



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

5 June 2014*

(Reference for a preliminary ruling — Social security — Regulation (EC) No 883/2004 — Articles 19(1) and 20(1) and (2) — Regulation (EC) No 987/2009 — Article 11 — National of a Member State insured in his State of residence — Sudden serious illness occurring while on holiday in another Member State — Person compelled to remain in that second Member State for 11 years as a result of his illness and the fact that specialist medical care is available close to the place where he lives — Provision of benefits in kind in the second Member State — Definition of ‘residence’ and ‘stay’)

In Case C-255/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 3 May 2013, received at the Court on 13 May 2013, in the proceedings

I

v

Health Service Executive,

THE COURT (Fourth Chamber),

Composed of L. Bay Larsen, President of the Chamber, M. Safjan (Rapporteur), J. Malenovský, A. Prechal and K. Jürimäe, Judges,

Advocate General: N. Wahl,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 29 January 2014,

after considering the observations submitted on behalf of:

- I, by F. Callanan, SC, L. McCann, SC, and G. Burke, Barrister, instructed by C. Callanan, Solicitor,
- the Health Service Executive, by S. Murphy, SC, instructed by Arthur Cox, Solicitors,
- Ireland, by A. Joyce and E. Mc Phillips, acting as Agents, and G. Gilmore, Barrister,
- the Greek Government, by T. Papadopoulou, acting as Agent,
- the Netherlands Government, by M. Bulterman and C. Schillemans, acting as Agents,

* Language of the case: English.

— the European Commission, by D. Martin and J. Tomkin, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 20 March 2014,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 19(1) and 20(1) and (2) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1; corrigendum OJ 2004 L 200, p. 1).
- 2 The request has been made in proceedings between I, an Irish national, and the Health Service Executive ('HSE') concerning the latter's refusal to grant the applicant a further renewal of Form E 112 to cover the costs of medical treatment which he is receiving in Germany.

Legal framework

Regulation (EEC) No 1408/71

- 3 Council Regulation (EEC) No 1408/71 of 14 June 1971 of the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ English Special Edition 1971 (II), p. 416) was replaced by Regulation No 883/2004.
- 4 In accordance with Article 91 of Regulation No 883/2004 and Article 97 of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation No 883/2004 (OJ 2009 L 284, p. 1), Regulation No 883/2004 became applicable on 1 May 2010, when Regulation No 1408/71 was repealed.
- 5 Article 1 of Regulation No 1408/71 contains the following definitions:

'For the purpose of this Regulation:

...

(h) "residence" means habitual residence;

(i) "stay" means temporary residence;

...'

- 6 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', provided in paragraph 1 thereof as follows:

'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

(b) who, having become entitled to benefits chargeable to the competent institution, is authorised by that institution to return to the territory of the Member State where he resides, or to transfer his residence to 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 or residence 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;

(ii) to cash benefits provided by the competent institution in accordance with the provisions of the legislation which it administers. However, by agreement between the competent institution and the institution of the place of stay or residence, such benefits may be provided by the latter institution on behalf of the former, in accordance with the provisions of the legislation of the competent State.'

Regulation (EEC) No 574/72

7 Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71 (OJ English Special Edition 1972, p. 160) was replaced by Regulation No 987/2009, which, pursuant to Article 1 thereof, became applicable on 1 May 2010.

8 Article 21 of Regulation No 574/72, entitled 'Benefits in kind in the case of a stay in a Member State other than the competent State — Workers other than those covered by Article 20 of the Implementing Regulation or self-employed persons', provides in paragraph 1 thereof as follows:

'In order to receive benefits in kind under Article 22(1)(a)(i) of ... Regulation [No 1408/71] ..., an employed or self-employed person shall submit to the institution of the place of stay a certified statement testifying that he is entitled to benefits in kind. Such certified statement, which shall be issued by the competent institution at the request of the person concerned, if possible before he leaves the territory of the Member State in which he resides, shall specify in particular, where necessary, the maximum period during which benefits in kind may be granted, in accordance with the legislation of the competent State. If the person concerned does not submit the said certified statement, the institution of the place of stay shall obtain it directly from the competent institution.'

