JUDGMENT OF THE COURT (Grand Chamber)

12 April 2005 *

In Case C-145/03,

REFERENCE for a preliminary ruling under Article 234 EC, made by the Juzgado de lo Social n° 20 de Madrid (Spain), by decision of 6 November 2001, received at the Court on 31 March 2003, in the proceedings

Heirs of Annette Keller

v

Instituto Nacional de la Seguridad Social (INSS),

Instituto Nacional de Gestión Sanitaria (Ingesa), formerly Instituto Nacional de la Salud (Insalud),

* Language of the case: Spanish.

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, R. Silva de Lapuerta, K. Lenaerts (Rapporteur) and A. Borg Barthet, Presidents of Chambers, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues, E. Juhász, G. Arestis and M. Ilešič, Judges,

Advocate General: L.A. Geelhoed,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the written procedure and further to the hearing on 9 November 2004,

after considering the observations submitted on behalf of:

— the heirs of Annette Keller, by C. Fernández Álvarez and A. Pedrajas Moreno, abogados,

— Instituto Nacional de Gestión Sanitaria (Ingesa) and Instituto Nacional de la Seguridad Social (INSS), by A.R. Trillo García, A. Llorente Álvarez and F. Sánchez-Toril y Riballo, abogados,

— the Belgian Government, by A. Snoecx and E. Dominkovits, acting as Agents,

— the Spanish Government, by E. Braquehais Conesa, acting as Agent,

— the Netherlands Government, by H. Sevenster, S. Terstal, C. Wissels and N. Bel, acting as Agents,

— the Commission of the European Communities, by H. Michard, I. Martínez del Peral and D. Martin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 January 2005,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 3, 19 and 22 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 (OJ 1983 L 230, p. 6) ('Regulation No 1408/71' and 'Regulation No 574/72').

2 The reference was made in the course of proceedings between the heirs of Ms Keller, who succeeded her in the course of the main proceedings, and Instituto Nacional de la Seguridad Social (INSS) and Instituto Nacional de Gestión Sanitaria (Ingesa) ('the defendants in the main proceedings'). The dispute arose from the refusal by Ingesa, which at the time was called Instituto Nacional de la Salud (Insalud), to reimburse the costs of hospital treatment received by Ms Keller in a hospital in Switzerland.

Legal context

Community legislation

3 Under Article 3(1) of Regulation No 1408/71, '[s]ubject 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'.

4 Article 19 of that regulation, entitled 'Residence in a Member State other than the competent State — General rules', states:

'1. An employed or self-employed person residing in the territory of a Member State other than the competent State, who satisfies the conditions of the legislation of the competent State for entitlement to benefits, taking account where appropriate of the provisions of Article 18, shall receive in the State in which he is resident:

(a) benefits in kind provided on behalf of the competent institution by the institution of the place of residence in accordance with the provisions of the legislation administered by that institution as though he were insured with it;

...'

5 Article 22 of Regulation No 1408/71, entitled 'Stay outside the competent State — Return to or transfer of residence to another Member State during sickness or maternity — Need to go to another Member State in order to receive appropriate treatment', lays down in paragraphs 1 and 2:

'1. An employed or self-employed person who satisfies the conditions of the legislation of the competent State for entitlement to benefits, taking account where appropriate of the provisions of Article 18, and:

(a) whose condition necessitates immediate benefits during a stay in the territory of another Member State; or

...

(c) who is authorised by the competent institution to go to the territory of another Member State to receive there the treatment appropriate to his condition,

shall be entitled:

(i) to benefits in kind provided on behalf of the competent institution by the institution of the place of stay ... in accordance with the provisions of the legislation which it administers, as though he were insured with it; the length of the period during which benefits are provided shall be governed, however, by the legislation of the competent State;

...

2. ...

The authorisation required under paragraph 1(c) may not be refused where the treatment in question is among the benefits provided for by the legislation of the Member State on whose territory the person concerned resides and where he cannot be given such treatment within the time normally necessary for obtaining the treatment in question in the Member State of residence taking account of his current state of health and the probable course of the disease.'

