JUDGMENT OF THE COURT (First Chamber)

15 June 2006 *

In Case C-466/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunal Superior de Justicia de Cantabria (Spain), made by decision of 1 October 2004, received at the Court on 3 November 2004, in the proceedings

Manuel Acereda Herrera

v

Servicio Cántabro de Salud,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, K. Schiemann, N. Colneric, K. Lenaerts (Rapporteur) and E. Juhász, Judges,

* Language of the case: Spanish.

Advocate General: L.A. Geelhoed,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 24 November 2005,

after considering the observations submitted on behalf of:

— the Spanish Government, by E. Braquehais Conesa and J.M. Rodríguez Cárcamo, acting as Agents,

— the Belgian Government, by M. Wimmer, acting as Agent,

— Ireland, by D. O'Hagan, acting as Agent, and N. Hyland BL,

— the Cypriot Government, by C. Lycourgos, acting as Agent,

— the Polish Government, by E. Buczkowska and T. Nowakowski, acting as Agents,

— the Finnish Government, by T. Pynnä, acting as Agent,

— the United Kingdom Government, by S. Nwaokolo, acting as Agent, and S. Lee, Barrister,

— the Commission of the European Communities, by R. Vidal and D. Martin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 January 2006,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 22 and 36 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 (OJ, English Special Edition 1971 (II), p. 416), as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1) ('Regulation No 1408/71'), and the interpretation of Articles 10 EC, 12 EC, 49 EC, 81 EC, 82 EC, 87 EC and 249 EC.

2 The reference was made in the course of proceedings stemming from the refusal of the Servicio Cántabro de Salud (the public health service of the Autonomous Community of Cantabria, 'the CHS') to pay the travel, accommodation and subsistence costs incurred by Mr Acereda Herrera, a Spanish resident, for hospital treatment received in France, and the costs incurred by a member of his family who accompanied him.

Legal context

Community legislation

3 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', states:

'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;

(ii) to cash benefits provided by the competent institution in accordance with the provisions of the legislation which it administers. ...

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 resided 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.

...'

4 Article 23 of Regulation No 1408/71 reads as follows:

'1. The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on average earnings or on average contributions shall determine such average earnings or contributions exclusively by reference to earnings or contributions completed under the said legislation.

2. The competent institution of a Member State whose legislation provides that the calculation of cash benefits shall be based on standard earnings shall take account exclusively of the standard earnings or, where appropriate, of the average of standard earnings for the periods completed under the said legislation.

3. The competent institution of a Member State under whose legislation the amount of cash benefits varies with the number of members of the family shall also take into account the members of the family of the person concerned who are resident in the territory of another Member State as if they were resident in the territory of the competent State.'

5 Article 36 of Regulation No 1408/71 provides:

'1. 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.'

6 Under the chapter dealing with accidents at work and occupational diseases, Article 59 of Regulation No 1408/71, entitled 'Costs of transporting a person who has sustained an accident at work or is suffering from an occupational disease', reads as follows:

'1. The competent institution of a Member State whose legislation provides for meeting the costs of transporting a person who has sustained an accident at work or is suffering from an occupational disease, either to his place of residence or to a hospital, shall meet such costs to the corresponding place in the territory of another Member State where the person resides, provided that that institution gives prior authorisation for such transport, duly taking into account the reasons justifying it. Such authorisation shall not be required in the case of a frontier worker.

2. The competent institution of a Member State whose legislation provides for the costs of transporting the body of a person killed in an accident at work to the place of burial shall, in accordance with the provisions of the legislation which it administers, meet such costs to the corresponding place in the territory of another Member State, where the person was residing at the time of the accident.'

7 In accordance with Articles 18 and 24 of 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 (I), p. 159), as amended and updated by Regulation No 118/97 ('Regulation No 574/72'), the drawing of cash benefits under Article 22(1)(c)(ii) of Regulation No 1408/71 is, as a general rule, contingent on submitting 'a notification of having ceased work or, if the legislation administered by the competent institution or by the institution of the place of residence so provides, a certificate of incapacity for work issued by the doctor providing treatment for the person concerned'.

8 As appears 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 No 1408/71 and No 574/72 (E 001, E 103 to E 127) (OJ 1994 L 244, p. 22), Form E 112 is the documentation required for the application of Article 22(1)(c)(i) of Regulation No 1408/71.

National legislation

9 On the date of the entry into force of Regulation No 1408/71 in Spain, namely 1 January 1986, the issue of medical treatment provided by services outside the Spanish national health service was governed by Article 18 of Decree No 2766/1967 of 16 November 1967 regulating medical treatment and organisation of the medical services of the general social security scheme (BOE No 354 of 28 November 1967, p. 16425).

10 In substance, that article provided that an insured person who decided to use services other than those to which he had been referred by the competent body did not, as a rule, have any right to recover the costs incurred (Article 18(1)). Exceptionally, provision was made for entitlement to reimbursement where either

the body in question had 'refused, without justification,' to provide the individual concerned with the treatment his medical condition required (Article 18(3)), or use of services outside the national health service had been dictated by 'an urgent need for life-saving treatment' (Article 18(4)).