9 On the basis of Article 2(1) of Regulation No 574/72, the Administrative Commission on Social Security for Migrant Workers — set up pursuant to Article 80(1) of Regulation No 1408/71 — drew up a model for the certificate relating to the application of Article 22(1)(a)(i) of Regulation No 1408/71, namely, form E 111. Form E 111 was replaced, with effect from 1 June 2004, by the 'European health insurance card'.

10 Moreover, the Administrative Commission drew up a model for the certificate relating to the application of Article 22(1)(c)(i) of Regulation No 1408/71, namely 'Form E 112'. Form E 112 was replaced, with effect from 1 May 2010, by Form S 2.

Regulation No 883/2004

11 Recitals 3 and 15 in the preamble to Regulation No 883/2004 are worded as follows:

‘(3) [Regulation No 1408/71] been amended and updated on numerous occasions in order to take into account not only developments at Community level, including judgments of the Court of Justice, but also changes in legislation at national level. Such factors have played their part in making the Community coordination rules complex and lengthy. Replacing, while modernising and simplifying, these rules is therefore essential to achieve the aim of the free movement of persons.

...

(15) It is necessary to subject persons moving within the Community to the social security scheme of only one single Member State in order to avoid overlapping of the applicable provisions of national legislation and the complications which could result therefrom.’

12 Article 1 of Regulation No 883/2004, entitled ‘Definitions’, provides as follows:

‘For the purposes of this Regulation:

...

(j) “residence” means the place where a person habitually resides;

(k) “stay” means temporary residence;

...

(va) “benefits in kind” means:

(i) for the purposes of Title III, Chapter 1 (sickness, maternity and equivalent paternity benefits), benefits in kind provided for under the legislation of a Member State which are intended to supply, make available, pay directly or reimburse the cost of medical care and products and services ancillary to that care. This includes long-term care benefits in kind;

...’

13 Article 11 of Regulation No 883/2004, which forms part of Title II, entitled ‘Determination of the legislation applicable’, provides in paragraphs 1 and 3 thereof as follows:

‘1. Persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. Such legislation shall be determined in accordance with this Title.

...

3. Subject to Articles 12 to 16:

(a) a person pursuing an activity as an employed or self-employed person in a Member State shall be subject to the legislation of that Member State;

(b) a civil servant shall be subject to the legislation of the Member State to which the administration employing him/her is subject;

- (c) a person receiving unemployment benefits in accordance with Article 65 under the legislation of the Member State of residence shall be subject to the legislation of that Member State;
- (d) a person called up or recalled for service in the armed forces or for civilian service in a Member State shall be subject to the legislation of that Member State;
- (e) any other person to whom subparagraphs (a) to (d) do not apply shall be subject to the legislation of the Member State of residence, without prejudice to other provisions of this Regulation guaranteeing him/her benefits under the legislation of one or more other Member States.’
- 14 Articles 19 and 20 of Regulation No 883/2004 are in Title III, entitled ‘Special provisions concerning the various categories of benefits’, and form part of Chapter I of Title III, concerning sickness, maternity and equivalent paternity benefits.
- 15 Article 19 of Regulation No 883/2004, entitled ‘Stay outside the competent Member State’, provides in paragraph 1 thereof as follows:
- ‘... an insured person and the members of his/her family staying in a Member State other than the competent Member State shall be entitled to the benefits in kind which become necessary on medical grounds during their stay, taking into account the nature of the benefits and the expected length of the stay. These benefits shall be provided on behalf of the competent institution by the institution of the place of stay, in accordance with the provisions of the legislation it applies, as though the persons concerned were insured under the said legislation’.
- 16 Article 20 of Regulation No 883/2004, entitled ‘Travel with the purpose of receiving benefits in kind — Authorisation to receive appropriate treatment outside the Member State of residence’, is worded in paragraphs 1 and 2 thereof as follows:
- ‘1. Unless otherwise provided for by this Regulation, an insured person travelling to another Member State with the purpose of receiving benefits in kind during the stay shall seek authorisation from the competent institution.
2. An insured person who is authorised by the competent institution to go to another Member State with the purpose of receiving the treatment appropriate to his/her condition shall receive the 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 it applies, as though he/she were insured under the said legislation. The authorisation shall be accorded where the treatment in question is among the benefits provided for by the legislation in the Member State where the person concerned resides and where he/she cannot be given such treatment within a time limit which is medically justifiable, taking into account his/her current state of health and the probable course of his/her illness.’

