JUDGMENT OF THE COURT
9 DECEMBER 1965[1]

Hessische Knappschaft
v Maison Singer et Fils[2]

(Reference for a preliminary ruling by the Cour d'appel, Colmar)

Case 44/65

Summary

1. Procedure — Preliminary ruling — Parties to the main action — Rights (EEC Treaty, Article 177)

2. Free movement of persons — Workers within the meaning of Regulation No 3 of the Council of the EEC — Concept

3. Free movement of persons — Workers — Accident insurance — Benefits granted under the legislation of a Member State — Injury sustained in the territory of another Member State — Injury sustained before the entry into force of Regulation No 3 of the Council of the EEC — Institutions liable for payment — Rights with regard to a third party liable for compensation — Action for reimbursement — Admissibility

(Regulation No 3 of the Council of the EEC, Article 52 and 53 (3))

1. Since the right to determine the questions to be brought before the Court devolves upon the court or tribunal of the Member State alone, the parties may not change their tenor or have them declared to be without purpose.
2. The concept of 'worker' under Regulation No 3 is not limited solely to migrant workers *stricto sensu* or solely to workers required to move for the purpose of their employment.
   Cf. paragraph 1, summary in Case 75/63 Rec. 1964, p. 351.
3. Article 52 of Regulation No 3 empowers the social security institutions of a Member State to bring an action, on conditions laid down therein, for the reimbursement of benefits granted in consequence of an accident even if it occurred before 1 January 1959.

In Case 44/65

Reference to the Court under Article 177 of the EEC Treaty by the Première Chambre Civile (First Civil Chamber) of the Cour d'Appel, Colmar, for a preliminary ruling in the action pending before that court between:

1 — Language of the Case: French.
2 — CMLR.

HESSISCHE KNAPPSCHAFT, Weilburg/Lahn (Germany),

plaintiff,

and

MAISON SINGER ET FILS, Erstein (France),

defendant,

on the interpretation of certain provisions of Regulation No 3 of the Council of the European Economic Community concerning social security for migrant workers (Official Journal of 16 December 1958, p. 561 et seq.),

THE COURT

composed of: Ch. L. Hammes, President, W. Strauß (Rapporteur), President of Chamber, A. M. Donner, R. Lecourt and R. Monaco, Judges.

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Questions submitted to the Court

By a letter of 1 June 1965, the President of the First Civil Chamber of the Cour d'Appel, Colmar, transmitted to the Court of Justice of the European Communities a decision of the said Chamber of the same date, by which a preliminary ruling was requested of the Court on the following questions:

'(1) Whether Article 52 of Regulation No 3 applies exclusively to migrant workers who are, or at the time of the event have been, employed in one of the six countries of the Community, or whether this provision, as at least the circular on social security of the Federal Republic of Germany of 15 February 1963 seems to recommend, applies to any worker affiliated to a social security scheme of any one of the six Member States of the European Economic Community, even if he is not a migrant worker and even if the accident which he suffered and which gave rise to the payment of social security benefits did not occur either during or arising out of his work.

(2) If so, whether in these circumstances the social security agencies in each of the six Member States are entitled to claim, as from 1 January 1959, when Regulation No 3 entered into force, in the other such

States the reimbursement of the benefits which they have paid to a person insured by them who has suffered an accident in the territory of that other State before 1 January 1959 for which he can claim compensation from a third party under the civil law of that State, whereas, under Article 52 of Regulation No 3, each Member State of the EEC is obliged to recognize, as if resulting from its own laws, substitutions based on the national legislations of the other Member States and automatically having or having had effect from the entry into force of Regulation No 3, that is to say, from 1 January 1959 (Article 56 of Regulation No 3, as amended by Article 88 of Regulation No 4).'

It emerges from the file that this decision is based on the following facts:

On 24 September 1957, Mr Gassner, a German national spending his holidays in France, was killed as a result of a collision between his motorcycle and a cattle truck belonging to Maison Singer et Fils and driven by Mr Stadelweiser, an agent of that firm.

In its capacity as a social security agency the Hessische Knappschaft paid to the successors of the victim benefits for which it claimed repayment, in particular from Maison Singer, by virtue of a substitution for the rights of the said successors, which takes place under German legislation and Article 52 of Regulation No 3.

