Case C-7/24

Request for a preliminary ruling

Date lodged:

4 January 2024

Referring court:

Retten i Svendborg (Denmark)

Decision of:

2 January 2024

Applicants:

Deutsche Rentenversicherung Nord

BG Verkehr

Defendant:

Gjensidige Forsikring, dansk filial af Gjensidige Forsikring ASA, Norge for Marius Pedersen A/S

Mandatar Gjensidige Forsikring, dansk filial Gjensidige Forsikring ASA, Norge for Marius Pedersen A/S

RETTEN I SVENDBORG
ORDER

delivered on 2 January 2024

Case …

Deutsche Rentenversicherung Nord
…

GJENSIDIGE FORSIKRING, DANSK FILIAL AF GJENSIDIGE FORSIKRING ASA, NORGE acting on behalf of MARIUS PEDERSEN A/S

and

Gjensidige Forsikring, dansk filial af Gjensidige Forsikring ASA, Norge
…

and

Case …

BG Verkehr
…

v

Mandatar Gjensidige Forsikring, dansk filial af Gjensidige Forsikring ASA, Norge for
MARIUS PEDERSEN A/S
…

This decision was delivered by Judge … [sitting as a single judge].

Reference for a preliminary ruling

PRELIMINARY REMARKS

1 This case concerns whether the Danish insurance undertaking Gjensidige Forsikring A/S, acting on behalf of Marius Pedersen A/S, is liable for recoupment vis-à-vis the German public-law pension insurance undertakings (obliged social security institutions), BG Verkehr and Deutsche Rentenversicherung Nord, in connection with the death of a German national ('X') as a result of an industrial accident in Denmark.

2 As a German employee, X had pension insurance with the obliged social security institutions BG Verkehr and Deutsche Rentenversicherung Nord, which, pursuant to German law, paid benefits to X's widow ('Y').

3 The Retten i Svendborg has decided to refer, pursuant to the second paragraph of Article 267 of the Treaty on the Functioning of the European Union (TFEU), a question to the Court of Justice of the European Union for a preliminary ruling on the interpretation of Article 85(1) of Council Regulation (EC) No 883/2004 of

29 April 2004 on the coordination of social security systems, as interpreted most recently by the judgments of the Court of Justice in Cases C-428/92, *DAK* v *Lærerstandens Brandforsikring*, ECLI:EU:C:1994:222, and C-397/96, *Kordel and Others*, ECLI:EU:C:1999:432.

FACTS OF THE CASE AND COURSE OF THE PROCEEDINGS

4 As a German employee, X was obliged to have public-law pension insurance with BG Verkehr and Deutsche Rentenversicherung Nord, which, pursuant to Paragraph 46(2) of the German Sozialgesetzbuch Sechstes Buch (SGB VI), are obliged to pay benefits to the survivors of the insured person. Public-law pension insurance is part of the German social security system and is intended to secure the pensions of employees and their survivors.

5 Disagreement has arisen between BG Verkehr and Deutsche Rentenversicherung Nord, on the one hand, and Marius Pedersen A/S and its civil-liability insurer, Gjensidige Forsikring, on the other, as to whether BG Verkehr and Deutsche Rentenversicherung Nord are entitled to recoupment for benefits paid to X's widow Y.

6 The German national, X, was injured while working as a driver engaged in the export trade for a German undertaking, DS Transport GmbH on 15 July 2015 as he was helping to load goods on to his German-registered lorry at one of Marius Pedersen A/S' business addresses in Denmark. As a result of the injuries sustained in the accident, X died shortly afterwards.

7 Arbejdsmarkedets Erhvervssikring [Labour Market Insurance] in Denmark subsequently decided that the fatal accident did not entitle X's widow, Y, to benefits under the Danish Law on industrial injury insurance since X was covered by the German social security scheme, as stated above (paragraph 4).