Regulation No 987/2009

- 17 Recital 11 in the preamble to Regulation No 987/2009 is worded as follows:

‘Member States should cooperate in determining the place of residence of persons to whom this Regulation and Regulation ... No 883/2004 apply and, in the event of a dispute, should take into consideration all relevant criteria to resolve the matter. These may include criteria referred to in the appropriate Article of this Regulation.’

18 Article 11 of Regulation No 987/2009, entitled ‘Elements for determining residence’, states as follows:

‘1. Where there is a difference of views between the institutions of two or more Member States about the determination of the residence of a person to whom ... Regulation [No 883/2004] applies, these institutions shall establish by common agreement the centre of interests of the person concerned, based on an overall assessment of all available information relating to relevant facts, which may include, as appropriate:

(a) the duration and continuity of presence on the territory of the Member States concerned;

(b) the person’s situation, including:

(i) the nature and the specific characteristics of any activity pursued, in particular the place where such activity is habitually pursued, the stability of the activity, and the duration of any work contract;

(ii) his family status and family ties;

(iii) the exercise of any non-remunerated activity;

(iv) in the case of students, the source of their income;

(v) his housing situation, in particular how permanent it is;

(vi) the Member State in which the person is deemed to reside for taxation purposes.

2. Where the consideration of the various criteria based on relevant facts as set out in paragraph 1 does not lead to agreement between the institutions concerned, the person’s intention, as it appears from such facts and circumstances, especially the reasons that led the person to move, shall be considered to be decisive for establishing that person’s actual place of residence.’

19 Paragraph 5 of Decision H1 of the Administrative Commission for the coordination of social security systems of 12 June 2009 concerning the framework for the transition from Council Regulations No 1408/71 and No 574/72 to Regulations No 883/2004 and No 987/2009 of the European Parliament and of the Council and the application of Decisions and Recommendations of the Administrative Commission for the coordination of social security systems (OJ 2010 C 106, p. 13) provides as follows:

‘The documents necessary for application of Regulations ... No 1408/71 and ... No 574/72 (that is, E-forms, European Health Insurance Cards and Provisional Replacement Certificates) issued by the competent institutions, authorities and other bodies of Member States before the entry into force of Regulations ... No 883/2004 and ... No 987/2009 shall continue to be valid (despite the fact that the references relate to Regulations ... No 1408/71 and ... No 574/72) and shall be taken into account by the institutions, authorities and other bodies of other Member States even after that date, until their date of validity has expired or until they are withdrawn or replaced by the documents issued or communicated under Regulations ... No 883/2004 and ... No 987/2009.’

20 Paragraph 6 of that decision provides that the decision is to apply from the date of entry into force of Regulation No 987/2009, namely 1 May 2010.

The dispute in the main proceedings and the question referred for a preliminary ruling

- 21 It is apparent from the order for reference and the documents submitted to the Court that I is a 56-year old Irish national who has worked in both Ireland and the United Kingdom.
- 22 In August 2002, when he was resident in Ireland, I travelled to Germany for the purpose of holidaying there with his partner, Ms B, a Romanian national. While on holiday, I was admitted as an emergency patient to the Universitätsklinikum Düsseldorf (Germany), where he was diagnosed as suffering from a rare, bilateral infarctus to his brain stem. Since that time, I has been suffering from severe quadriplegia and loss of motor function.
- 23 Shortly after the onset of that illness, I was found to have a genetic mutation which adversely affects the composition of his blood. Furthermore, since the opening of the main proceedings, I has been diagnosed as suffering from cancer and is also receiving treatment for this.
- 24 In view of the serious nature of his state of health, I has been receiving, since August 2002, constant care and attention from the consultants attached to the Universitätsklinikum Düsseldorf. He is completely wheelchair bound. Since he was discharged from hospital in 2003, I has lived in Düsseldorf with Ms B., who has looked after and cared for him. They live in an apartment which they rent and which is adapted for wheelchair use.
- 25 I applied to the Irish Minister for Social Protection for a disability allowance, which was initially refused on the ground that he was not habitually resident in Ireland. He commenced judicial review proceedings in 2008 and these were compromised. The Minister in question reviewed her decision and I's application was allowed. He has been in receipt of disability allowance since that time. According to the High Court, that allowance must be regarded as a cash benefit, which, under the applicable European Union ('EU') social security regulations, Ireland is entitled legitimately to confine to those who are resident there.
- 26 I also receives a small occupational pension awarded by the United Kingdom of Great Britain and Northern Ireland as a result of his earlier employment in that Member State. He does not receive any allowance or benefit in Germany.
- 27 Ms B., who had worked in Germany, accepted redundancy in 2004 in order to become I's full-time carer. She receives unemployment benefit from the Federal Republic of Germany. Moreover, according to the order for reference, she applied for a carer's allowance, which, in Germany, is a charge on the health insurance costs of the person cared for. That application was refused on the ground that I is an Irish resident and the Irish social security system does not provide for such an allowance.
- 28 The High Court points out that, although I is deeply grateful to the German health care system, he is compelled to live in Germany due to his medical condition and the necessity for ongoing medical treatment. In that regard, the High Court refers to the limited connections which I has established with the Federal Republic of Germany. He does not have a bank account in Germany and does not own any property in that Member State, whereas his bank account is with an Irish bank and he remains in regular contact with his two children, who were born in 1991 and 1994 respectively, and who live in Ireland. I does not speak German and has made no effort to integrate in Germany.
- 29 According to the order for reference, I would like to return to Ireland, which is contingent on a number of matters, including his fitness to travel, the availability of a medical treatment regime equivalent to that provided in Germany and, in particular, the availability of suitable wheelchair-adapted accommodation. Were this possible, Ms B. would go with him to Ireland.