6 Article 36 of Regulation No 1408/71 provides:

'1. Without prejudice to the provisions of Article 32, benefits in kind provided in accordance with the provisions of this chapter by the institution of one Member State on behalf of the institution of another Member State shall be fully refunded.

2. The refunds referred to in paragraph 1 shall be determined and made in accordance with the procedure provided for by the implementing Regulation referred to in Article 98, either on production of proof of actual expenditure or on the basis of lump-sum payments.

In the latter case, the lump-sum payments shall be such as to ensure that the refund is as close as possible to actual expenditure.

3. Two or more Member States, or the competent authorities of those States, may provide for other methods of reimbursement or may waive all reimbursement between institutions under their jurisdiction.'

7 Article 22 of Regulation No 574/72 lays down in paragraphs 1 and 3:

'1. In order to receive benefits in kind under Article 22(1)(b)(i) of [Regulation No 1408/71], an employed or self-employed person shall submit to the institution of the place of residence a certified statement testifying that he is entitled to continue receiving the said benefits. The certified statement, which shall be issued by the competent institution, shall specify in particular, where necessary, the maximum period during which such benefits may continue to be provided, in accordance with the provisions of the legislation of the competent State. The certified statement may, at the request of the person concerned, be issued after his departure if, for reasons of force majeure, it cannot be drawn up beforehand.

...

3. Paragraphs 1 and 2 shall apply by analogy in respect of the provisions of benefits in kind in the case referred to in Article 22(1)(c)(i) of the Regulation.'

8 As is apparent from Decision No 153 (94/604/EC) of the Administrative Commission of the European Communities on social security for migrant workers of 7 October 1993 on the model forms necessary for the application of Regulations (EEC) No 1408/71 and (EEC) No 574/72 (E 001, E 103 to E 127) (OJ 1994 L 244, p. 22), Form E 111 is the certificate necessary for the application of Article 22(1)(a)(i) of Regulation No 1408/71 and Form E 112 is the one necessary for the application of Article 22(1)(c)(i) of that regulation.

Spanish legislation

9 In the version in force at the material time, Article 102(3) of the Ley General de la Seguridad Social (General Law on Social Security) provided that '[t]he institutions responsible for providing medical treatment shall not be responsible for costs which may be incurred where the beneficiary has recourse to medical institutions other than those proposed to him, except in cases provided for by the legislation'.

10 Paragraphs 1 and 4 of Article 18, headed 'Medical treatment provided by institutions outside the social security system', of Decree No 2766/67 of 16 November 1967, as amended by Decree No 2575/73 of 14 September 1973 ('Decree No 2766/67'), provide:

'1. Where the beneficiary, on his own initiative or that of a member of his family, has recourse to institutions other than those made available to him, the institutions

responsible for providing medical treatment shall not assume responsibility for costs which may have been incurred, except in the cases provided for in paragraphs 3 and 4 of this article.

...

4. Where recourse to medical institutions other than those made available by the social security system is the result of the need for vital urgent treatment, the beneficiary may make to the institution responsible for providing him with medical care a request for reimbursement of the costs incurred, which will be granted if it is established, in the light of the results of the investigation carried out in that respect, that reimbursement is justified.'

German legislation

11 Paragraph 18(1) of Book V of the Sozialgesetzbuch — Gesetzliche Krankenversicherung (Code of Social Security — Statutory sickness insurance), in the version in force at the material time, provided:

'If treatment of an illness in accordance with the generally recognised state of medical knowledge is only possible abroad, the sickness fund may assume responsibility for all or part of the costs of the necessary treatment ...'

The main proceedings and the questions referred for a preliminary ruling

12 Ms Keller, of German nationality, was resident in Spain at the material time, and was affiliated to that Member State's general social security scheme.

13 As she intended to go to Germany for family reasons, Ms Keller asked Insalud to issue a Form E 111, which was given to her before departure, for the period from 15 September to 15 October 1994.

