JUDGMENT OF THE COURT (Sixth Chamber)

6 July 2000 *

In Case C-73/99,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Sozialgericht Münster, Germany, for a preliminary ruling in the proceedings pending before that court between

Viktor Movrin

and

Landesversicherungsanstalt Westfalen

on the interpretation of the EC Treaty and of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to

* Language of the case: German.

employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1),

THE COURT (Sixth Chamber),

composed of: J.C. Moitinho de Almeida (Rapporteur), President of the Chamber, R. Schintgen, C. Gulmann, J.-P. Puissochet and V. Skouris, Judges,

Advocate General: F.G. Jacobs,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Mr Movrin, by G. Hesen, Rechtsanwalt, Aachen,

— Landesversicherungsanstalt Westfalen, by J. Försterling, President thereof,

— the German Government, by W.-D. Plessing, Ministerialrat at the Federal Ministry of the Economy, and C.-D. Quassowski, Regierungsdirektor at the same ministry, acting as Agents,

— the Commission of the European Communities, by P. Hillenkamp, Legal Adviser, acting as Agent, assisted by R. Karpenstein, Rechtsanwalt, Hamburg,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Movrin, the German Government and the Commission at the hearing on 13 January 2000,

after hearing the Opinion of the Advocate General at the sitting on 23 March 2000,

gives the following

Judgment

1 By order of 26 January 1999, received at the Court on 2 March 1999, the Sozialgericht (Social Court) Münster referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation 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 (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1, 'Regulation No 1408/71').

2 The question has been raised in proceedings between Mr Movrin, a Netherlands national resident in the Netherlands, and the Landesversicherungsanstalt Westfalen (Regional Insurance Office, Westphalia, 'the LVA') in respect of the

LVA's refusal to pay Mr Movrin a subsidy towards his contributions to the Netherlands compulsory sickness insurance scheme.

Community legislation

3 Article 1(t) of Regulation No 1408/71 provides:

'For the purpose of this Regulation:

...

(t) "benefits" and "pensions" mean all benefits and pensions, including all elements thereof payable out of public funds, revalorisation increases and supplementary allowances, subject to the provisions of Title III, as also lump-sum benefits which may be paid in lieu of pensions, and payments made by way of reimbursement of contributions'.

4 Article 3(1) of Regulation No 1408/71 provides:

'Subject to the special provisions of this Regulation, 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 the State.'

5 The first subparagraph of Article 10(1) of Regulation No 1408/71 provides:

'Save as otherwise provided in this Regulation, invalidity, old-age or survivors' cash benefits, pension for accidents at work or occupational diseases and death grants acquired under the legislation of one or more Member States shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated'.

6 Article 27 of Regulation No 1408/71 which falls within Chapter 1 headed 'Sickness and maternity' of Title III provides:

'A pensioner who is entitled to draw pensions under the legislation of two or more Member States, of which one is that of the Member State in whose territory he resides, and who is entitled to benefits under the legislation of the latter Member State, taking account where appropriate of the provisions of Article 18 and Annex VI, shall, with the members of his family, receive such benefits from the institution of the place of residence and at the expense of that institution as though the person concerned were a pensioner whose pension was payable solely under the legislation of the latter Member State'.

7 Article 33(1) of the Regulation, which is also in Chapter 1, provides:

'The institution of a Member State which is responsible for payment of a pension and which administers legislation providing for deductions from pensions in respect of contributions for sickness and maternity shall be authorised to make such deductions, calculated in accordance with the legislation concerned, from the pension payable by such institution, to the extent that the cost of the benefits under Article[s] 27, 28, 28a, 29, 31 and 32 is to be borne by an institution of the said Member State.'

National legislation

8 Under Paragraph 23(1)(1)(e) of the Sozialgesetzbuch Erstes Buch (Social Security Code, Book I, 'SGB I') subsidies towards payment of contributions to sickness insurance are benefits of the statutory pension insurance scheme.

9 Under Paragraph 249a of the Sozialgesetzbuch Fünftes Buch (Social Security Code, Book V, 'SGB V'):

'Persons with compulsory insurance [under the statutory sickness insurance scheme], who receive a pension paid by the statutory pension insurance scheme, and pension insurance institutions shall pay respectively one half of the contributions calculated by reference to the pension.'

