JUDGMENT OF THE COURT (Sixth Chamber)
8 June 1995 *

In Case C-451/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Landessozialgericht für das Saarland for a preliminary ruling in the proceedings pending before that court between

Claudine Delavant

and

Allgemeine Ortskrankenkasse für das Saarland,

in the presence of Valérie and Stéphanie Delavant, interveners in the main proceedings,

interveners,

on the interpretation of Articles 1(f), 2(1), 3(1), 19(1)(a) and (2), and 20 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),

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: F. A. Schockweiler, President of the Chamber, G. F. Mancini, C. N. Kakouris (Rapporteur), J. L. Murray and G. Hirsch, Judges,

Advocate General: F. G. Jacobs,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Claudine, Valérie and Stéphanie Delavant, by Gerhard Schmidt-Delavant,

— the Kingdom of Belgium, by Patrick Duray, Assistant Adviser in the Legal Service of the Ministry of Foreign Affairs, External Trade and Development Cooperation, acting as Agent,

— the Federal Republic of Germany, by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Bernd Kloke, Regierungsrat in the same Ministry, acting as Agents,

— the French Republic, by Catherine de Salins, Assistant Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Claude Chavance, Principal Attaché in the Central Administration of that Directorate, acting as Agents,

— the Kingdom of the Netherlands, by A. Bos, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by Christopher Docksey, of the Legal Service, acting as Agent, assisted by Bernd Schulte, Rechtsanwalt at the Max Planck Institut für ausländisches und internationales Sozialrecht, Munich,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 9 February 1995,

gives the following

Judgment

1 By order of 15 October 1993, received at the Court on 25 November 1993, the Landessozialgericht für das Saarland (Higher Social Court, Saarland) submitted for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Articles 1(f), 2(1), 3(1), 19(1)(a) and (2), and 20 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) ('the regulation').

2 The question arose in proceedings between a French national, Claudine Delavant, and the Allgemeine Ortskrankenkasse für das Saarland (Local General Sickness Fund, Saarland) ('the AOK') concerning her children's entitlement to benefits in kind.

3 Mrs Delavant is employed in France (Metz) and by virtue of that employment is affiliated to the Caisse Primaire d'Assurance Maladie (Local Sickness Insurance Fund) in Metz. She is married to a German national and the couple has two infant daughters. The family lives in Germany (Saarbrücken).

4 Article 19 of the regulation provides in this regard:

'1. An employed or self-employed person residing in the territory of a Member State other than the competent State, who satisfies the conditions of the legislation of the competent State for entitlement to benefits, taking account where appropriate of the provisions of Article 18, shall receive in the State in which he is resident:

(a) benefits in kind provided on behalf of the competent institution by the institution of the place of residence in accordance with the provisions of the legislation administered by that institution as though he were insured with it;

...

2. The provisions of paragraph 1 shall apply by analogy to members of the family who reside in the territory of a Member State other than the competent State in so far as they are not entitled to such benefits under the legislation of the State in whose territory they reside.

...'

5 Various terms used in Article 19 are defined in Article 1 of the regulation:

— 'member of the family' means any person defined or recognized as a member of the family or designated as a member of the household by the legislation under which benefits are provided (Article 1(f));

— 'residence' means habitual residence (Article 1(h));

— 'competent institution' means the institution with which the person concerned is insured at the time of the application for benefit (Article 1(o)(i));

— 'institution of the place of residence' means the institution which is competent to provide benefits in the place where the person concerned resides or, where no such institution exists, the institution designated by the competent authority of the Member State in question (Article 1(p));

— finally, 'competent State' means the Member State in whose territory the competent institution is situated (Article 1(q)).

6 According to the documents before the Court, the AOK initially refused to refund the costs of hospital treatment for one of Mrs Delavant's children on the ground of the level of her husband's income but subsequently agreed to refund those costs following an appeal and a fresh calculation of that income. However, the AOK refused to accede to Mrs Delavant's request for a declaration that her children were entitled, irrespective of their parents' income, to receive from the AOK, as the institution of the place of residence, benefits in kind as if they were insured with it.

7 As the basis for that refusal, the AOK relied on Paragraph 10(3) of the Sozialgesetzbuch, Gesetzliche Krankenversicherung (Social Security Code — Statutory Sickness Insurance) ('SGB V'), which, in its opinion, was applicable to the case by virtue of Articles 19 and 1(f) of the regulation. Paragraph 10(3) of the SGB V provides that children of affiliated persons are not insured where the spouse of the affiliated person, being related to the children of the affiliated person, is not affiliated to a statutory sickness fund and his total monthly income normally exceeds one twelfth of the annual income limit and is in general higher than the total income of the person affiliated. In this case, Mrs Delavant's husband is covered by private health insurance since his income normally exceeds the limit laid down in the legislation in question and is normally higher than that of his wife.

8 Following the dismissal by the Sozialgericht für das Saarland (Social Court, Saarland) of her action challenging that decision, Mrs Delavant appealed to the Landessozialgericht für das Saarland. She has based her appeal in particular on Article 19(2) of the regulation, which in her view also entitles her children to benefits in kind provided by the AOK on behalf of the French institution without the provisions of domestic German law restricting that entitlement by reference to the level of their parents' income. She also states that the French institution has for years been reimbursing the cost of benefits received in Germany without being interested in her husband's income.

