances the national court stayed the proceedings pending a preliminary ruling by the Court of Justice on the following questions:

'1. Is Article 93 of Council Regulation (EEC) No 1408/71 to be interpreted as governing only the conditions for the right of the institution responsible for benefits to be subrogated to the rights of the injured party against a third party or does it also govern the rights to which the institution responsible may be subrogated?

2. If Article 93 also governs the rights to which the institution may be subrogated, is the decision on that point to be taken under the legislation of the State in which the institution responsible is established or under the legislation of the State in which the injury occurred?

3. Is Article 93 to be interpreted as also determining which of the rights to which the institution responsible is subrogated can be enforced in the State where the injury occurred against the liable third party?

4. Is Article 93 to be interpreted as also affording a basis for a recoupment action by the institution responsible against the liable third party in a case in which such an action would otherwise have been precluded under the legislation in the State in which the injury occurred as a result of rules corresponding to Paragraph 17(1) and Paragraph 22(2) of the Danish Law on liability for damage?'

12 In those four questions, which should be examined together in view of the close connections between them, the national court is essentially asking which is the national law applicable under Article 93 of the regulation to determine the conditions and extent of the right of recoupment of a social security institution within the meaning of the regulation against the party causing an injury, where the injury

has occurred in the territory of another Member State and has entailed the payment of social security benefits. The national court wishes to know, more particularly, whether provisions such as those of Paragraphs 17(1) and 22(2) of the Danish law exclude the bringing of an action by an institution responsible for benefits in another Member State.

13 The Commission and the German and Greek Governments submit that Article 93 of the regulation requires that the law of the Member State to which the institution responsible for benefits is subject be applied to determine not only the conditions but also the extent of the right of recoupment of the institution where the injury has occurred in the territory of another Member State. In their opinion, provisions such as Paragraph 17(1) and Paragraph 22(2) of the Danish law thus do not exclude the bringing of an action by the institution, where that action is provided for by the law of the Member State to which it is subject.

14 LB considers, on the other hand, that Article 93 of the regulation requires only that the law of the Member State to which the institution responsible for benefits is subject be applied to determine whether that institution has a right of recoupment against a liable third party, but that the extent of that right must by contrast be determined by the legislation applicable in the Member State where the event causing the injury has occurred. In its opinion, provisions such as Paragraph 17(1) and Paragraph 22(2) of the Danish law thus exclude the bringing of an action by the institution responsible for benefits, even if the institution is given that right by the legislation of the Member State to which it is subject.

15 Although the questions as worded refer to Article 93 of the regulation as a whole, it must be observed that in the light of the statement of grounds accompanying them, those questions in fact relate solely to the interpretation of Article 93(1). That paragraph reads as follows:

'If a person receives benefits under the legislation of one Member State in respect of an injury resulting from an occurrence in the territory of another State, any

rights of the institution responsible for benefits against a third party bound to compensate for the injury shall be governed by the following rules:

(a) where the institution responsible for benefit is, by virtue of the legislation which it administers, subrogated to the rights which the recipient has against the third party, such subrogation shall be recognized by each Member State;

(b) where the said institution has direct rights against the third party, such rights shall be recognized by each Member State.'

16 Like Article 52 of Regulation No 3 of the Council of 25 September 1958 concerning social security for migrant workers (Journal Officiel 1958 No 30, p. 561), whose wording it largely reproduces, Article 93(1) of the regulation has the object of allowing a social security institution, which has paid social security benefits following an injury sustained in the territory of another Member State, to exercise against the third party liable for the injury the rights of action provided for by the legislation which it administers, either by means of subrogation or by any other legal method (see the judgment in Case 27/69 *Entr'aide Médicale* v *Assurances Générales* [1969] ECR 405, paragraph 15). The rights thus conferred on national social security institutions constitute a logical and fair counterpart to the extension of the obligations of those institutions throughout the entire Community as a result of the provisions of the regulation (see the judgments in Case 33/64 *Betriebskrankenkasse Heseper Torfwerk* v *Koster* [1965] ECR 97 and Case 44/65 *Hessische Knappschaft* v *Singer* [1965] ECR 965).

17 To that end, Article 93(1) of the regulation provides that each Member State is to recognize the subrogation of the institution responsible for benefits to the rights which the recipient of the benefits has against the third party bound to compensate for the injury, or the direct rights of the institution responsible against the third party, where that institution is so subrogated or has such rights under the legislation of the Member State to which it is subject.