14 During that stay, Ms Keller was admitted to the Gummersbach District Hospital (Germany), which is attached to the Cologne University Clinic. She was then diagnosed with a malignant tumour of the nose, the nasal cavity, the eye socket and the base of the skull, with ramification in the intercranial space, sufficiently serious to be likely to cause the patient's death at any time.

15 Wishing to be able to continue receiving in Germany the medical treatment necessitated by the condition affecting her, Ms Keller requested Insalud to issue a Form E 112. As appears from an internal memorandum of that body of 23 February 1995, that form was issued to her, on the ground that in view of the serious nature of her state of health a transfer to Spain was not advisable. The period of validity of that form, which was extended on several occasions, ran from 24 October 1994 to 21 June 1996.

16 Following numerous examinations and a thorough analysis of the various possibilities of treatment available, the doctors of the Cologne University Clinic considered that, in view of its extremely delicate nature and the special expertise it required, the surgical operation which was immediately and vitally necessary for Ms

Keller could only be performed in the Zurich University Clinic (Switzerland). A report by an ear-nose-and-throat specialist, which was produced to the national court, states that that private clinic was the only one in Europe which could treat with recognised scientific efficacy the condition Ms Keller was suffering from.

17 The doctors of the Cologne University Clinic thereupon transferred Ms Keller to the Zurich University Clinic, where during a stay in hospital from 10 to 25 November 1994 she underwent surgery, the results of which were considered satisfactory. Following that operation Ms Keller had to undergo radiotherapy from 15 December 1994 to 22 February 1995. The total cost of the treatment amounted to CHF 87 030 and was paid in full by Ms Keller.

18 On 26 April 1995 Ms Keller sought reimbursement of that sum from Insalud.

19 Her application was refused by a decision of Insalud of 10 August 1995. In reliance on Article 102 of the Ley General de la Seguridad Social and Article 18(1) of Decree No 2766/67, Insalud stated, in support of its decision, that reimbursement of the costs of medical treatment provided in a non-member country required express prior authorisation on its part.

20 Ms Keller's objection against that decision was rejected by Insalud on 7 December 1995.

21 On 3 May 1999 Ms Keller again applied for reimbursement of the costs of her hospital treatment in Switzerland. That application was refused by a decision of the health inspectorate of Insalud of 26 July 1999, on the ground that '... although the illness was serious, it did not have the character of a life-threatening emergency which justifies going outside the national and/or Community public health scheme in order to be treated in a private setting outside the Community, without allowing the Spanish management authority to examine and propose the corresponding care options appropriate to the condition from which the patient was suffering'.

22 Ms Keller brought proceedings against that decision in the Juzgado de lo Social n° 20 de Madrid (Social Court No 20, Madrid). Following an application by Insalud of 2 November 2000, the action was extended to Instituto Nacional de la Seguridad Social, on the ground that that institution would have to reimburse the costs at issue in the main proceedings if the action were successful.

23 Ms Keller died on 30 October 2001. Her heirs carried on the main proceedings.

24 The Juzgado de lo Social n° 20 de Madrid is uncertain, first, as to whether the competent Spanish institution is bound by the diagnosis and choice of treatment of the doctors authorised by the German institution concerned.

25 That court is uncertain, second, whether, having regard to the principle of equal treatment set out in Articles 3, 19 and 22 of Regulation No 1408/71, there is an obligation to reimburse the costs of Ms Keller's hospital treatment in the Zurich University Clinic, in view of the fact that it was confirmed that, under the legislation applicable in Germany, where Ms Keller was staying when the hospital treatment became necessary, she would have had those costs paid in full if she had been affiliated to AOK Rheinland (Rhineland Local General Sickness Fund).