10 Paragraph 255(1) of SGB V is worded as follows:

'Where contributions linked to pensions are borne by the persons subject to compulsory [sickness] insurance, the contributions shall be deducted by the pensions insurance institutions at the time of payment of the pension and shall be paid, together with the contributions borne by those institutions, to the Bundesversicherungsanstalt für Angestellte (Federal Insurance Office for Salaried Employees) for sickness insurance, with the exception of agricultural sickness insurance.'

11 The version of Paragraph 106(1) of the Sozialgesetzbuch Sechstes Buch (Social Security Code, Book VI, 'SGB VI') applying to the dispute in the main proceedings provides:

'Pensioners who are voluntarily affiliated to the statutory sickness insurance scheme, or who are insured with an insurance undertaking subject to regulation by the competent German authorities, shall receive, in addition to their pension, an allowance representing a sickness insurance contribution subsidy. This provision shall not apply if the persons concerned are at the same time compulsorily affiliated to the statutory sickness insurance scheme.'

12 The version of Paragraph 106(2) of SGB VI that was in force up to and including 31 December 1996 provides:

'The monthly allowance shall be equal to the total sickness insurance contributions for which the pension insurance institution is responsible in respect of pensioners compulsorily affiliated to the statutory sickness insurance scheme.

The allowance shall not exceed one-half of the actual cost of the sickness insurance. Where pensioners are in receipt of several pensions, a limited allowance proportionate to the amount of each of the pensions shall be paid by the pension insurance institutions. The allowance may also be paid by way of a single lump sum supplementing one of those pensions.'

13 The version of Paragraph 106(2) of SGB VI in force on and after 1 January 1997 provides:

'The monthly allowance shall be equal to one-half of the sum obtained by applying the average rate of general contributions to sickness insurance to the amount of the pension. That rate shall be fixed on 1 January every year by the Federal Ministry of Health and shall apply in a unitary way to the Federal Republic of Germany. It shall be rounded up to one figure after the decimal point. It shall apply from 1 July of the calendar year in question until 30 June of the following year. The monthly allowance shall not exceed one-half of the actual cost of the sickness insurance. Where pensioners are in receipt of several pensions, a limited allowance proportionate to the amount of each of the pensions shall be paid by the pension insurance institutions. The allowance may also be paid by way of a single lump sum supplementing one of those pensions.'

14 In relation to recipients of pensions whose usual residence is outside Germany, Paragraph 111(2) of SGB VI provides:

'Recipients of the pension shall not receive any allowance representing a subsidy towards sickness insurance and dependants' insurance.'

The dispute in the main proceedings

15 Mr Movrin who completed periods of old-age insurance in Germany has, since 1 March 1991, been entitled to a German disability pension of a net monthly amount of DEM 1 070.13. By decision of 11 February 1993 he was also granted an allowance equal to 6.4% of his pension representing a sickness insurance contribution subsidy.

16 After the Netherlands insurance institution based in Heerlen, Netherlands, had informed the German authorities that Mr Movrin was compulsorily insured with the statutory sickness insurance scheme in the Netherlands, the deductions paid to the Krankenversicherung der Rentner (Pensioners' Sickness Insurance Scheme, 'the KVdR') were repaid to Mr Movrin pursuant to a decision of the LVA of 18 June 1993. The decision was taken on the basis that he was exempt from that scheme, inasmuch as he was entitled to sickness insurance in the Netherlands which took precedence over the German scheme.

17 By decision of 7 September 1995 the LVA granted Mr Movrin a normal old-age pension of DEM 1 335.36 per month from 1 September 1995 instead of the disability pension paid up to that time on the ground that he had reached the age of 65.

18 In addition, since 1 August 1995 Mr Movrin has been receiving an old-age pension from the Netherlands pension insurance institution. When it pays his pension, the institution deducts contributions for sickness insurance calculated on the basis of the cumulative amount of his German and Netherlands old-age pensions. Moreover, Mr Movrin receives from the Netherlands institution a payment intended to set off the cost of his sickness insurance contributions. When this payment is calculated, no account is taken of Mr Movrin's German pension.

19 By letter of 21 November 1996 Mr Movrin, applying by analogy Paragraph 106 of SGB VI, and Paragraph 249a of SGB V, in conjunction with Article 10 of Regulation No 1408/71, applied for the grant of a subsidy towards his Netherlands sickness insurance contributions payable by virtue of his German pension. As the recipient of a German pension, he claimed that he was entitled to the subsidy for which he had applied and that a refusal to pay that benefit would infringe Article 10(1) of Regulation No 1408/71, as well as Article 51 of the EC Treaty (now, after amendment, Article 42 EC).