- 30 Since the onset of his illness, I has been able to travel abroad on a few occasions, albeit for short periods and under medical supervision. He thus travelled to Lisbon (Portugal) to give a lecture in October 2004. He has also travelled to Ireland on a few occasions, most recently in 2009. This was achieved with considerable difficulty because of the difficulties associated with negotiating access through airports for such a severely disabled traveller. It is accepted by the parties to the main proceedings that it would be all but impossible for I to travel to Ireland, at least if he were confined to travelling by scheduled airlines.
- 31 The costs of the health care provided to I in Germany were initially covered by Form E 111, which relates to the situation of an insured person whose condition necessitates immediate benefits during a stay in the territory of a Member State other than the State of residence, that form having been issued by Ireland. That form is now covered by Article 19 of Regulation No 883/2004.
- 32 In March 2003, the HSE altered I's status by granting him treatment, from that point, pursuant to Form E 112. Accordingly, he was authorised by the competent institution to go to another Member State with the purpose of receiving treatment appropriate to his condition. That form, which is now covered by Article 20 of Regulation No 883/2004, has been renewed some 20 times since that date.
- 33 On 25 November 2011, the HSE refused to grant I a further renewal of Form E 112 on the ground that he is now resident in the Federal Republic of Germany. On 5 December 2011, I brought judicial review proceedings before the High Court seeking a mandatory order compelling the HSE to continue to grant him treatment pursuant to that form.
- 34 The HSE has indicated that, in view of I's very particular situation, it will continue to cover on an ex gratia basis the costs of the health care provided to him pursuant to Form E 106, which relates to entitlement to sickness/maternity insurance benefits in kind in the case of persons resident in a State other than the competent State.
- 35 The High Court is of the view that there is some doubt as to whether, under EU legislation concerning medical treatment received abroad, a person covered by insurance for social security purposes who is compelled to stay in a Member State by reason of an extremely serious medical condition may 'stay' in that State for the purposes of Articles 19 or 20 of Regulation No 883/2004.
- 36 The High Court considers that, while many of the factors referred to in Article 11 of Regulation No 987/2009 might suggest a different outcome, I should nevertheless be regarded, in the light of the purpose and objectives of that provision, as 'staying' in Germany.
- 37 In those circumstances, the High Court decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:
- 'Is an insured citizen of a Member State ("the First Member State") who has been gravely ill for over 11 years as a result of a serious medical condition which first manifested itself when that person was resident in the First Member State but was on holiday in another Member State ("the Second Member State") to be regarded as "staying" in that Second Member State for that period for the purposes of either Article 19(1) ... or, alternatively, Article 20(1) and Article 20(2) of Regulation No 883/2004 ... where the person in question has been effectively compelled by reason of his acute medical illness and the convenient proximity of specialist medical care physically to remain in that Member State for that period?'
- 38 By letter of 15 May 2014, the referring court informed the Court of Justice that the applicant died on 7 April 2014. It also indicated in that letter that it intended to proceed with the question referred, on the ground that an answer to the question was necessary for the purposes of the national proceedings. In those circumstances, it is necessary to answer the question referred by the High Court.