26 In this respect, the national court refers to two certificates issued in the year 2000 by AOK Rheinland, to which Ms Keller was affiliated as from 15 March 1996. The first certificate, dated 4 May 2000 and included in the case-file, shows that the costs of the operation and the post-operative treatment undergone by Ms Keller in 1999 in the Zurich University Clinic following a recurrence of the tumour were paid in full by the German social security system. According to the order for reference, the second certificate, dated 22 December 2000, shows that the costs of the medical treatment Ms Keller received in the Zurich University Clinic in 1994 and 1995 would have been reimbursed in full by AOK Rheinland if she had at that time been affiliated to it.

27 In those circumstances, the Juzgado de lo Social n° 20 de Madrid decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Are Form E 111 and in particular Form E 112, the issue of which is provided for in Articles 22(1)(c) of Regulation No 1408/71 and Article 22(1) and (3) of Regulation No 574/72, binding on the competent institution which issues them (in this case the Spanish social security) as regards the diagnosis made by the institution of the place of residence (in this case the German public health service), and specifically the conclusions reached therein that the worker required an immediate surgical operation as the only treatment capable of saving her life and that the operation could only be carried out by a hospital in a country not belonging to the European Union, namely the Zurich University Clinic in Switzerland, so that the institution of the place of residence may send the worker to that hospital without the competent institution being authorised to require the worker to return so that it can carry out the medical examinations it considers appropriate and offer him the care options appropriate for the condition which he presents?

2. Is the principle of equal treatment laid down in Article 3 of Regulation No 1408/71, which provides that workers are to "... enjoy the same benefits under the legislation of any Member State as the nationals of that State", in conjunction with Articles 19(1)(a) and 22(1)(i) of that regulation, which provide that a worker moving within the Community is to be entitled to benefits in kind provided by the institution of the place of stay or residence in accordance with the provisions which it administers, as though he were insured with it, to be interpreted as meaning that the competent institution is required to assume the costs of the health care provided in a country outside the European Union when it is established that if the worker had been affiliated to or been insured by the institution of the place of residence he would have been entitled to that health benefit, when in addition the said health care — that is, health care in cases of life-threatening emergency provided by private centres, including those in countries not belonging to the European Union — is among the benefits provided for by the legislation of the competent State?'

The questions referred for a preliminary ruling

Admissibility

28 First, the defendants in the main proceedings point to contradictions in the order for reference between the account of the facts in the order and the wording of the first question. They submit that those contradictions make it difficult to understand that question and consequently make it less easy to draft relevant written observations and less easy for the Court to provide the national court with an answer which will be of use to it.

29 On this point, it must be recalled that, according to settled case-law, the need to provide an interpretation of Community law which will be of use to the national

court makes it necessary that the national court should define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based (see, inter alia, Case C-72/03 *Carbonati Apuani* [2004] ECR I-8027, paragraph 10).

30 The information provided in orders for reference must not only enable the Court to reply usefully but must also give the Governments of the Member States and the interested parties the opportunity to submit observations pursuant to Article 23 of the Statute of the Court of Justice. It is the Court's duty to ensure that that opportunity is safeguarded, bearing in mind that under that provision only the orders for reference are notified to the interested parties (Case C-67/96 *Albany* [1999] ECR I-5751, paragraph 40).

31 In the present case, the order for reference makes it possible — as is shown by the content of the observations submitted by the parties to the main proceedings and the Governments of the Member States — to assess the relevance and the scope of the national court's first question. By that question, that court asks essentially whether the issue by the institution to which the person in question is affiliated ('the competent institution') of a Form E 111 or E 112 for the purposes of the application of Article 22(1)(a)(i) or (c)(i) of Regulation No 1408/71 means that that institution is bound by the findings of the medical bodies of the Member State in which the insured person is staying ('the Member State of stay') as to the vital need for an urgent surgical operation having regard to the condition from which the insured person is suffering, and by their choice of treatment involving a transfer to a hospital situated in a State which is not a member of the European Union.