20 Mr Movrin drew attention to the fact that, in Germany, any pensioner who is compulsorily affiliated to the statutory sickness insurance scheme receives, in accordance with Paragraph 249a of SGB V, one half of his sickness insurance contributions. The contributions are calculated by reference to the pension received under the statutory insurance scheme, irrespective of which Member State is the pensioner's State of residence. Furthermore, any pensioner who is voluntarily affiliated in Germany to the statutory sickness scheme, or who has taken out private health insurance in a Member State, receives, under Paragraph 106 of SGB VI, an insurance subsidy representing one half of the sickness insurance contributions in question, even if he is resident in another Member State. The only pensioners who are excluded from that subsidy are pensioners who are resident in another Member State and compulsorily affiliated in that State to the statutory sickness insurance scheme.

21 Mr Movrin claimed that such a position constitutes an infringement of the principle of equal treatment laid down in Article 3(1) of Regulation No 1408/71. He has also pointed out that, by virtue of Article 10 of Regulation No 1408/71, old-age cash benefits acquired under the legislation of a Member State may not be withheld by reason of the fact that the recipient resides in another Member State. Moreover, it cannot be correct that recipients of a German pension who are compulsorily affiliated in Germany to the sickness insurance scheme receive the allowance provided for in Paragraph 249a of SGB V, while recipients of the same pension who are resident in another Member State and who, on that account, are compulsorily insured under the sickness insurance scheme in that State may not claim the benefit in question. Mr Movrin stated that he was obliged to join the statutory sickness insurance scheme in the Netherlands and that he had no opportunity of taking out sickness insurance which would have given him the right to a German subsidy. He claimed that the German legislation precluding him from receiving the subsidy for which he applied constitutes covert

discrimination for the purposes of the first paragraph of Article 6 of the EC Treaty (now, after amendment, the first paragraph of Article 12 EC), inasmuch as the legislation governs an area in which foreigners typically receive less favourable treatment. The legislation constitutes an infringement of the principle of freedom of movement for workers within the meaning of Article 48 of the EC Treaty (now, after amendment, Article 39 EC).

22 By decision of 9 January 1997 the LVA refused to pay the sickness insurance contribution subsidy provided for in Paragraph 106 of SGB VI. According to the decision, Mr Movrin, as the recipient of both a German and a Netherlands pension, is subject, in accordance with Article 27 of Regulation No 1408/71, to compulsory sickness insurance under Netherlands legislation. In other words, the KVdR is not applicable and accordingly no subsidy within the meaning of Paragraph 106 of SGB VI can be paid. Article 10(1) of Regulation No 1408/71 does not, according to the LVA's decision, apply in the case in question since Mr Movrin does not have any right to a cash sickness benefit under the German statutory pension insurance scheme. Similarly, the principle of equal treatment in Article 3(1) of Regulation No 1408/71 does not support the applicant's case. A German national who is not a member of the compulsory Pensioners' Sickness Insurance Scheme does not have a right to a sickness insurance contribution subsidy either.

23 Mr Movrin objected to that decision, making a further submission that Article 27 of Regulation No 1408/71 in no way precluded his right. He claimed that that article merely lays down rules concerning the receipt of sickness insurance benefits. The present case, however, concerns a subsidy which, pursuant to Article 1(t) of Regulation No 1408/71, is in the nature of a pension and thus constitutes an element of the German old-age pension. This also follows from Paragraph 23(1)(1)(e) of SGB I, under which subsidies to the cost of sickness insurance are benefits of the statutory pension insurance scheme. Mr Movrin infers from that that he may rely on Article 10(1) of Regulation No 1408/71.

24 By decision of 26 June 1997 the LVA's Objections Committee dismissed Mr Movrin's objection on the same grounds as those given in the LVA's decision of 9 January 1997. It added that Paragraph 249a of SGB V merely lays down who is to pay sickness insurance contributions relating to a pension subject to such contributions by virtue of Paragraph 228 of SGB V. Pursuant to Article 27 of Regulation No 1408/71, there is no compulsory German insurance in the KVdR for pensioners, such as Mr Movrin, who are entitled to a number of pensions. Instead, in Mr Movrin's case, the sickness insurance obligation is governed solely by Netherlands legislation.