In a judgment of 4 October 1963, the Chambre Civile of the Tribunal de Grande Instance, Strasbourg, dismissed the action brought against Maison Singer et Fils on the grounds:

— that Regulation No 3 concerns migrant workers, whereas the victim, according to the statements of the Hessische Knappschaft itself, was on holiday in France when he suffered the accident;

— and that in any case since the said Regulation only entered into force on 1 January 1959, that is to say, after the accident in question, it cannot be applicable in this case.

The Hessische Knappschaft brought an appeal against this judgment before the Cour d'appel, Colmar.

II — Procedure

Under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, the Hessische Knappschaft, Maison Singer et Fils and the Commission of the EEC submitted written observations.

The hearing took place on 12 October 1965.

The Advocate-General delivered his opinion on 4 November 1965.

III — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The observations submitted in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

1. *Observations of the Hessische Knappschaft*

A — With regard to the first question

It follows from the judgments given by the Court in the cases of Bertholet (31/64) and Koster (née Van Dijk) (33/64) that Article 52 of Regulation No 3 is applicable to cases such as the present one.

B — With regard to the second question

The said Article 52 states that the substitution in question 'shall be recognized' by each Member State; the fact that in the French version the verb is in the present and not in the

future tense ('reconnaît' not 'reconnaîtra') implies that such recognition applies with immediate, not merely future effect. Moreover, Article 53 (2) of Regulation No 3 provides expressly that, subject to the provisions of paragraph (1) of this Article, benefit shall be payable under this Regulation 'even if it relates to an event before the date on which it comes into force'.

It must therefore be admitted that, in the case provided for by Article 52, the claim arising from the substitution 'must be recognized as valid .... in the State where it existed .... as from 1 January 1959'.

In any case, the Hessische Knappschaft has the right to the payment of the benefits disbursed by it as from 1 January 1959.

2. *Observations of Maison Singer et Fils*

A — On the first question

Maison Singer admits that the said case-law of the Court renders Article 52 of Regulation No 3 applicable in cases similar to the one in question, but it relies on Article 184 of the EEC Treaty to stress the inapplicability of Article 52, so construed.

(a) It is claimed that this submission is admissible under Article 184; in particular, Maison Singer is 'party' to 'proceedings in which a regulation of the Council or of the Commission is in issue'.

(b) The submission is also well-founded: in fact, by adopting the provision in dispute, the Council of the EEC acted *ultra vires* by exceeding the powers conferred upon it by Article 51 of the EEC Treaty:

— The criteria for the 'freedom of movement for workers', found in Article 48 of the said Treaty, 'are limited ... in the concept of a movement of workers in connexion with their employment or determined by a cause, even if not immediate, arising out of their employment'.

— The concept of 'migrant workers' refers to workers required to move for the purpose of their employment.

— Consequently, in so far as Article 52 of Regulation No 3 is to be applied to cases such as the present one, it is not a measure 'necessary to provide freedom of movement for workers'.

Furthermore, Regulation No 3 is vitiated by an internal contradiction, as its heading and most of its provisions are directed to migrant workers *stricto sensu*, whilst in certain other aspects it exceeds that limitation.

In conclusion the request of the Cour d'Appeal, Colmar, for a preliminary ruling is without purpose.

B — On the second question

By reason of the submission set out at A, this question is only considered as an alternative point.

Regulations Nos 3 and 4 of the Council of the EEC contain no additional provisions relating to the application in time of Article 52 of Regulation No 3. In particular, Article 53 of that Regulation, dealing only with the relationship between the institution and the insured, is not such a provision.

In these circumstances, recourse must be had to the general principles of law. These principles point to a difference as regards the relationship between the social security institution and the insured, on the one hand, and the person responsible for the accident on the other. The former relationship 'is to be construed, with regard to the benefits due for a social security risk which has materialized, as a situation continuing after the risk has materialized'; it is in fact generally admitted that the new law—such as is the case with Regulation No 3—takes effect immediately in such situations.

The latter, on the other hand, relates to the civil liability of the persons responsible for the accident; 'it is no longer a risk which has materialized which is

in question here. .... but indeed an act giving rise to obligations'. 'To subject the person responsible for an accident occurring prior to the law to provisions relating to an action brought under a law subsequent to the accident would be to give the new law retroactive effect', since 'the person responsible for an accident has a vested right in having the consequences of that accident assessed in accordance with the law in force at the date of the accident'.