8 Subsequent to X's death, BG Verkehr and Deutsche Rentenversicherung Nord paid benefits under the German Law on social security to X's widow, Y, and were, under German law, subrogated to Y's legal position vis-à-vis the party responsible for the injury.

9 Since Marius Pedersen A/S, through its civil-liability insurance undertaking, Gjensidige Forsikring, has acknowledged that it is liable to pay compensation in connection with X's death on 15 July 2015, BG Verkehr and Deutsche Rentenversicherung Nord are claiming reimbursement by Marius Pedersen A/S / Gjensidige Forsikring of the benefits paid by the undertakings to X's widow.

10 Marius Pedersen A/S / Gjensidige Forsikring refused to meet the recoupment claims from BG Verkehr and Deutsche Rentenversicherung Nord with reference to the fact that national Danish law does not confer a right of recoupment in respect of the recoupment claims raised since they are benefits for which no claim for recovery can be raised under Danish law and since X's widow, Y, in the view

of Marius Pedersen A/S / Gjensidige Forsikring, must be considered to have had a claim for the benefits regardless of the cause of X's death.

11 Marius Pedersen A/S / Gjensidige Forsikring further stated that Y has already received damages for loss of provider as Gjensidige Forsikring has paid compensation for loss of provider calculated in accordance with national Danish law to Y at the request of her lawyer. BG Verkehr and Deutsche Rentenversicherung Nord contended that the damages have not been paid in full discharge of liabilities since Marius Pedersen A/S and Gjensidige Forsikring were not in good faith as regards BG Verkehr's and Deutsche Rentenversicherung Nord's recoupment claim at the time of payment. In relation to the payment of damages for loss of provider to Y from Gjensidige Forsikring, the parties agree that the claim has been calculated and paid in accordance with national, Danish rules on damages and that Y cannot claim further damages vis-à-vis Marius Pedersen A/S / Gjensidige Forsikring under Danish law.

12 On 6 and 12 July 2018, respectively, BG Verkehr and Deutsche Rentenversicherung Nord brought actions against Marius Pedersen A/S / Gjensidige Forsikring A/S claiming that Marius Pedersen A/S / Gjensidige Forsikring A/S must acknowledge that it is liable vis-à-vis BG Verkehr and Deutsche Rentenversicherung Nord for recoupment for the benefits which BG [Verkehr] and Deutsche Rentenversicherung Nord are obliged to pay, and have paid, to Y under Paragraph 46(2) of German Sozialgesetzbuch Sechstes Buch (SGB VI).

PROVISIONS OF NATIONAL LAW AND NATIONAL CASE-LAW

Lovbekendtgørelse 2018-08-24 nr. 1070 om erstatningsansvar (erstatningsansvarsloven) (Consolidated Law No 1070 of 24 August 2018 on liability for damages) (Law on liability for damages)

13 Paragraph 1(1) of the Law on liability for damages: '*A person liable for personal injury shall pay damages for loss of income, medical expenses and other losses resulting from the injury, as well as compensation for pain and suffering.*'

14 Paragraph 13(1) of the Law on liability for damages: '*Damages for loss of provider for a spouse or cohabiting partner shall be 30% of the damages which the deceased must be assumed to have received in the event of a complete loss of earning capacity (see Paragraphs 5 to 8). However, the damages shall be at least DKK 644 000, save in exceptional circumstances.*'

15 Paragraph 17(1) of the Law on liability for damages: '*Benefits under 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 claim against the person liable for damages. […]*'

16 Paragraph 26a(1) of the Law on liability for damages; '*A person who deliberately or as a result of gross negligence causes the death of another may be ordered to pay compensation to survivors who had a particularly close connection with the deceased.*'

Lovbekendtgørelse 2022-08-19 nr. 1186 om arbejdsskadesikring (arbejdsskadesikringsloven) (Consolidated Law No 1186 of 19 August 2022 on industrial injury insurance) (Law on industrial injury insurance)