25 On 1 August 1997 Mr Movrin brought an action in the Sozialgericht Münster to contest the decision of the Objections Committee, in which he repeated the same arguments. He claimed that his view on the matter was shared by the Commission which, in its letter of 13 November 1991 in the consultation procedure against the Federal Republic of Germany (SG-(91) D/21325-A/91/0807), had objected to the fact that the Bundesversicherungsanstalt für Angestellte (Federal Insurance Office for Salaried Employees) did not grant a sickness insurance contribution subsidy to pensioners who had taken out sickness insurance with an insurance institution established outside the Federal Republic of Germany. According to that letter, such a subsidy is in the nature of a pension for the purposes of Article 1(t) and Article 10(1) of Regulation No 1408/71.

26 By decision of 21 October 1997 the Sozialgericht Münster dismissed Mr Movrin's action.

27 Mr Movrin appealed to the Landessozialgericht (Higher Social Court), Nordrhein-Westfalen. Before that court he repeated that, contrary to the LVA's submission, the subsidy for which he had applied does not constitute a sickness

insurance benefit for the purposes of Article 27 of Regulation No 1408/71, but rather a pension for the purposes of Article 1(t) of that regulation, so that Article 10 of the regulation should be applied. He claimed that the same view on this matter, reached by the Commission, persuaded the German legislature to amend the relevant legislation in such a way that recipients of a German pension who have insured themselves with an undertaking established outside Germany also receive a sickness insurance contribution subsidy. Mr Movrin claimed that the position cannot be any different for recipients of a German pension who — like him — are resident in another Member State and are insured there against sickness. That was the view of the Court of Justice of the European Communities when it held in Case 103/75 *Aulich* v *Bundesversicherungsanstalt für Angestellte* [1976] ECR 697 that a recipient of a German pension who was resident in the Netherlands had a right to a subsidy in respect of contributions to voluntary sickness insurance that he had taken out under Netherlands law.

28 Mr Movrin maintained that, if need be, a reference for a preliminary ruling should be made to the Court of Justice regarding the question of whether the sickness insurance contribution subsidy is a benefit for the purposes of Article 10 of Regulation No 1408/71.

29 The LVA noted that in a judgment delivered on 27 April 1977 the Bundessozialgericht (Federal Social Court) held that a sickness insurance contributions subsidy from Germany cannot be paid where there is a foreign compulsory statutory sickness insurance scheme. The LVA contended that *Aulich* is not relevant to the present case because Mr Movrin is not a voluntary, but a compulsory, member of the Netherlands sickness insurance scheme. It stated that the second sentence of Paragraph 106(1) of SGB VI prevents payment of a sickness insurance subsidy for periods in which the recipient of the pension is simultaneously a member of a statutory compulsory sickness insurance scheme.

30 By judgment of 27 July 1998 the Landessozialgericht Nordrhein-Westfalen annulled the contested decision and referred the case back to the Sozialgericht Münster, which decided to stay proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Is European Community law infringed where the defendant refuses to grant a subsidy in respect of the cost of Netherlands sickness insurance to the plaintiff, who receives a normal old-age pension from the defendant?'

The question referred to the Court for a preliminary ruling

31 By this question the national court is asking essentially whether, on a proper construction of Article 1(t) and Article 10(1) of Regulation No 1408/71, a sickness insurance contribution subsidy provided for in the legislation of a Member State, such as the subsidy at issue in the main proceedings, constitutes an old-age cash benefit for the purposes of the provisions mentioned above, which the recipient of an old-age pension payable under the legislation concerned may claim even if he is resident in another Member State in which he is subject to compulsory membership of a sickness insurance scheme.

32 It should be noted that, under Article 10(1) of Regulation No 1408/71, old-age cash benefits acquired under the legislation of one or more Member States may not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated.

33 That provision implies that neither an initial entitlement, nor a continued entitlement, to the benefits, pensions or allowances referred to in the provision may be denied on the sole ground that the person concerned does not reside within the territory of the Member State in which the institution responsible for payment is situated (Joined Cases 379/85 to 381/85 and 93/86 *Caisse Régionale d'Assurance Maladie Rhône-Alpes and Others* v *Giletti and Others* [1987] ECR 955, paragraph 17).

