JUDGMENT OF THE COURT (Fourth Chamber)
6 October 1987 *

In Case 152/83

REFERENCE to the Court under Article 177 of the Treaty by the tribunal de grande instance (Regional Court), Colmar, for a preliminary ruling in the proceedings pending before that court between

(1) Marcel Demouche,

(2) The Allianz Insurance Company,

(3) HUK-Verband,

and

(1) Fonds de garantie automobile,

(2) Bureau central français

on the interpretation of the Uniform Agreement between bureaux of 17 December 1953 and the Supplementary Agreement between national bureaux of 16 October 1972 on insurance against civil liability in respect of the use of motor vehicles,

THE COURT (Fourth Chamber),

composed of: C. Kakouris, President of the Chamber, T. Koopmans and G. C. Rodríguez Iglesias, Judges,

Advocate General: Sir Gordon Slynn
Registrar: B. Pastor, Administrator

after considering the observations submitted on behalf of

the Allianz insurance company, plaintiff in the main proceedings, by Maître Bergmann, Avocat,

* Language of the Case: French.

HUK-Verband, plaintiff in the main proceedings, by C. Hootz, Avocat,

Bureau central français, defendant in the main proceedings, by L. Funck-Brentano, Avocat,

the Commission of the European Communities, by J. Amphoux, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 1 July 1987,

after hearing the Opinion of the Advocate General delivered on the same day,

gives the following

Judgment

1 By a judgment of 6 July 1983 which was received at the Court on 26 July 1983, the tribunal de grande instance, Colmar, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the Uniform Agreement between bureaux of 17 December 1953 and the Supplementary Agreement of 16 October 1972 concluded by the national bureaux of motor vehicle insurers on insurance against civil liability in respect of the use of motor vehicles.

2 That question arose in the course of a dispute between the parties to the main proceedings as to whether the tribunal de grande instance had jurisdiction to decide who was liable to compensate the victim of a car accident, in the light of the arbitration clauses contained in the abovementioned agreements.

Law applicable

3 In the Community, insurance against civil liability in respect of the use of motor vehicles normally based in another Member State is governed by private-law agreements and Community measures.

4 The first such agreement, known as the Uniform Agreement between bureaux, was signed on 17 December 1953 between the central bureaux of the Member States; it set up a system of cooperation known as the 'green card scheme', based on a standard green card insurance certificate. Under that scheme, each national central bureau, an association composed of all or the majority of insurance companies, undertakes to settle in its own country the damage caused by vehicles carrying a green card which are registered in other Member States and to reimburse foreign bureaux which have paid compensation for damage caused by vehicles insured in its own country.

5 Article 13 of the agreement provides that '... any dispute between bureaux regarding the interpretation and effects of this agreement shall be submitted to arbitrators..' and that 'the decision of the arbitrators shall be final and binding on the bureaux ...'.

6 In order to facilitate further the movement of persons travelling between Member States, the Council adopted Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (Official Journal, English Special Edition 1972 (II), p. 360), which set up a system based on the following principles: compulsory insurance, under the national legislation of each Member State, against civil liability in respect of the use of motor vehicles (Article 3) and a corresponding presumption that all Community motor vehicles travelling in Community territory are covered by insurance; the abolition of checks on green cards for vehicles normally based in a Member State when they cross intra-Community frontiers (Article 2 (1)).

7 The functioning of this system presupposes that each national bureau will guarantee compensation in respect of any loss or injury giving entitlement to compensation caused in its territory by a vehicle normally based in a Member State, whether or not it is insured, and will have a right to recover from the bureau of the country in which the vehicle is normally based or against the insurer. With reference to that requirement, Article 2 (2) of the directive provides as follows:

'As regards vehicles normally based in the territory of a Member State, the provisions of this Directive, with the exception of Articles 3 and 4, shall take effect:

(i) after an agreement has been concluded between the six national insurers' bureaux under the terms of which each national bureau guarantees the settlement, in accordance with the provisions of its own national law on compulsory insurance, of claims in respect of accidents occurring in its territory caused by vehicles normally based in the territory of another Member State, whether or not such vehicles are insured;

(ii) from the date fixed by the Commission, upon its having ascertained in close cooperation with the Member States that such an agreement has been concluded;

(iii) for the duration of that agreement.'

8 In order to comply with the directive, the national bureaux of the Member States and two non-member countries concluded on 16 October 1972 an agreement supplementing the 1953 Agreement which was to take effect 'on the date referred to in the second indent of Article 2 (2) of the directive . . . ', that is to say on the date fixed by the Commission. Article 1 (c) of the agreement in question provides that the contracting parties base themselves on the directive and Article 1 (d) provides that 'any dispute between bureaux regarding the interpretation of the term "normally based" in so far as it is not defined above shall be submitted to a court of three arbitrators . . . '.