Paragraph 19(1) of the Law on industrial injury insurance: '*Where an industrial injury has resulted in death, the surviving spouse shall have the right to […] if the marriage was entered into before the industrial injury occurred and cohabitation existed at the time of the injured person's death. […]*'

Paragraph 20(1) of the Law on industrial injury insurance: '*A person who is entitled to a transitional amount under Paragraph 19(1) to (3) and who has lost a provider as a result of the death of the injured person, or who has had his or her support circumstances impaired in some other way as a result of the death, shall have the right to damages therefor. The damages shall be determined taking account of the extent of the dependency and the survivor's ability to support himself or herself, having regard to age, state of health, education, employment, dependency and financial circumstances.*'

(2): '*The damages shall be granted in the form of a fixed-term continuous benefit, which shall amount to 30 per cent of the deceased's annual salary under Paragraph 24. The damages shall be paid with effect from the date of death with 1/12 monthly in advance. The period may be set at a maximum of 10 years. However, if a bereavement allowance is paid in connection with the death, the benefit shall not be paid until the end of the bereavement allowance period. If the deceased has received continuous damages for loss of earning capacity under this Law, damages for loss of provider shall not be paid until the first of the month following the death.*'

(3): '*Benefits under subparagraph (2) shall remain unchanged for the period stipulated unless the benefit is wholly or partly converted into a lump sum or the beneficiary dies.*'

17 Paragraph 77(1) of the Law on industrial injury insurance: '*Benefits under the Law cannot form the basis for a recoupment claim against the party responsible for the injury who is liable for damages to injured persons or their survivors, […]. The claims of injured persons or their survivors against the party responsible for the injury shall be reduced to the extent that benefits have been paid or are payable to the persons concerned under this Law.*'

Danish case-law

18 Article 93 of Council Regulation (EEC) 1408/71 of 14 June 1971, the previously applicable provision, was the subject of a reference for a preliminary ruling to the Court of Justice (judgment of 2 June 1994 in C-428/92, *DAK*, ECLI:EU:C:1994:222) in connection with judgment U 1995 341 Ø of the Østre Landsret (High Court of Eastern Denmark). That case established that Paragraphs 17(1) and 22(2) of the Danish Law on liability for damages do not preclude a foreign social security institution from seeking recoupment for social security benefits paid.

19 The Højesteret (Supreme Court) subsequently delivered judgement in U 2002. 573 H. That case concerned a German employer's recoupment claim for pay during illness, medical expenses and a pension paid to a German boatman who was injured while working in Denmark.

20 In the proceedings, the Højesteret (see U 1999 773 H) declined to refer questions on the interpretation of then Article 93 (now Article 85) to the Court of Justice of the European Union. The Højesteret stated in the grounds for the order that, from the case-law of the Court of Justice,

'*it is clear that Article 93(1) of Council Regulation No 1408/71 (Article 52 of Council Regulation No 3) is to be interpreted as meaning that the provision only governs the choice of law concerning the institution's right of recoupment against the party responsible for the injury and that the institution's claim cannot – even in cases where it has the character of an independent claim under point (b) – exceed the claim which the injured person could assert against the party responsible for the injury under the rules of the law applicable to the relationship between them, that is to say, in general, the law of the place in which the damage occurs*.'

21 In its order, the Højesteret referred, inter alia, to the judgment of the Court of Justice in Case 78/72, *Ster*, ECLI:EU:C:1973:51, in which the Court of Justice held at paragraph 3 that '*the direct right of the institution liable vis-à-vis the third party responsible derives from the fact that the person receiving the benefit of payments has a right, in the territory of the State in which the damage occurred, to claim compensation from that third party*' and also that the institution cannot '*claim from the third party responsible any payment other than that which could be claimed by the victim of the damage or his dependants*'.