32 Second, the Spanish Government submits that, contrary to what is stated in the order for reference, Ms Keller's admission to the Zurich University Clinic resulted not from a decision to transfer her taken by the doctors of the Cologne University Clinic but from a personal initiative on the part of Ms Keller, who left the hospital in

which she was being treated against the advice of the German doctors. It follows, according to the Government, that the reference for a preliminary ruling is based on a purely hypothetical case, while the actual circumstances of the case at issue in the main proceedings do not in fact raise any question of interpretation of Community law.

33 In this regard, it must be recalled that, in proceedings under Article 234 EC, which are based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in the case is a matter for the national court. Similarly, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of Community law, the Court is in principle bound to give a ruling (see, inter alia, Case C-326/00 *IKA* [2003] ECR I-1703, paragraph 27).

34 In the present case, as is apparent from the account of the facts in the order for reference, the national court considered that Ms Keller's admission to the Zurich University Clinic followed from a decision of the doctors of the Cologne University Clinic taken after several examinations and a detailed analysis of the possibilities of treatment in relation to the patient's condition. The national court relies in this respect on the report of an ear-nose-and-throat surgeon which stated that, at the material time, the Zurich University Clinic was the only one in Europe capable of performing with a real chance of success the kind of operation necessitated by Ms Keller's condition.

35 As to the statement by Ms Keller produced by the Spanish Government in support of its assertions, in which she confirmed that she was leaving the Gummersbach Hospital voluntarily, on her own initiative and against the advice of the German

doctors, it relates not to her departure for Switzerland but to a temporary discharge of Ms Keller from the hospital in order to visit a member of her family, as is apparent from information in the documents produced by the heirs of Ms Keller in support of their reply to a written question from the Court, which was not contradicted at the hearing.

36 The Spanish Government's argument that the request for a preliminary ruling is purely hypothetical must therefore be rejected.

37 Third, the defendants in the main proceedings and the Spanish Government submit that Regulations No 1408/71 and No 574/72 cannot apply to the present case because the medical treatment at issue in the main proceedings was provided in Switzerland. The outcome of the main proceedings does not therefore depend on the interpretation of Community law, but is a matter exclusively for national law.

38 It must be observed on this point, however, that the mere fact that the treatment was given outside Community territory is not enough to exclude the application of those regulations, since the decisive criterion for their applicability is that the insured person concerned is affiliated to a social security scheme of a Member State (see, to that effect, Case 300/84 *van Roosmalen* [1986] ECR 3097, paragraph 30; Joined Cases 82/86 and 103/86 *Laborero and Sabato* [1987] ECR 3401, paragraph 25; and Case C-60/93 *Aldewereld* [1994] ECR I-2991, paragraph 14).

39 In the present case, Ms Keller was affiliated at the material time to the Spanish social security scheme and was the holder of forms issued by Insalud under Article 22 of

Regulation No 1408/71. The applicability in the main proceedings of Regulations Nos 1408/71 and 574/72 is therefore beyond doubt.

40 Whether the issue of a Form E 111 or E 112 by the competent institution means that that institution is required to bear the costs of medical treatment provided to the insured person in a non-member country depends on the proper interpretation of the provisions of Community law which are the subject of the questions referred by the national court.

Substance

Preliminary considerations

41 The context of the questions which have been referred is national legislation under which the insured person is entitled to reimbursement of the costs of medical treatment received, without prior consultation of bodies within the national health system, from bodies outside that system, where it is shown that that treatment met an urgent vital need.

42 Before answering the questions, it should be observed that, although the order for reference refers to the institution of the 'place of residence' to designate the German social security institution and the doctors authorised by that institution, it is common ground that at the material time Ms Keller was resident in the competent Member State, namely Spain. As the defendants in the main proceedings point out,

Ms Keller's presence in Germany at that time thus corresponds not to the case provided for in Article 19 of Regulation No 1408/71 but to that mentioned in Article 22 of that regulation. It follows that there is no need to answer the request for a preliminary ruling in so far as it relates to the interpretation of Article 19(1)(a) of Regulation No 1408/71.

