

1. Article 22(1)(a)(i) and (c)(i) 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 and Article 22(1) and (3) of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71, both as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983, must be interpreted as meaning that, where the competent institution has consented, by issuing a Form E 111 or Form E 112, to one of its insured persons receiving medical treatment in a Member State other than the competent Member State, it is bound by the findings as regards the need for urgent vitally necessary treatment made during the period of validity of the form by doctors authorised by the institution of the Member State of stay, and by the decision of those doctors, taken during that period on the basis of those findings and the current state of medical knowledge, to transfer the patient to a hospital establishment in another State, even if that State is a non-member country. However, in such a situation, in accordance with Article 22(1)(a)(i) and (c)(i) of Regulation No 1408/71, the insured person's right to the benefits in kind provided on behalf of the competent institution is subject to the condition that, under the legislation administered by the institution of the Member State of stay, that institution is obliged to provide persons insured with it with the benefits in kind corresponding to such treatment.

In such circumstances, the competent institution is not entitled to require the person concerned to return to the competent Member State in order to undergo a medical examination there or to have him examined in the Member State of stay, nor to make the above findings and decisions subject to its approval.

2. Where doctors authorised by the institution of the Member State of stay have for reasons of vital urgency and in the light of current medical knowledge chosen to transfer the insured person to a hospital establishment in a non-member country, Article 22(1)(a)(i) and (c)(i) of Regulation No 1408/71 must be interpreted as meaning that the cost of the treatment provided in that State must be borne by the institution of the Member State of stay in accordance with the legislation administered by that institution, under the same conditions as those applicable to insured persons covered by that legislation. In the case of treatment which is among the benefits provided for by the legislation of the competent Member State, it is then for the institution of that State to bear the cost of the benefits thus provided, by reimbursing the institution of the Member State of stay under the conditions laid down in Article 36 of Regulation No 1408/71.

Where the cost of the treatment provided in an establishment in a non-member country has not been assumed by the institution of the Member State of stay, but it is established that the person concerned was entitled to have the cost borne and the treatment is among the benefits provided for by the legislation of the competent Member State, it is for the competent institution to reimburse to that person or his heirs directly the cost of that treatment, so as to

ensure a level of assumption of costs equivalent to that which that person would have enjoyed if the provisions of Article 22(1) of Regulation No 1408/71 had been applied.

(¹) OJ C 146 of 21.06.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 14 April 2005

in Case C-157/03: Commission of the European Communities v Kingdom of Spain (¹)

(Failure of a Member State to fulfil obligations — Directives 68/360/EEC, 73/148/EEC, 90/365/EEC and 64/221/EEC — Right of residence — Residence permit — Third-country national who is a member of the family of a Community national — Time-limit for issue of residence permit)

(2005/C 132/11)

(Language of the case: Spanish)

In Case C-157/03, Commission of the European Communities (Agents: C. O'Reilly and L. Escobar Guerrero) v Kingdom of Spain (Agent: N. Díaz Abad) — action under Article 226 EC for failure to fulfil obligations, brought on 7 April 2003 — the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann, J. Makarczyk (Rapporteur), P. Küris and J. Klučka, Judges; C. Stix-Hackl, Advocate General; R. Grass, Registrar, gave a judgment on 14 April 2005, in which it:

1. — Declares that, by failing to transpose correctly into its national law Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services and Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity, in particular, by requiring third-country nationals who are members of the family of a Community national who has exercised his right to freedom of movement to obtain a residence visa for the issue of a residence permit, and

— by failing, in breach of the provisions of Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, to issue a residence permit as soon as possible and in any event not later than six months from the date on which the application for that permit was submitted,

the Kingdom of Spain has failed to fulfil its obligations under those directives;

2. Orders the Kingdom of Spain to pay the costs.

(⁽¹⁾) OJ C 135 of 07.06.2003.

JUDGMENT OF THE COURT

(Grand Chamber)

of 15 March 2005

in Case C-160/03: Kingdom of Spain v Eurojust (⁽¹⁾)

(Action for annulment under Article 230 EC — Action brought by a Member State challenging calls for applications, issued by Eurojust, for positions as members of the temporary staff — No jurisdiction of the Court — Inadmissible)

(2005/C 132/12)

(Language of the case: Spanish)

In Case C-160/03: Kingdom of Spain (Agent: L. Fraguas Gadea), supported by Republic of Finland (Agent: T. Pynnäv) v Eurojust (Agent: J. Rivas de Andrés and D. O'Keeffe) — action for annulment under Article 230 EC, brought on 8 April 2004 — the Court (Grand Chamber), composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas (Rapporteur) and A. Borg Barthet, Presidents of Chambers, R. Schintgen, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues, E. Juhász, G. Arestis, M. Ilešić and J. Malenovský, Judges; M. Poiares Maduro, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, gave a judgment on 15 March 2005, in which it:

1. Declares that the application is inadmissible;
2. Orders the Kingdom of Spain to pay the costs;
3. Orders the Republic of Finland to bear its own costs.

(⁽¹⁾) OJ C 146 of 21.6.2003.

JUDGMENT OF THE COURT

(First Chamber)

of 17 March 2005

in Case C-170/03 (reference for a preliminary ruling from the Hoge Raad der Nederlanden): Staatssecretaris van Financiën v J.H.M. Feron (⁽¹⁾)

(Regulation (EEC) No 918/83 — Relief from customs duties — Meaning of 'personal property' and 'possession' — Motor vehicle made available to a person by his employer)

(2005/C 132/13)

(Language of the case: Dutch)

In Case C-170/03: reference for a preliminary ruling under Article 234 EC from the Hoge Raad der Nederlanden (Netherlands), made by decision of 11 April 2003, received at the Court on 14 April 2003, in the proceedings pending before that court between Staatssecretaris van Financiën and J.H.M. Feron — the Court (First Chamber), composed of P. Jann, President of the Chamber, A. Rosas, K. Lenaerts, S. von Bahr (Rapporteur) and K. Schiemann, Judges; M. Poiares Maduro, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 17 March 2005, the operative part of which is as follows:

A car such as that at issue in the main proceedings is to be regarded as personal property within the meaning of Article 1(2)(c) of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty and thus eligible for relief from import duty under Articles 2 and 3 of the regulation.

(⁽¹⁾) OJ C 146 of 21.06.2003.