22 The Højesteret subsequently concluded in U 1999 773 H that it follows from Article 93(1) (now Article 85) that the employer's claim against the liability insurer could not exceed the claim which the injured party could have asserted under Danish law against the party responsible for the damage. As a direct consequence thereof, the Højesteret held in U 2002 573 H that the employer's claim concerning salaries and medical expenses was time-barred (under Danish law), but that there was a claim for reimbursement of the employer's pension

expenses, although the claim could not exceed what the injured party would have been entitled to under Danish law.

23 As regards recent Danish case-law, reference can be made to the judgment of the Østre Landsret of 2 March 2020 (FED 2020 31 Ø) and the judgment of the Højesteret of 8 December 2021 (U 2022 1033 H), which addresses a similar issue. That case concerned the collision of a German couple on a Danish motorway, in which one spouse died and the other was injured.

24 That case concerned whether Bundesbahnvermögen – Rechtfähiges Sondervermögen der Bundesrepublik Deutschland and Krankenversicherung für Bundesbahnbeamten, Bezirksleistung Wuppertal had a claim for reimbursement of their expenses by the injured party's insurer, Codan Forsikring A/S, which acknowledged its liability for damages.

25 In the view of the Østre Landsret, the social security institution's recoupment claim for benefits paid in one Member State on the basis of an event which occurred in another Member State could not exceed the claim which the injured party could assert under the legislation of that other Member State in which the injury occurred.

26 The Østre Landsret further stated that there was only an obligation to reimburse the claim from the social security institution in so far as the insurer, in this case Codan Forsikring A/S, was obliged under Danish law to pay a corresponding amount of compensation to the injured party.

27 The Østre Landsret thus assumed that in order for the injured party's claim to be recoverable there had to be identity between the benefits paid to the injured party by the obliged social security institution in Germany and the claim for which the injured party could recover under the legislation of the Member State in which the injury occurred, that is to say under Danish law.

28 An appeal was lodged against the judgment of the Østre Landsret before the Højesteret. In accordance with the Østre Landsret's decision, the Højesteret stated in its judgement that the social security institution's claim could not exceed the claim which the injured party could assert against the party responsible for the injury under the rules of the legislation applicable to the relationship between the injured party and the party responsible for the injury.

29 The Højesteret did not rule on whether recoupment could be claimed against Codan Forsikring A/S for widow's pension benefits and 'Sterbegeld' calculated and paid in accordance with German law because the Højesteret found in the particular circumstances that Codan Forsikring A/S had in good faith and in full discharge of liabilities paid damages for loss of provider calculated in accordance Danish law to the widow residing in Germany.

30 The Højesteret further stated that it was sufficiently established that the expenses incurred by Krankenversicherung für Bundesbahnbeamten were, by their nature,

covered by the expression ‘medical expenses and other losses’ in Paragraph 1 of the Law on liability for damages.

31 Moreover, it should also be noted that it was common ground between the parties in this case that the scope of the claim for damages was to be determined under Danish law and therefore the claim could not exceed the claim which the injured party could assert under Danish law against the party responsible for the injury.

EU LAW

32 The provision of EU law to which this case relates is, in particular, Article 85(1) of Council Regulation (EC) No 883/2004 of 29 April 2004 on the coordination of social security systems. That provision corresponds to Article 93(1) of Council Regulation (EEC) No 1408/71 of 14 June 1971, the previously applicable provision, and Article 52 of Council Regulation No 3 of 25 September 1958.

ARGUMENTS OF THE PARTIES

33 **BG Verkehr and Deutsche Rentenversicherung Nord** claim in the proceedings that BG Verkehr and Deutsche Rentenversicherung Nord are subrogated to Y’s claim against Marius Pedersen A/S / Gjensidige Forsikring A/S pursuant to Paragraph 116(1) of the German Sozialgesetzbuch Zehntes Buch (SGB X). BG Verkehr and Deutsche Rentenversicherung Nord therefore have a recoupment claim against Marius Pedersen A/S / Gjensidige Forsikring A/S for the social benefits paid by BG Verkehr and Deutsche Rentenversicherung Nord to Y through subrogation to Y’s right against Marius Pedersen A/S and Gjensidige Forsikring A/S. Furthermore, this is not disputed by the parties.