Consideration of the question referred

- 39 By its question, the High Court asks, in essence, whether Article 1(j) and (k) of Regulation No 883/2004 is to be interpreted as meaning that, for the purposes of Article 19(1) or 20(1) and (2) of that regulation, where an EU national who was resident in one Member State suffers a sudden serious illness while on holiday in a second Member State and is compelled to remain in the latter State for 11 years as a result of that illness and the fact that specialist medical care is available close to the place where he lives, such a person may be regarded as ‘staying’ in the second Member State.
- 40 First, it is settled case-law that Regulation No 1408/71 established a system for the coordination of national social security schemes and lay down, in Title II thereof, rules governing the determination of the legislation to be applied. Those rules were intended not only to ensure that the persons concerned are not left without social security cover because there is no legislation which is applicable to them, but also to ensure that the persons concerned are subject to the social security scheme of only one Member State, so that the complications arising from more than one system of national legislation being applicable are avoided (see, to that effect, Case C-589/10 *Wencel* EU:C:2013:303, paragraphs 45 and 46 and the case-law cited).
- 41 While, as indicated in recital 3 in the preamble thereto, Regulation No 883/2004 is intended to modernise and simplify the rules for the coordination of national social security legislation, it maintains the same objectives as those of Regulation No 1408/71.
- 42 The system introduced by Regulation No 1408/71 used the residence of the person concerned as one of the connecting factors for the determination of the legislation applicable (see, to that effect, *Wencel*, EU:C:2013:303, paragraph 48). The same applies as regards Regulation No 883/2004.
- 43 According to Article 1(j) of Regulation No 883/2004, the term ‘residence’ refers to the place where a person habitually resides. That term has an autonomous meaning specific to EU law (see, by analogy, Case C-90/07 *Swaddling* EU:C:1999:96, paragraph 28).
- 44 As the Court has held in relation to Regulation No 1408/71, where a connection may be established between a person’s legal situation and the legislation of a number of Member States, the concept of the Member State in which a person resides refers to the State in which that person habitually resides and where the habitual centre of his interests is to be found (see Case 13/73 *Hakenberg* EU:C:1973:92, paragraph 32; *Swaddling* EU:C:1999:96, paragraph 29; and *Wencel* EU:C:2013:303, paragraph 49).
- 45 In that context, account should be taken in particular of the family situation of the person concerned; the reasons which have led him to move; the length and continuity of his residence; the fact (where this is the case) that he is in stable employment; and his intention as it appears from all the circumstances (see, to that effect, Case C-102/91 *Knoch* EU:C:1992:303, paragraph 23, and *Swaddling* EU:C:1999:96, paragraph 29).
- 46 The list of factors to be taken into account in determining a person’s place of residence, as developed by case-law, is now codified in Article 11 of Regulation No 987/2009. As the Advocate General observed at point 32 of his Opinion, that list, which is not exhaustive, does not establish any order of precedence for the various criteria set out in Article 11(1).
- 47 It is apparent from the foregoing that, for the purposes of the application of Regulation No 883/2004, a person cannot have simultaneously two habitual residences in two different Member States (see, to that effect, *Wencel* EU:C:2013:303, paragraph 51), given that, under that regulation, an insured person’s place of residence is necessarily different from his place of stay.