9 The Landessozialgericht is not itself in doubt that Article 19(2) of the regulation, in conjunction with Article 1(f) thereof, refers to German social-security legislation and that the relevant provision in that legislation, namely Paragraph 10(3) of the SGB V, lays down, as a condition for social-security cover for members of the affiliated person's family, the income of the parents.

10 The national court is, however, uncertain whether application of that provision is compatible with Community law. It observes first of all that, while Para-

graph 10(3) does not discriminate on grounds of nationality, the availability of social-security cover for children is subject in this case to exchange-rate fluctuations, that is to say, the relation between the French franc and the German mark, which affects the relation between Mrs Delavant's income and that of her husband. Second, the intention of the regulation is to place frontier workers and members of their families in a more favourable position. In the present case, however, a disadvantage arises by reason of the fact that, under the German legislation, Mrs Delavant would be required to pay a contribution once again in order for her children to be covered by the statutory sickness fund in Germany.

11 In the light of those considerations, the Landessozialgericht für das Saarland has stayed the proceedings and requested the Court to give a preliminary ruling on the question

'whether Articles 1(f)(i), 2(1), 3(1), 19(1)(a) and (2), and 20 of 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 contain a principle of law that prohibits Member States from making affiliation to a social-insurance system of the natural children of a frontier worker insured in another Member State dependent on the income level of her husband, in addition to conditions connected with the personal situation of the children themselves.'

12 It appears from this question that the national court is proceeding on the assumption that, pursuant to Article 19 of the regulation, the applicable legislation for replying to the question whether members of the worker's family are entitled to benefits in kind is that of the family's State of residence and not that of the State in which the person works and in which the institution with which that person is insured is situated. Before addressing the question submitted, it is therefore necessary to examine whether that assumption is correct.

13 It should be recalled at the outset that, by virtue of Article 13(2)(a) of the regulation, a person employed in the territory of one Member State is in principle subject to the legislation of that State even if he resides in the territory of another Member State.

14 So far as health insurance is concerned, that principle is implemented by Article 19 of the regulation. It follows from Article 19(1) that a worker residing in the territory of a Member State other than the State in which he works is subject to the legislation of the latter State so far as conditions for entitlement to benefits are concerned. Once that entitlement has been recognized, the worker will be entitled to receive, in the State in which he is resident and at the expense of the State in which he works, benefits in kind provided by the institution of his place of residence within the limits and in accordance with the provisions of the legislation administered by that institution as if he were insured with it.

15 Furthermore, pursuant to Article 19(2), the provisions of Article 19(1) are applicable by analogy to members of the family of the worker who reside in the territory of a Member State other than the competent State, as specified above, in so far as they are not entitled to sickness benefits under the legislation of the State in whose territory they reside. Subject to that latter proviso, it follows that members of the family of the worker are subject to the legislation of the State in which that person works so far as concerns the conditions of their entitlement to receive benefits; once that entitlement is recognized, they have the right to receive, at the expense of the State in which the person works, benefits in kind provided by the institution of their place of residence within the limits and in accordance with the provisions of the legislation administered by that institution.

16 That interpretation is borne out by Article 17 of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71, in the version codified by Regulation No 2001/83 of 2

June 1983 (OJ 1983 L 230, p. 6), which provides that: 'In order to receive benefits in kind under Article 19 of the Regulation, an employed or self-employed person must register himself and the members of his family with the institution of his place of residence by submitting a certified statement testifying that he and the members of his family are entitled to the said benefits ...'.

17 According to the interpretation of Article 19(2) proposed by the referring court and advocated by the Belgian, German, Netherlands and French Governments, as well as by the Commission, Article 19(2) refers back to Article 19(1) as regards the persons already recognized as members of the worker's family. The question whether a person is to be recognized as such is, they argue, governed, pursuant to Article 1(f) of the regulation, by the legislation under which the benefits are provided, that is to say, the legislation of the State of residence. Consequently, according to this interpretation, the only persons entitled to rely on Article 19(2) are those who would be regarded as members of the family of the worker by the legislation of the State of residence if the worker was affiliated to the statutory health-insurance fund of that State.

18 That interpretation cannot be accepted. Article 1(f) of the regulation does not deal with the conditions of affiliation or of entitlement to social-security benefits for members of the family of a worker, but merely refers to the legislation under which benefits are provided for determining the persons considered to be family members.

19 In the light of the foregoing, the answer to the question submitted by the national court must be that Article 19(2) of the regulation is to be understood as meaning that when a worker resides with the members of his family in the territory of a Member State other than the Member State in which he works, under whose legislation he is insured by virtue of the regulation, the conditions for entitlement to

sickness benefits in kind for members of that person's family are also governed by the legislation of the State in which that person works in so far as the members of his family are not entitled to those benefits under the legislation of their State of residence.

Costs

20 The costs incurred by the Belgian, German, Netherlands and French 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, 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 (Sixth Chamber),

in answer to the question referred to it by the Landessozialgericht für das Saarland, by order of 15 October 1993, hereby rules:

Article 19(2) 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, is to be understood as meaning that when a worker resides with the members of his family in the territory of a Member State other than the Member State in which he works, under whose legislation he is insured by virtue of the regu-

lation, the conditions for entitlement to sickness benefits in kind for members of that person's family are also governed by the legislation of the State in which that person works in so far as the members of his family are not entitled to those benefits under the legislation of their State of residence.

Schockweiler Mancini Kakouris

Murray Hirsch

Delivered in open court in Luxembourg on 8 June 1995.

R. Grass F. A. Schockweiler

Registrar President of the Sixth Chamber