9 In Recommendation 73/185 of 13 May 1973 (Official Journal 1973, L 194, p. 13), the Commission stated on the basis of the second indent of Article 2 (2) of the Council Directive that the supplementary agreement fulfilled the conditions laid down in the first indent of Article 2 (2) and fixed the date from which the Member States were to refrain from making checks on insurance against civil liability in respect of the use of vehicles normally based in the territory of another Member State.

10 On the subsequent accession of non-member countries to the system set out above, by the conclusion of fresh supplementary agreements between national bureaux, the Commission has always adopted decisions on the same legal basis and in the same terms as its first recommendation, each time fixing the date from which frontier checks were to be abolished. One such supplementary agreement, dated 12 December 1973, was annexed to Commission Decision 74/167/EEC of 6 February 1974 (Official Journal 1974, L 87, p. 14) and published in the Official Journal.

The dispute in the main proceedings

11 The dispute in the main proceedings arises out of a car accident which occurred in France in August 1973 in which Mr Demouche, a French national, was injured by a vehicle registered in the Federal Republic of Germany and insured by a German insurance company, whose driver did not have a driving licence.

12 The Bureau central français, against which an action was brought for compensation for the victim, brought third-party proceedings against the German insurance company and the German central bureau. The latter argued that the French court had no jurisdiction because of the arbitration clause in Article 13 of the abovementioned agreement between bureaux of 17 December 1953, which provides that 'any dispute between bureaux regarding the interpretation and effects of this agreement shall be submitted to arbitrators . . . '. The Bureau central français contended that that clause was amended by the Supplementary Agreement between bureaux of 16 October 1972 (Article 2 (c)), cited above, which from that date restricted the application of the arbitration clause to the sole case of a dispute regarding the interpretation of the term 'normally based'.

13 The tribunal de grande instance, Colmar, stayed the proceedings on the third-party claim and submitted to the Court for a preliminary ruling the question:

'whether the Supplementary Agreement of 16 October 1972 restricted the application of the arbitration clause, which the agreement of 17 December 1953 had provided as being of general application, to the sole case of a dispute between the bureaux on the interpretation of the concept "normally based" '.

14 Reference is made to the Report for the Hearing for a more detailed account of the facts, the law applicable, the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The jurisdiction of the Court

15 The Bureau central français, defendant in the main proceedings, the United Kingdom, the Danish Government and the Commission submit in their written observations that the Court has no jurisdiction to interpret the provisions referred to in the question asked by the national court since agreements between central bureaux, inasmuch as they are concluded between bodies governed by private law, are private agreements and therefore are not in the nature of an act of an institution of the Community within the meaning of Article 177 of the EEC Treaty.

16 The HUK-Verband, which is the German central bureau and a plaintiff in the main proceedings, maintains that the Court has jurisdiction to interpret the agreements in question; that view was also adopted by the Bureau central français at the hearing. In their view, the entry into force of Directive 72/166 is dependent on the conclusion of a supplementary agreement between the central bureaux of the Member States, and the duration of that agreement determines the period of applicability of the directive; thus the aim of the directive could not have been achieved in the absence of the agreement in question. Moreover, the fact that the 1973 Supplementary Agreement was annexed to Commission Decision 74/167 shows that the agreements in question are connected with the Community measures governing these matters.

17 Article 177 provides that 'the Court of Justice shall have jurisdiction to give preliminary rulings concerning . . . (b) the validity and interpretation of acts of the institutions of the Community . . . '. It must therefore be determined whether the Supplementary Agreement of 16 October 1972, an interpretation of which is sought by the national court, must be regarded as an act of an institution of the Community within the meaning of that provision.

18 It is not disputed that the supplementary agreement was negotiated and concluded by national associations of insurers, which are bodies governed by private law and

act within the framework of the functions attributed to them by their statutes and the national legislation to which they are subject.

19 The agreement cannot therefore be considered an act of a Community institution, since no Community institution or agency took part in its conclusion. The fact that the conclusion of this agreement was a pre-condition for the entry into force of Council Directive 72/166 and that the length of time for which the directive is applicable is determined by the agreement's duration does not affect the nature of that agreement as a measure adopted by private associations.

20 That cannot be altered by the fact that the Commission, in a recommendation and in successive decisions, consistently stated that the supplementary agreements in question complied with the directive's requirements or by the fact that one of those agreements was annexed to a Commission decision and published with it in the Official Journal. The Commission was merely establishing that the condition laid down in Article 2 (2) of the Council directive was satisfied, and the agreement was not thereby incorporated in the text of the decision or turned into a Community measure.

21 In the light of the foregoing considerations, it must be concluded that the Court has no jurisdiction to give a preliminary ruling on the question submitted to it by the national court.

Costs

22 The costs incurred by the United Kingdom, the Danish Government and 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 (Fourth Chamber),

in answer to the question referred to it by the tribunal de grande instance, Colmar, by judgment of 6 July 1983, hereby rules:

The Court has no jurisdiction to give a ruling on the question submitted to it by the national court.

Kakouris Koopmans Rodríguez Iglesias

Delivered in open court in Luxembourg on 6 October 1987.

P. Heim
Registrar

C. Kakouris
President of the Fourth Chamber