The first question

43 By its first question, the national court essentially asks whether the issue by the competent institution of a Form E 111, necessary for the application of Article 22(1)(a)(i) of Regulation No 1408/71, or a Form E 112, necessary for the application of Article 22(1)(c)(i) of that regulation, means that that institution is bound by the diagnosis of doctors authorised by the institution of the Member State of stay as regards the existence of a life-threatening emergency necessitating immediate surgery, and by the decision of those doctors to transfer the insured person to a hospital establishment in the territory of a non-member country on the ground that that establishment, according to current medical knowledge, is the only one to perform the kind of operation required with a real chance of success.

44 To answer that question, reference should be made, as the Advocate General suggests in points 15 to 17 of his Opinion, to the objective pursued by Article 22 of Regulation No 1408/71 and the function of Forms E 111 and E 112 in the system established by that article.

45 In the context of the general objectives of the EC Treaty, Article 22 of Regulation No 1408/71 is one of a number of measures designed to allow a worker from one Member State to enjoy, under the conditions which it specifies, benefits in kind in the other Member States, whatever the national institution to which he is affiliated

and whatever the place of his residence (Case C-156/01 *Van der Duin and ANOZ Zorgverzekeringen* [2003] ECR I-7045, paragraph 50).

46 By guaranteeing that a person covered by social insurance under the legislation of one Member State whose state of health makes medical services immediately necessary during a stay in another Member State, or who has been authorised by the competent institution to go to another Member State to receive treatment there which is appropriate to his state of health, has access to treatment in that other Member State on reimbursement conditions as favourable as those enjoyed by insured persons covered by the legislation of that State, Article 22 of Regulation No 1408/71 helps to facilitate the free movement of persons covered by social insurance and, to the same extent, the provision of cross-frontier medical services between Member States (see Case C-368/98 *Vanbraekel and Others* [2001] ECR I-5363, paragraph 32, and Case C-56/01 *Inizan* [2003] ECR I-12403, paragraph 21).

47 As the Netherlands Government observes in its written observations, the achievement of the objective pursued by Article 22(1)(a)(i) and (c)(i) of Regulation No 1408/71 is based on a sharing of responsibilities between the competent institution and the institution of the Member State of stay.

48 The very wording of Article 22 of Regulation No 1408/71 shows, on the one hand, that it is for the competent institution to decide, in the case covered by paragraph 1 (c) of that article, on the grant of authorisation for the insured person to go to another Member State for medical purposes, to fix in accordance with its national legislation the duration of the provision of services in the Member State of stay, and to bear the cost of those services. On the other hand, it is for the institution of the

Member State of stay to provide those services in accordance with the provisions of the legislation it administers, as if the insured person concerned were affiliated to it.

49 In this context, Forms E 111 and E 112 are intended to assure the institution of the Member State of stay and the doctors authorised by that institution that the holders of those forms are entitled to receive in that Member State, during the period specified in the form, treatment whose cost will be borne by the competent institution.

50 It follows from that rule of sharing of responsibilities, in correlation with the Community measures relating to the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of medicine (see, in this respect, Case C-120/95 *Decker* [1998] ECR I-1831, paragraph 42, and Case C-158/96 *Kohll* [1998] ECR I-1931, paragraphs 47 and 48), that, once it has agreed, by issuing a Form E 111 or Form E 112, that one of its insured persons in one of the cases provided for in Article 22(1) of Regulation No 1408/71 may receive medical treatment outside the competent Member State, the competent institution is in the hands of the doctors authorised by the institution of the Member State of stay, acting within the scope of their office, who are called on to treat the insured person in the latter State, and it is obliged to accept and recognise the findings and choices of treatment made by those doctors as if they had been made by authorised doctors who would have had to treat the insured person in the competent Member State, subject to the existence of any abuse (see, by analogy, in the context of medical findings concerning the incapacity for work of a person covered by social insurance made by the institution of the Member State of residence or stay pursuant to Article 18 of Regulation No 574/72, Case C-206/94 *Paletta* [1996] ECR I-2357, paragraphs 24 to 28).