11 So far as indicated by the national court, the costs for which reimbursement was provided under Article 18(3) and (4) of Decree No 2766/1967 included, in accordance with the national case-law and the administrative practice of the authorities responsible for the Spanish national health service, the travel, accommodation and subsistence costs incurred by insured persons and, where appropriate, by the persons required to accompany them on account of their medical condition.

12 The national court explains that, when Regulation No 1408/71 entered into force in Spain, entitlement to reimbursement of those costs was extended to the situations covered by Article 22(1)(a) and (c) of that regulation on the ground that the first of those situations could be incorporated into that covered by Article 18(4) of Decree No 2766/1967 and the second into that covered by Article 18(3) thereof.

13 Article 18 was repealed and replaced by Article 5 of Royal Decree No 63/1995 of 20 January 1995 on the provision of treatment under the national health service (BOE No 35 of 10 February 1995, p. 4538).

14 Under that Article 5, meeting the costs of expenses linked to medical treatment administered outside the framework of the national health service was henceforth only possible 'in cases where immediate, urgent, life-saving treatment was provided outside the national health service' and in so far as it could be proven that 'it was not possible to use the services of that system in sufficient time and this exception had not been used inappropriately or abusively' (Article 5(3)).

15 So far as is indicated by the decision making the reference, the effect of the legislative amendment referred to in the preceding paragraph was to abolish the entitlement, formerly laid down in Article 18(3) of Decree No 2766/1967, to reimbursement of medical expenses in the case where there was an unjustified refusal of the competent institution to provide the treatment to the individual concerned. Consequently, since that amendment, there is no longer any connecting factor between the case covered by Article 22(1)(c) of Regulation No 1408/71, which had been incorporated into that situation, and the national legislation on the reimbursement of travel, accommodation and subsistence costs in relation to hospital treatment in another Member State. By contrast, reimbursement of such expenses remains possible in the case covered by Article 22(1)(a) of Regulation No 1408/71, because of the incorporation of that case into the situation covered by Article 5(3) of Royal Decree No 63/1995.

The factual background to the dispute in the main proceedings and the questions referred for a preliminary ruling

16 Mr Acereda Herrera is insured as a self-employed worker with the Spanish national health service.

17 In July 2002 he was urgently admitted to a hospital attached to the CHS, where he was diagnosed with a serious illness for which he received treatment in that hospital.

18 Taking the view that, in the light of his medical condition, there were shortcomings in the treatment received, Mr Acereda Herrera requested the competent institution on 19 August 2002 to issue a Form E 112 to enable him to receive treatment in a hospital in France.

19 On 17 January 2003 he was issued with that form, which was valid for one year. The CHS met the cost of the hospital treatment administered in France.

20 In the course of that treatment, Mr Acereda Herrera travelled to France on several occasions, accompanied by a member of his family on account of his fragile health. He claimed reimbursement of the travel, accommodation and subsistence costs occasioned by those visits from the CHS. Those costs totalled EUR 19 594.

21 The CHS refused that claim. Mr Acereda Herrera brought an action against that refusal before the Juzgado de lo Social n° 1 de Santander (Santander Social Court No 1), which dismissed that action by a ruling of 17 November 2003.

22 Mr Acereda Herrera appealed against that ruling to the Tribunal Superior de Justicia de Cantabria (Cantabrian High Court of Justice).

23 Since it had doubts as to the interpretation of Community law, the Tribunal Superior de Justicia de Cantabria decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 22(1)(c) and (2) and Article 36 of ... Regulation [No 1408/71] be interpreted as meaning that the authorisation, granted by the competent institution, to go to the territory of another Member State to receive there the appropriate medical treatment also confers on the individual concerned the right to be reimbursed, by the institution which granted the authorisation, for the costs of travel to, and accommodation and/or subsistence on, the territory of the Member State in question?

(2) In the event that the reply to the first question is in the affirmative: is there a provision or rule of Community law in accordance with which the costs to be refunded, and their amount, must be set?

(3) In the event that the reply to the first question is in the negative: is it compatible with the division of powers between the Member States and the institutions of the Community laid down in the Treaty establishing the European Community, and in particular with Article 10 EC ... and with the legal status of Community regulations laid down in Article 249 EC ... for a Member State to implement the provisions of a Community regulation by domestic law, adopting additional provisions which supplement those of the regulation and by means of which it introduces different rules for different cases which, under the regulation, are governed by the same rules, thereby impeding the exercise by individuals of certain options and rights available to them under the Community provision? Specifically, is it compatible with the Treaty establishing the European Community, and with ... Regulation [No 1408/71], for the Kingdom of Spain to maintain provisions of domestic law which confer on individuals registered with the social security scheme benefit rights additional to those referred to in Article 22 of Regulation No 1408/71 but which differentiate between the cases referred to in that regulation, with the result that the additional benefits concerned fail to be provided only in the case of Article 22(1)(c), notwithstanding that there appears to be no objective, proportionate and reasonable justification for such differentiation?