34 BG Verkehr and Deutsche Rentenversicherung Nord further claim that BG [Verkehr’s] and Deutsche Rentenversicherung Nord’s right of recoupment against Marius Pedersen A/S / Gjensidige Forsikring A/S pursuant to Article 85(1) of Council Regulation (EC) No 883/2004 of 29 April 2004 must be determined in accordance with the law of the Member State in which BG Verkehr and Deutsche Rentenversicherung Nord, as obliged social security institutions, have their registered office, that is to say under German law, and that, therefore, Paragraph 17(1) of the Danish Law on liability for damages does not preclude BG Verkehr’s and Deutsche Rentenversicherung Nord’s right of recoupment against Marius Pedersen A/S and Gjensidige Forsikring A/S.

35 BG Verkehr and Deutsche Rentenversicherung Nord claim in that regard that, under Article 85(1), the conditions and extent of the claims to which BG Verkehr and Deutsche Rentenversicherung Nord are subrogated must also be determined in accordance with the law of the Member State in which BG Verkehr and Deutsche Rentenversicherung Nord, as obliged social security institutions, have their registered office, that is to say, under German law.

36 BG Verkehr and Deutsche Rentenversicherung Nord further claim that, if the extent of the claim which BG Verkehr and Deutsche Rentenversicherung Nord have against Marius Pedersen A/S and Gjensidige Forsikring A/S is to be determined in accordance with the substantive rules of the Member State in whose territory the injury occurred, that is to say, Danish law, that does not preclude BG Verkehr's and Deutsche Rentenversicherung Nord's right of recoupment against Marius Pedersen A/S / Gjensidige Forsikring A/S for the social benefits paid to Y by BG Verkehr and Deutsche Rentenversicherung Nord.

37 In support of this claim, BG Verkehr and Deutsche Rentenversicherung Nord refer to the Danish Højesteret's interpretation of Article 93(1) of the Regulation No 1408/71, the previously applicable provision, in judgment U 2002 573 H of 19 December 2001.

38 That judgment concerned which Member State's legislation was to be applied in the settlement of accounts between the parties and thus the extent of the obliged social security institution's right of recoupment against the party responsible for the injury. The Højesteret attached considerable importance to the fact that the obliged social security institution's claim could not, in terms of the amount, exceed the claim the injured party could recover under the legislation of the Member State in which the injury occurred. However, the Højesteret did not rule on whether or not the obliged social security institution's claim must be identical or otherwise comparable to the claim which the injured party could have recovered under Danish law.

39 BG Verkehr and Deutsche Rentenversicherung Nord claim that Article 85(1) should be interpreted as meaning that the social benefits paid by BG Verkehr and Deutsche Rentenversicherung Nord to the widow (widow's pension) and the claim which, under Danish law, the widow could recover from the injured party (compensation for personal injury and damages for loss of provider) do not have to be identical or in any way comparable in nature in order to be recoverable. BG Verkehr and Deutsche Rentenversicherung Nord claim in that regard that the claim simply cannot exceed, in terms of the amount, the claim which the injured party could recover under the law of the Member State in which the injury occurred, that is to say, under Danish law.

40 BG Verkehr and Deutsche Rentenversicherung Nord claim that, since the subrogation of the obliged social security institution under Article 85(1) must be recognised by each Member State, it would be contrary to Article 85(1) if a Member State has to recognise the obliged social security institution's right of subrogation if, at the same time, that Member State could effectively prevent the claim from being enforced. BG Verkehr and Deutsche Rentenversicherung Nord claim that the provision was not intended to preclude a claim by an obliged social security institution against the person responsible for the injury on the ground of a lack of identity between the benefits which may be claimed under the legislation of the Member State in which the obliged social security institution has its

registered office and the legislation of the Member State in which the injury occurred.