In conclusion, Article 52 must not be applied to accidents occurring before 1 January 1959.

C — Conclusions

Maison Singer et Fils contends that the Court should:

1. Declare that Maison Singer et Fils are entitled, by virtue of Articles 173 and 184 of the Treaty establishing the European Economic Community, to claim that Article 52 of Regulation No 3 concerning social security for migrant workers does not apply;
2. Declare that this submission is well founded and rule that Article 52 of Regulation No 3 is consequently inapplicable;
3. Consequently rule that the two questions in the decision of the Cour d'Appel, Colmar, of 1 June 1965 requesting an interpretation are without purpose;
4. Alternatively, with regard to the second question, rule that Article 52 of Regulation No 3 does not apply to an accident occurring before 1 January 1959;
5. Give an appropriate ruling as to the costs.

3. *Observations of the Commission of the EEC*

A — On the first question

This question is in fact divided into two parts:

— Does Article 52 of Regulation No 3 apply even to workers who are not migrant workers?

— Does this provision apply even if the accident in question did not occur during or arising out of employment?

After quoting and commenting on the judgments of the Court in Cases 75/63 (Hoekstra (née Unger)), 31/64 (Bertholet) and 33/64 (Koster (née Van Dijk)), the Commission submits that the Court has already answered these questions in the affirmative.

B — On the second question

Article 52 applies even when an accident has occurred before the entry into force of Regulation No 3. In fact, the drafting of that Article is incompatible with any limitation *ratione temporis;* in particular, it does not lay down any condition with regard to the date when the 'benefits' were paid.

Moreover, it emerges from Article 53 (3) of Regulation No 3 that in cases comparable with the present one the institutions were obliged, by 1 January 1959 at the latest, to grant the injured person payment of the benefits. 'It therefore seems illogical that the right to claim compensation from a third party for the injury by virtue of a substitution for the rights of the injured person should not be recognized in return'.

Grounds of judgment

I — On the first question

By the first question the Court is asked to rule whether Article 52 of Regulation No 3 applies only to migrant workers who have, or had at the time of the accident, employment in one of the six countries of the Community, or

whether it applies to any worker affiliated to a social security scheme of one of those Member States, even if he is not a migrant worker and even if the accident suffered which gave rise to the disbursement of social security payments took place neither during nor arising out of his employment.

In its judgment in Case 33/64 of 11 March 1965 (reference for a preliminary ruling by the Arrondissementsrechtbank, Assen, [1965] ECR) the Court, in interpreting the provisions of the first paragraph of Article 52, ruled that:

'These provisions are applicable where a worker who, under the legislation of one Member State, is in receipt of one of the benefits mentioned in Article 2 of Regulation No 3 in respect of an injury sustained in the territory of another Member State, whether or not such injury is connected with his work, is entitled to compensation for that injury from a third party in the latter State's territory'.

In view of the facts of the present case, it must be recalled that Article 52 applies to the case of any person who is in receipt of benefit under the legislation of one Member State whether it be the worker himself or his successors.

Whilst the defendant in the main action admits that this interpretation of Regulation No 3 is well founded, it considers that it is incompatible with Article 51 of the EEC Treaty, especially as under that provision the Council is only entitled to make rules governing the situation of migrant workers *stricto sensu*.

Consequently it claims before the Court, by virtue of Articles 173 and 185 of the said Treaty, that Article 52 of Regulation No 3 does not apply, and contends that the request for a preliminary ruling by the Cour d'Appel, Colmar, should be declared to be without purpose.

Under Article 177 of the Treaty it is for the court or tribunal of a Member State, and not the parties to the main action, to bring a matter before the Court of Justice.

Since the right to determine the questions to be brought before the Court thus devolves upon the court or tribunal of the Member State alone, the parties may not change their tenor or have them declared to be without purpose. Consequently the Court of Justice cannot be compelled at the request of a party to entertain a question when the initiative for referring it to the Court pertains not to the parties but to the court or tribunal of the Member State itself, or to entertain within the particular framework of Article 177 a claim based primarily on Article 184.

Besides, the contrary view fails to recognize that the authors of Article 177 intended to establish direct cooperation between the Court of Justice and the courts and tribunals of the Member States by way of a non-contentious procedure excluding any initiative of the parties, who are merely invited to be heard in the course of that procedure. The claim of Maison Singer et Fils to have the Colmar court's request for a preliminary ruling declared to be without purpose must therefore be rejected.