51 In the case referred to in Article 22(1)(a) of Regulation No 1408/71, the doctors established in the Member State of stay are clearly best placed to assess the state of health of the person concerned and the immediate treatment required by that state. In the case provided for in Article 22(1)(c) of Regulation No 1408/71, the authorisation issued by the competent institution implies that, during the period of validity of the authorisation, that institution places its confidence in the institution of the Member State in which it has allowed the insured person to stay for medical purposes, and in the doctors authorised by the latter institution.

52 It must be recalled in this respect that, as the Court has held in the field of the freedom to provide services, doctors established in other Member States must be regarded as providing the same guarantees of professional competence as doctors established within the country (see *Kohll*, paragraph 48).

53 Accordingly, where the competent institution, by issuing a Form E 111 or Form E 112, has agreed that one of its insured persons is to receive medical treatment outside the competent Member State, it is bound by the findings relating to the need for urgent vital treatment made by the doctors authorised by the institution of the Member State of stay (see, in an analogous sense, in the context of Article 19 of Regulation No 1408/71 and Article 18 of Regulation No 574/72, Case 22/86 *Rindone* [1987] ECR 1339, paragraphs 9 to 14, and Case C-45/90 *Paletta* [1992] ECR I-3423, paragraph 28).

54 Similarly, the competent institution is bound by the choice of treatment made by those doctors on the basis of their findings and in accordance with the current state of medical knowledge, including where that choice is to transfer the person concerned to another State to be given the urgent treatment necessitated by his

condition which it is not possible for the doctors in the Member State of stay to provide.

55 As the Advocate General observes in point 23 of his Opinion, it is of no importance for determining whether the competent institution is bound by such findings and decisions that the State to which those doctors have decided to transfer the patient is not a member of the European Union, since the choice of treatment thus made is, having regard to the considerations in points 47 to 52 above, within the competence of the doctors authorised by the institution of the Member State of stay and of that institution.

56 In those circumstances, and as the defendants in the main proceedings themselves conceded in their written observations, the person concerned, covered by a Form E 111 or E 112, cannot be required to return to the competent Member State to undergo a medical examination there, when doctors authorised by the institution of the Member State of stay consider that his state of health requires urgent vitally necessary treatment (see, to that effect, *Rindone*, paragraph 21).

57 Moreover, it cannot be argued, as the defendants in the main proceedings do, that the findings made and decisions on treatment taken by doctors authorised by the institution of the Member State of stay must be subject to the approval of the competent institution. Such an argument would amount to disregarding the rule of shared responsibilities which underlies Article 22(1)(a)(i) and (c)(i) of Regulation No 1408/71 and the principle of mutual recognition of doctors' professional skills, and would be contrary to the interests of patients who need urgent vitally necessary treatment.

58 It is significant in this respect, as Ms Keller observed in the main proceedings and the Netherlands Government did in its written observations, that while, in order to obtain benefits in kind such as the payment of a pension in accordance with Article 22(1)(a)(ii) of Regulation No 1408/71, an insured person staying in a Member State other than the competent Member State may, under Article 18(5) of Regulation No 574/72, be required by the competent institution to be examined by a doctor chosen by it, that institution is not, on the other hand, entitled to have such an examination carried out in the cases, relating to benefits in kind, referred to in Article 22(1)(a)(i) and (c)(i) of Regulation No 1408/71.

59 The Spanish Government submits that, since the authorisation referred to in Article 22(1)(c) of Regulation No 1408/71 is intended to allow the person concerned to go to another Member State 'to receive there' the treatment appropriate to his condition, the right conferred by point (c)(i) of that paragraph on an insured person in possession of a Form E 112 concerns solely the treatment provided in the Member State, identified in that form, which the competent institution has authorised him to go to for that purpose, to the exclusion of any treatment given him in another State.