34 Furthermore, under Article 1(t) of Regulation No 1408/71, the terms 'benefits' and 'pensions' mean, for the purpose of applying the regulation, 'all benefits and pensions, including all elements thereof payable out of public funds, revalorisation increases and supplementary allowances, subject to the provisions of Title III, as also lump-sum benefits which may be paid in lieu of pensions, and payments made by way of reimbursement of contributions'.

35 The LVA starts from the premiss that the subsidy at issue in the main proceedings constitutes a sickness benefit. To the extent to which, under Article 27 of Regulation No 1498/71, the legislation of the Member State of residence, in this case the Kingdom of the Netherlands, is applicable in respect of sickness benefits, the plaintiff in the main proceedings cannot rely on the German Pensioners' Sickness Insurance Scheme. In the absence of a benefit acquired under the German statutory pension insurance scheme, Article 10 of Regulation No 1408/71 cannot reasonably be relied on either.

36 According to the German Government, the subsidy at issue in the main proceedings should not be considered a 'benefit' within the meaning of Article 1(t) of Regulation No 1408/71 where, as in the present case, the person concerned is a member of a compulsory sickness insurance scheme. In such a case the German subsidy is not paid to the recipient of the pension who is resident in Germany but directly to the sickness insurance scheme. Article 10 of Regulation No 1408/71 cannot therefore apply.

37 In order to reply to the question referred for a preliminary ruling, it is necessary to ascertain whether the disputed subsidy constitutes an 'old-age cash benefit' for the purposes of Article 10 of Regulation No 1408/71.

38 As the Court has consistently held, the reply to a question as to whether a benefit falls within the scope of Regulation No 1408/71 essentially depends on the fundamental characteristics of the benefit, in particular its purpose and the conditions for its grant (see, in particular, Case C-45/90 *Paletta and Others* v *Brennet* [1992] ECR I-3423, paragraph 16).

39 As Mr Movrin and the Commission have correctly noted, the necessary connection between the subsidy at issue in the main proceedings and the old-age pension, as well as the purpose for which they are paid arise directly from the German legislation.

40 In that respect, it should be noted, in particular, that the grant of the disputed subsidy is based on the assumption (i) that a right to a pension already exists, (ii) that the subsidy is paid by the pension insurance institution, (iii) that its amount is calculated by reference to the level of contributions paid to the sickness insurance scheme, that level itself being calculated on the basis of the pension received, and (iv) that it is designed to supplement old-age pension benefits by subsidising the contributions payable in respect of sickness insurance for the purpose of reducing their cost to the pensioner.

41 Contrary to the claims of the LVA, the disputed subsidy cannot be characterised as a sickness benefit within the meaning of Regulation No 1408/71. As Mr Movrin and the Commission have rightly pointed out, the subsidy is not provided in the case of illness, that is to say, after the risk insured against has materialised, but payment of the subsidy is a precondition for the very existence of the sickness benefit. A payment which represents a share in the contribution to sickness insurance cannot constitute a benefit from that insurance (see *Aulich*, paragraph 7).

42 In addition, the argument put forward by the German Government must also be rejected. According to that argument, the sums paid by the pension insurance institution to the sickness insurance institution do not constitute a 'benefit' for the purposes of Article 1(t) of Regulation No 1408/71 inasmuch as, in the case of compulsory sickness insurance, the pension insurance institution pays its share of the contributions not to the pensioner but directly to the sickness insurance institution (Paragraph 255 of SGB V).

43 It should be noted in that respect that Article 1(t) of Regulation No 1408/71 mentions supplementary allowances and expressly includes the case of 'payments made by way of reimbursement of contributions'. As the Commission has rightly pointed out, the fact that such payments are made directly to the sickness insurance institution rather than to the recipient of the pension who is compulsorily affiliated to the sickness insurance scheme concerned does not affect the determining factor that these payments are made for the benefit of the pensioner and that their effect is to increase the value of his pension in order to offset the cost to him of paying his contributions. In addition, as Mr Movrin has rightly noted, acceptance of the German Government's argument would open the way to blocking the application of the principle of exportability of benefits laid down in Article 10 of Regulation No 1408/71 merely on the ground that the benefits are not paid to the person entitled to them but are paid directly to the sickness insurance scheme to which the contributions subsidised by the benefits are due.