Moreover, the argument of the plaintiff in the main action that Regulation No 3 and in particular Article 52 thereof are incompatible with the limitations prescribed by Article 51 of the Treaty cannot be accepted.

Under Article 51 of the Treaty, the Council 'shall . . . adopt such measures in the field of social security as are necessary to provide freedom of movement for workers'. Article 51 is included in the Chapter entitled 'Workers' and situated in Title III ('Free movement of persons, services and capital') in Part Two of the Treaty ('Foundations of the Community'). The establishment of as complete freedom of movement for workers as possible, which thus forms part of the 'foundations' of the Community, therefore constitutes the ultimate objective of Article 51 and thereby conditions the exercise of the power which it confers upon the Council.

It would not be in conformity with that spirit to limit the concept of 'worker' solely to migrant workers *stricto sensu* or solely to workers required to move for the purpose of their employment. Nothing in Article 51 imposes such distinctions, which would in any case tend to make the application of the rules in question impracticable.

On the other hand, the system adopted by Regulation No 3, which consists in abolishing as far as possible the territorial limitations on the application of the different social security schemes, certainly corresponds to the objectives of Article 51 of the Treaty.

II—On the second question

In its second question, the Cour d'Appel, Colmar, asks the Court to rule whether, under Article 52 of Regulation No 3, the social security institutions of a Member State are entitled to bring an action, on the conditions laid down therein, for the reimbursement of benefits granted in consequence of an accident occurring before 1 January 1959. Under Article 88 (1) of Regu-

lation No 4 of the Council of the EEC, Regulation No 3 entered into force on 1 January 1959. The said Regulation No 3 was incapable of giving rise, before 1 January 1959, to the rights and duties referred to therein. But events occurring before that date may, once the Regulation has entered into force, give rise to those rights and duties. In the absence of an express provision to the contrary, its rules must be regarded as taking effect as soon as they enter into force, inasmuch as they determine in the present legal consequences of actions in the past. Article 52 of Regulation No 3 in no way modifies the conditions governing the creation and the limits of extra-contractual liability, which remains subject solely to national law. It is limited to substituting the institution liable for payment for the beneficiary in any claims which he may have against the third party liable, in other words, to substituting a new claimant for the old.

Moreover, the substitution provided for in Article 52 in favour of the national social security institutions constitutes the logical and fair counterpart to the extension of the obligations of the said institutions throughout the Community. To this end, Article 53 (3) of Regulation No 3 provides that benefit shall be payable even if it relates to an event occurring before the date on which it entered into force. The same effect with regard to time should thus be admitted in connexion with the application of Article 52.

The second question of the Cour d'Appel, Colmar, should thus be answered in the affirmative.

III — Costs

The costs incurred by the Commission of the EEC, which submitted observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Cour d'Appel, Colmar, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of the Commission of the EEC and the parties to the main action;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the EEC, especially Article 177;

Having regard to the Protocol on the Statute of the Court of Justice of the EEC, especially Article 20;
Having regard to Regulation No 3 of the Council of the EEC concerning social security for migrant workers (Official Journal of 16 December 1958, p. 561 et seq.), especially Articles 52 and 53;
Having regard to Regulation No 4 of the Council of the EEC on implementing procedures and supplementary provisions in respect of Regulation No 3 concerning social security for migrant workers (Official Journal of 16 December 1958, p. 597 et seq.), especially Article 88;
Having regard to the judgment of the Court of 11 March 1965 in Case 33/64;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

in answer to the questions referred to it by the First Civil Chamber of the Cour d'Appel, Colmar, by a decision of the said Chamber of 1 June 1965, hereby rules:

1. **The reply to the first question of the Cour d'Appel, Colmar, follows from the judgment of the Court of 11 March 1965 in Case 33/64;**

2. **Article 52 of Regulation No 3 of the Council of the EEC concerning social security for migrant workers entitles the social security institutions of a Member State to bring an action, under the conditions laid down therein, for the reimbursement of benefit paid by them in respect of an accident occurring before 1 January 1959;**

3. **The decision on the costs of these proceedings is a matter for the Cour d'Appel, Colmar.**

Hammes Strauß Donner

Lecourt Monaco

Delivered in open court in Luxembourg on 9 December 1965.

A. Van Houtte
Registrar

Ch. L. Hammes
President