18 Article 93(1) must thus be seen as conflict-of-laws rule, which requires the national court hearing an action for compensation brought against the party liable for the injury to apply the law of the Member State to which the institution responsible is subject, not only to determine whether that institution is subrogated by law to the rights of the injured party or has direct rights against the third party liable, but also to determine the nature and extent of the claims to which the institution responsible for benefits is subrogated or which it can bring directly against the third parties.

19 If the national court were to apply the law of the Member State in whose territory the injury was sustained to determine the extent of the rights of the institution responsible, as LB argues, it might have to deprive Article 93(1) of part or all of its practical effect. That would be the case in particular if the legislation of the Member State in whose territory the injury had been sustained provided that the subrogation or direct rights did not cover certain types of claim which the institution responsible could enforce, by means of subrogation or direct rights, in the Member State to which it was subject.

20 The rights referred to in Article 93(1) of the regulation relate, however, in accordance with the wording of that article, only to social security benefits payable as a result of an injury which has occurred in the territory of another Member State (see the judgment in Case 72/76 *Landesversicherungsanstalt Rheinland-Pfalz* v *Töpfer* [1977] ECR 271, paragraphs 13 to 15). Since LB in its observations expressed doubt as to whether those rights could relate to benefits intended to cover costs such as the costs of Miss Leipelt's hospital treatment in Denmark and the transport from Denmark to Germany, it must be stated that the benefits referred to in Article 93(1) include benefits intended to cover costs, such as hospital or transport costs, incurred in a Member State other than that in which the institution responsible is established.

21 Finally, it should be noted that Article 93(1) of the regulation is intended only to ensure that the rights which the institution responsible may have by virtue of the legislation which it administers are recognized by the other Member States. Its purpose is not to alter the rules applicable for determining whether and to what extend there is non-contractual liability on the part of the third party who has caused the injury. The third party's liability remains subject to the substantive rules which are normally to be applied by the national court before which proceedings are brought by the institution responsible or by the victim, in other words, in principle the legislation of the Member State in whose territory the injury has occurred (see on this point the judgments in *Hessische Knappschaft*, cited above, and Case 78/72 *L'Etoile* v *Syndicat Général* [1973] ECR 499, paragraph 6).

22 It follows that provisions such as Paragraph 17(1) and Paragraph 22(2) of the Danish law, which relate to the rights of recoupment of social security institutions against third parties bound to compensate for injuries as a result of which social security benefits have been paid, cannot be applied to determine whether and to what extent an institution responsible for benefits in another Member State has a right of recoupment against the party who has caused an injury in the territory of the Member State where those provisions apply. Such provisions therefore do not preclude a claim by an institution responsible for benefits in a Member State other than that in which they apply.

23 Consequently, the answer to the national court's questions must be that Article 93(1) of the regulation is to be interpreted as meaning that the conditions and extent of the right of recoupment which a social security institution within the meaning of the regulation has against the party who has caused an injury in the territory of another Member State, which has entailed the payment of social security benefits, are determined in accordance with the law of the Member State to which that institution is subject. In particular, provisions such as Paragraph 17(1)

and Paragraph 22(2) of the Danish law do not exclude claims by institutions responsible for benefits in other Member States.

Costs

24 The costs incurred by the German and Greek Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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 (Fifth Chamber),

in answer to the questions referred to it by the Østre Landsret by order of 17 December 1992, hereby rules:

Article 93(1) 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, as codified by Regulation (EEC) No 2001/83 of 2 June 1983, must be interpreted as meaning that the conditions and extent of the right of recoupment which a social security institution within the meaning of that regulation has against the party who has caused an injury in the territory of another Member State, which has entailed the payment of social security benefits, are determined in

accordance with the law of the Member State to which that institution is subject. In particular, provisions such as Paragraph 17(1) and Paragraph 22(2) of the Lov om Erstatningsansvar, Law No 228 of 23 May 1984, as amended, do not exclude claims by institutions responsible for benefits in other Member States.

Moitinho de Almeida Edward Rodríguez Iglesias

Grévisse Zuleeg

Delivered in open court in Luxembourg on 2 June 1994.

R. Grass

Registrar

J. C. Moitinho de Almeida

President of the Fifth Chamber