60 However, where it turns out, in the course of the treatment undergone by the insured person in the territory of the Member State which he has been authorised by the competent institution to go to for medical purposes, that the condition with which he is diagnosed necessitates urgent treatment of vital importance which, in the present state of medical knowledge, the doctors authorised by the institution of that Member State consider can only be provided in an establishment in the territory of a State other than that Member State, Article 22(1)(c)(i) of Regulation No 1408/71 must be interpreted as meaning that the insured person's right to the benefits in kind provided by the institution of the Member State of stay includes the treatment provided in that establishment, on condition that, under the legislation administered by that institution, it is obliged to provide a person insured with it with the benefits in kind corresponding to such treatment.

61 The defendants in the main proceedings submit that the objective of planning and organising the provision of hospital care would be endangered if insured persons were allowed to have free access to health services in any State, including non-member countries.

62 While the Court has indeed held that such an objective may be justification for the assumption by the competent institution of the costs of hospital treatment received outside the competent Member State being subject to prior authorisation by that institution (see Case C-157/99 *Smits and Peerbooms* [2001] ECR I-5473, paragraphs 76 to 80, and Case C-385/99 *Müller-Fauré and Van Riet* [2003] ECR I-4509, paragraphs 76 to 82), considerations connected with that objective are not relevant, by contrast, where the competent institution has precisely consented, by issuing a Form E 111 or E 112, to one of its insured persons receiving hospital treatment outside the competent Member State.

63 In the light of the foregoing, the first question should be answered as follows:

— Article 22(1)(a)(i) and (c)(i) of Regulation No 1408/71 and Article 22(1) and (3) of Regulation No 574/72 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.

The second question

64 By its second question, the national court essentially asks the Court to determine the conditions and arrangements for assumption of the costs linked to medical treatment received in a non-member country in circumstances such as those mentioned in the preceding paragraph.

65 It should be recalled that, according to Article 22(1)(i) of Regulation No 1408/71, an insured person who is in one of the situations referred to in points (a) and (c) of that paragraph must in principle, for the period fixed by the competent institution, enjoy the benefits in kind provided on behalf of that institution by the institution of the Member State of stay, in accordance with the provisions of the legislation it administers, as if the insured person were insured with it (see *Vanbraekel and Others*, paragraph 32, and *Inizan*, paragraph 20).

66 The right thus conferred on the insured person consequently means that the cost of the treatment given is initially borne by the institution of the Member State of stay, in accordance with the legislation it administers, and the competent institution is subsequently to reimburse the institution of the Member State of stay under the conditions laid down in Article 36 of Regulation No 1408/71 (see *Vanbraekel and Others*, paragraph 33, and *Inizan*, paragraphs 20, 22 and 23).

67 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, provided that the institution of the Member State of stay has no reason seriously to doubt the correctness of that medical decision, the cost of the treatment given in that State is to be borne by that institution in accordance with the legislation it administers, 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 competent institution to assume 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.

68 As to the argument of the defendants in the main proceedings concerning the need to control social security expenditure, it must be observed that the fact that the medical treatment is provided outside the Member State of stay does not put the competent institution in a different situation from that in which the same treatment could have been provided in that Member State, since the legislation applicable and

any consequent limits on reimbursement are, in both cases, those of the Member State of stay (see, by analogy, *Decker*, paragraphs 38 to 40, and *Kohll*, paragraphs 40 to 42).

69 It should also be added that both the effectiveness and the spirit of the Community provisions at issue require the conclusion that, where it is established that the person concerned would have been entitled to have the cost of medical treatment received in a non-member country borne by the institution of the Member State of stay (see paragraphs 25 and 26 above) and that 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)(a)(i) and (c)(i) of Regulation No 1408/71 had been applied (see, to that effect, *Vanbraekel and Others*, paragraph 34, and *IKA*, paragraph 61).

70 In the light of the foregoing, the answer to the second question should be:

— 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.

71 In those circumstances, there is no need to answer the request for a preliminary ruling in so far as it relates to the interpretation of Article 3 of Regulation No 1408/71.

Costs

72 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) rules as follows:

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.

[Signatures]