- 48 In that regard, since the determination of the place of residence of a person who is covered by insurance for social security purposes must be based on a whole range of factors, the simple fact that such a person has remained in a Member State, even continuously over a long period, does not necessarily mean that he resides in that State within the meaning of Article 1(j) of Regulation No 883/2004.
- 49 Indeed, the length of residence in the Member State in which payment of a benefit is sought cannot be regarded as an intrinsic element of the concept of residence within the meaning of Regulation No 1408/71 (see, to that effect, *Swaddling* EU:C:1999:96, paragraph 30).
- 50 It is true that Article 1(k) of Regulation No 883/2004 defines ‘stay’ as ‘temporary’ residence. However, as observed by the Advocate General at points 43 to 46 of his Opinion, such a ‘stay’ does not necessarily involve a visit of short duration.
- 51 First, as is apparent from the wording of Article 1(va)(i) of Regulation No 883/2004, Articles 19 and 20 of that regulation are applicable to benefits in kind, including ‘long-term care’ benefits in kind. Consequently, a person may be regarded as staying in another Member State even if he is in receipt of benefits over a long period.
- 52 Second, whereas Article 22(1)(i) of Regulation No 1408/71 provided that the length of the period during which benefits were provided was to be governed by the legislation of the competent State, that rule no longer appears in Article 19(1) or Article 20(1) and (2) of Regulation No 883/2004, which have essentially replaced Article 22(1)(a) to (i) of Regulation No 1408/71.
- 53 The mere fact that I stayed in Germany for 11 years is not therefore sufficient in itself alone for him to be regarded as having been resident in that Member State.
- 54 For the purpose of determining I’s habitual centre of interests, the national court must take account of all the relevant criteria, in particular those identified in Article 11(1) of Regulation No 987/2009, as well as, in accordance with Article 11(2) of that regulation, the intention of the person concerned as to his actual place of residence. That intention must be assessed in the light of the objective facts and circumstances of the case in the main proceedings; a mere declaration of intention to reside in a particular place is not, in itself, sufficient for the purpose of the application of Article 11(2).
- 55 In preliminary ruling proceedings, although it is ultimately for the national court to assess the facts, the Court of Justice, which is called on to provide answers of use to the national court, may nevertheless provide guidance based on the documents in the file and on the written and oral observations which have been submitted to it, in order to enable the national court to give judgment (see, to that effect, Case C-381/99 *Brunnhofer* EU:C:2001:358, paragraph 65, and Case C-191/12 *Alakor Gabonatermelő és Forgalmazó* EU:C:2013:315, paragraph 31).
- 56 The factors to be taken into account by the national court for the purpose of applying Article 1(j) and (k) of Regulation No 883/2004 include, in particular, the fact that, although I lived in Germany for a long time, that situation does not reflect a personal choice on his part, since, according to the actual wording of the question referred, he was compelled ‘by reason of his acute medical illness and the convenient proximity of specialist medical care physically to remain in that Member State for that period’.
- 57 In the present case, it is for the national court to verify whether, having regard to the circumstances of the main proceedings, I was fit to travel and whether medical treatment equivalent to that he was receiving in Germany was available in Ireland.

- 58 In addition to the information set out in the order for reference, it should be noted that at the hearing, in response to a question put by the Court, I stated that he had no connection with the German tax system and that he was resident for tax purposes in Ireland, even though he did not pay any tax there as he had no income, apart from a disability allowance paid by Ireland and a small pension awarded by the United Kingdom.
- 59 In the light of the foregoing considerations, the answer to the question referred is that Article 1(j) and (k) of Regulation No 883/2004 must be interpreted as meaning that, for the purpose of Article 19(1) or Article 20(1) and (2) of that regulation, where a European Union national who was resident in one Member State suffers a sudden serious illness while on holiday in a second Member State and is compelled to remain in the latter State for 11 years as a result of that illness and the fact that specialist medical care is available close to the place where he lives, such a person must be regarded as ‘staying’ in the second Member State if the habitual centre of his interests is in the first Member State. It is for the national court to determine the habitual centre of such a person’s interests by carrying out an assessment of all the relevant facts and taking into account that person’s intention, as may be discerned from those facts, the mere fact that that person has remained in the second Member State for a long time not being sufficient in itself alone for him to be regarded as residing in that Member State.

Costs

- 60 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 (Fourth Chamber) hereby rules:

Article 1(j) and (k) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems must be interpreted as meaning that, for the purpose of Article 19(1) or Article 20(1) and (2) of that regulation, where a European Union national who was resident in one Member State suffers a sudden serious illness while on holiday in a second Member State and is compelled to remain in the latter State for 11 years as a result of that illness and the fact that specialist medical care is available close to the place where he lives, such a person must be regarded as ‘staying’ in the second Member State if the habitual centre of his interests is in the first Member State. It is for the national court to determine the habitual centre of such a person’s interests by carrying out an assessment of all the relevant facts and taking into account that person’s intention, as may be discerned from those facts, the mere fact that that person has remained in the second Member State for a long time not being sufficient in itself alone for him to be regarded as residing in that Member State.

[Signatures]