41 In conclusion, BG Verkehr and Deutsche Rentenversicherung Nord claim that, irrespective of whether the conditions for and the extent of the claim to which BG Verkehr and Deutsche Rentenversicherung Nord are subrogated and for which damages are sought are to be determined under Danish or German law, in order for Marius Pedersen A/S / Gjensidige Forsikring A/S to be liable for recoupment vis-à-vis Deutsche Rentenversicherung Nord, it is not required that the social benefits paid to Y by BG Verkehr and Deutsche Rentenversicherung Nord and the claim which Y could recover from Marius Pedersen A/S / Gjensidige Forsikring A/S under Danish law be comparable in nature. Marius Pedersen A/S / Gjensidige Forsikring A/S must therefore compensate the social benefits paid by BG Verkehr and Deutsche Rentenversicherung Nord to Y.

42 During the proceedings, **Marius Pedersen A/S / Gjensidige Forsikring A/S** claims that Regulation 883/2004 on the coordination of social security schemes of 29 April 2004 only governs whether the applicant may be subrogated to the injured party's claim and not whether there is a lawful basis under Danish rules for the recoupment claim raised by the applicant.

43 Marius Pedersen A/S / Gjensidige Forsikring A/S further claim that the decisive factor for the applicant's right of recoupment is whether the injured party has a claim under Danish law to the benefits for which the applicant claims recoupment (see, inter alia, the Højesteret's decision in U 1999 773 H and U 2022 1033 H), and that this is not the case as a claim for a continuous widow's pension under German law does not correspond to a claim for capitalised damages for loss of provider under Danish law.

44 It is claimed that the recoupment claim for damages for pension benefits to the deceased's widow must be regarded as independent of the deceased's death in an industrial accident since the deceased's widow must be regarded as having a claim to the benefits regardless of the cause of death.

45 Although it is acknowledged by Marius Pedersen A/S / Gjensidige Forsikring that there is in principle a right of recoupment for German insurance institutions, it claimed that under the first sentence of Paragraph 77(1) of the Law on industrial injury insurance, benefits under that law cannot form the basis for a 'recoupment claim against the party responsible for the injury who is liable for damages' vis-à-vis the deceased's widow. Furthermore, under the second sentence of Paragraph 77(1) of that law, the survivor's (widow's) claim against the person liable for damages (in this case Marius Pedersen A/S / Gjensidige Forsikring) is to be reduced to the extent that 'benefits have been paid or are payable to the persons concerned under this Law'. It is therefore claimed that the recoupment claim of the applicant insurance institutions must be considered to be precluded when the benefits must be deemed to replace benefits covered by Paragraph 20 of the Law

on industrial injury insurance on the survivors' right to damages for loss of provider.

46 Marius Pedersen A/S / Gjensidige Forsikring further claims that this view is in accordance with the EFTA Court's decision in Case E-11/16, *Mobil Betriebskrankenkasse* v *Tryg Forsikring*, judgment of 20 July 2017, according to which a recoupment claim under the regulation cannot exceed the claim or claims which the injured party him or herself would be able to assert against the party responsible for the injury under the law of the place where the injury occurred.

BACKGROUND TO THE QUESTIONS

47 There is – in principle – no disagreement that an obliged social security institution in one Member State has, pursuant to Article 85(1) of Council Regulation (EC) No 883/2004 of 29 April 2004, a right of recoupment against a liable party responsible for the injury on the basis of an event giving rise to liability which occurs in another Member State, irrespective of the provision of the national law of that other Member State, in this case Paragraph 17(1) of the Danish Law on liability for damages.

48 However, there is disagreement as to which Member State's legislation is to determine the extent of the claim to which an obliged social security institution is subrogated.