44 Consequently, a subsidy such as that at issue in the main proceedings, in so far as it takes the form of an increase in the value of the pension (see, in particular, *Giletti*, paragraph 14), constitutes an old-age cash benefit for the purposes of Article 10(1) of Regulation No 1408/71. This ensures its exportability in the absence of any special procedures for the purposes of Annex VI to Regulation No 1408/71 which might prevent Article 10(1) from applying.

45 Consequently, a person in Mr Movrin's situation cannot lose his right to the disputed supplement to his pension merely because he no longer resides in

the territory of the Member State responsible for paying the benefit concerned.

46 The German Government contends that the Kingdom of the Netherlands is wrong to take into account the pension payable under the legislation of other Member States for the purpose of financing Netherlands sickness insurance. Thus, in accordance with the Ziekenfondswet (Netherlands law relating to sickness insurance), during the year in which the plaintiff in the main proceedings made his application, namely 1996, he would have had to pay to the Netherlands sickness insurance institution — in addition to his basic contribution of 7.4% of his Netherlands pension — a supplementary amount equal to 5.4% of all his other income including the German statutory pension.

47 The German Government submits that taking pensions paid under the legislation of other Member States into account in this way in order to finance sickness insurance is incompatible with Article 33 of Regulation No 1408/71. An unlawful measure of that kind cannot provide a legal basis for imposing an obligation on the German institution paying the pension subject to contribution to pay an allowance representing a contribution subsidy.

48 In that respect, as the Commission has correctly observed, even if the Netherlands legislation has misinterpreted Article 33 of Regulation No 1408/71, that in no way calls in question the principle of exportability of old-age cash benefits paid under the legislation of a Member State, since that principle is guaranteed by Article 10 of Regulation No 1408/71.

49 The German Government also contends that the subsidy at issue in the main proceedings is in any event precluded in a case such as Mr Movrin's. In his case the contribution he has to pay to Netherlands sickness insurance on the basis of his German pension (5.4%) is less than the contribution he would have to pay on

the basis of his German pension (7%) if he were resident in Germany and compulsorily affiliated to the KVdR. If he were paid the subsidy, he would receive unwarranted preferential treatment in comparison with a pensioner affiliated to the KVdR, which would be unacceptable.

50 Mr Movrin's response is that the German Government has not taken account of contributions of 7.35%, also calculated by reference to his Netherlands and German pensions, which he must pay under the Netherlands general law in respect of exceptional sickness costs. Ultimately, he pays far more than the German rate of 7% in respect of his Netherlands sickness insurance.

51 Even on the hypothesis that, as the German Government contends, the party concerned is placed at an advantage in comparison with a pensioner who has always been resident in Germany, that consequence would result not from the interpretation of Community law but from the system at present in force, which, in the absence of a common social security scheme, is based on a simple coordination of national legislative systems which have not been harmonised (see, in particular, Case 27/71 *Keller* v *Caisse Régionale d'Assurance Vieillesse des Travailleurs Salariés de Strasbourg* [1971] ECR 885, paragraph 13, and Case 22/77 *Fonds National de Retraite des Ouvriers Mineurs* v *Mura* [1977] ECR 1699, paragraph 10).

52 In those circumstances the reply to the question must be that, on a proper construction of Article 1(t) and Article 10(1) of Regulation No 1408/71, a sickness insurance contribution subsidy provided for in the legislation of a Member State, such as the subsidy at issue in the main proceedings, constitutes an old-age cash benefit for the purposes of those provisions. The recipient of an old-age pension payable under that legislation may claim such a subsidy even if he is resident in another Member State where he is compulsorily affiliated to the sickness insurance scheme.

Costs

53 The costs incurred by the German Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, a step in the proceedings pending before the national court, a 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 Sozialgericht Münster by order of 26 January 1999, hereby rules:

On a proper construction of Article 1(t) and Article 10(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 (EC) No 118/97 of 2 December 1996, a sickness insurance contribution subsidy provided for in the legislation of a Member State, such as the subsidy at issue in the main proceedings, constitutes an old-age cash benefit for the purposes of those provisions. The recipient of an old-age pension payable under that legislation may claim such a subsidy even if he is resident in another Member State where he is compulsorily affiliated to the sickness insurance scheme.

Moitinho de Almeida Schintgen Gulmann

Puissochet Skouris

Delivered in open court in Luxembourg on 6 July 2000.

R. Grass

Registrar

J.C. Moitinho de Almeida

President of the Sixth Chamber