49 There is also disagreement as to whether, if the extent of such a claim is to be determined under the substantive rules of the Member State in which the damage occurred, the right of recoupment of the social security institution requires that the social benefits for which recovery is sought must be comparable in nature to the benefits for which the injured party could seek recovery under the legislation of the Member State in which the injury occurred.

50 There is also disagreement as to what is meant, if so, by the term 'by nature' and whether this merely requires that the claim for which recovery is sought cannot exceed, in terms of the amount, the claim which the injured party could recover under the law of the Member State in which the injury occurred.

51 Danish law has also addressed the nature of the items of damages which an injured party or the survivors of an injured party can claim as a result of personal injury. The Law on liability for damages therefore contains provisions under which claims can be raised for damages for other losses, loss of earnings, pain and suffering, permanent injury, loss of earning capacity, loss of provider, transitional amount in the event of death and compensation for tort. Most items are also capped at a specified amount.

52 Paragraph 77 of the Law on industrial injury insurance also states that damages calculated in accordance with the Law on liability for damages is to be subsidiary to the damages which the injured party or survivors may claim under the Law on

industrial injury insurance, and that damages for industrial injuries cannot form the basis for recoupment against a party responsible for the injury who is liable for damages.

53 Neither the Law on liability for damages nor the Law on industrial injury insurance confers on a survivor a right to a widow's pension of the nature and in the manner set out in Paragraphs 64 to 65 of the Sozialgesetzbuch Sechstes Buch (SGB VI)). Therefore, it is not readily possible to establish identity between the claim for damages by the social security institution seeking recoupment and the corresponding item(s) in the Law on liability for damages or the Law on industrial injury insurance.

54 Consequently, it is also not readily possible to deduce whether and, if so, to what extent a recoupment claim for expenses incurred by the social security institution can be enforced against the liable party responsible for the injury.

55 There is limited case-law from the Court of Justice of the European Union on how Article 85(1) of Council Regulation (EC) No 883/2004 of 29 April 2004 is to be interpreted in relation to the scope of the claim to which an obliged social security institution can be subrogated and recover from a liable person responsible for the injury (see, inter alia, Case C-397/96, *Kordel and Others*, ECLI:EU:C:1999:432, and Case C-428/92, *DAK*, ECLI:EU:C:1994:222).

56 In its case-law, most recently in Case C-397/96, *Kordel and Others*, the Court of Justice of the European Union has held that Article 93(1) of Council Regulation (EEC) No 1408/71 of 14 June 1971, applicable at the material time, must be interpreted as meaning that both the requirements for and the extent of the claim which a social security institution within the meaning of the regulation has against a person who, in the territory of another Member State, caused an injury which gave rise to the payment by that institution of social security benefits, are to be determined in accordance with the law of the Member State to which the institution is subject.

57 Furthermore, in Case C-428/92, *DAK*, ECLI:EU:C:1994:222, the Court of Justice of the European Union also acknowledged that both 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.

58 However, it appears to be unclear from the case-law of the Court of Justice whether the substantive rules of the law of the Member State in which the injury occurred can limit the right of recoupment of the obliged social security institution where the social security benefits for which recovery is sought are not identical or at least not comparable in nature to the claim which the injured party could recover under those substantive rules.

Conclusion

In the light of the foregoing, the Retten i Svendborg, which is the court of first instance in this case, finds that there is a need to refer questions to the Court of Justice of the European Union for a preliminary ruling as set out below.

The Retten i Svendborg asks the Court of Justice of the European Union to answer the following question referred for a preliminary ruling:

1. Must Article 85(1) of Council Regulation (EC) No 883/2004 of 29 April 2004 on the coordination of social security systems be interpreted as meaning that for the obliged institution to have a right of recoupment under that provision there must be a lawful basis in the Member State in which the injury occurred for the type of damages or compensation for which a right of recoupment is claimed, or equivalent benefit, as a consequence of the event for which the party responsible for the injury is liable for damages under the law of the place where the injury occurred?

2 January 2024

…