(4) In any event:

(a) Is a rule of national law [such as] Article 5(3) of Royal Decree No 63/1995, which, by repealing Article 18(3) of Decree No 2766/1967, abolishes the right of individuals entitled to benefits under the Spanish public social security scheme to obtain reimbursement of the costs of medical treatment provided by medical establishments and practitioners established on Spanish territory where the treatment to which they are entitled is not provided to them under the public scheme within a reasonable period, taking account of their condition and the probable course of the disease, notwithstanding that the body which administers the social security scheme is required to

authorise the individuals concerned to receive treatment in such cases from medical establishments and practitioners established on the territory of a Member State other than Spain, compatible with the prohibition of discrimination on grounds of nationality laid down in Article 12 EC?

(b) Is a rule of national law [such as] Article 5(3) of Royal Decree No 63/1995, which, by repealing Article 18(3) of Decree No 2766/1967, abolishes the right of individuals entitled to benefits under the Spanish public social security scheme to obtain reimbursement of the costs of medical treatment provided by medical establishments and practitioners established on Spanish territory where the treatment to which they are entitled is not provided to them under the public scheme within a reasonable period, taking account of their condition and the probable course of the disease, notwithstanding that the body which administers the social security scheme is required to authorise the individuals concerned to receive treatment in such cases from medical establishments and practitioners established on the territory of a Member State other than Spain, compatible with the principle of freedom to provide services enshrined in Article 49 EC et seq.?

(c) Is a rule of national law [such as] Article 5(3) of Royal Decree No 63/1995, which, by repealing Article 18(3) of Decree No 2766/1967, abolishes the right of individuals entitled to benefits under the Spanish public social security scheme to obtain reimbursement of the costs of medical treatment provided by medical establishments and practitioners established on Spanish territory where the treatment to which they are entitled is not provided to them under the public scheme within a reasonable period, taking account of their condition and the probable course of the disease, notwithstanding that the body which administers the social security scheme is required to authorise the individuals concerned to receive treatment in such cases from medical establishments and practitioners established on the territory of a Member State other than Spain, compatible with the rules on competition in Articles 81 EC, 82 EC and 87 EC?'

The questions referred

The first two questions

24 By its first question, the national court essentially seeks to ascertain whether Article 22(1)(c) and (2) and Article 36 of Regulation No 1408/71 must be interpreted as meaning that the authorisation granted by the competent institution to an insured person to go to another Member State in order there to receive medical treatment appropriate to his condition also confers on the individual concerned the right to be reimbursed, by that institution, for the costs of travel, accommodation and subsistence connected with that visit for medical purposes.

25 As the Finnish Government pointed out in its written observations, Article 22(1)(c) of Regulation No 1408/71 lays down an exhaustive list of the categories of benefits which may be claimed by an insured person to whom the competent institution has issued authorisation.

26 That article grants such an insured person entitlement both to 'benefits in kind' provided on behalf of the competent institution by the institution of the Member State of stay in accordance with the provisions administered by that latter institution (Article 22(1)(c)(i)) and to 'cash benefits' provided by the competent institution in accordance with the provisions administered by that institution, subject to any agreement between it and the institution in the Member State of stay which lays down that such benefits may be provided by the latter institution on behalf of the former in accordance with the provisions of the competent Member State (Article 22(1)(c)(ii)).

27 As is confirmed by the second subparagraph of Article 22(2) of Regulation No 1408/71, the sole purpose of Article 22(1)(c)(i) of that regulation is to confer on the insured person granted authorisation by the competent institution the right to have access to 'treatment' in another Member State on conditions for reimburse-

ment as favourable as those enjoyed by patients covered by the legislation of that other State (see Case C-368/98 *Vanbraekel and Others* [2001] ECR I-5363, paragraph 32; Case C-56/01 *Inizan* [2003] ECR I-12403, paragraph 21; and Case C-372/04 *Watts* [2006] ECR I-4325, paragraph 135).

28 As the Spanish Government, Ireland and the Cypriot, Finnish and United Kingdom Governments have pointed out in their written observations, the obligation imposed on the competent institution by Article 22(1)(c)(i) of Regulation No 1408/71 therefore relates exclusively to the expenditure connected with the healthcare received by the insured person in the host Member State, namely, such as that at issue in the case in the main proceedings, in the case of hospital treatment, the cost of medical services strictly defined and the inextricably linked costs relating to the stay and meals in the hospital (see *Watts*, paragraph 136).

29 The essential characteristic of 'benefits in kind' within the meaning of Regulation No 1408/71 is that they are 'designed to cover care received by the person concerned', inter alia, by the direct payment or reimbursement of 'medical expenses' incurred by that person's state (see, in the context of a statutory scheme of social insurance against the risk of reliance on care, Case C-160/96 *Molenaar* [1998] ECR I-843, paragraphs 32 and 34; see also *Watts*, paragraph 137).

30 The concept of 'cash benefits' within the meaning of Article 22(1)(c)(ii) of Regulation No 1408/71 must also be given an autonomous interpretation in Community law (see, to that effect, *Molenaar*, paragraphs 31 and 33 to 36).

31 That concept essentially covers the benefits designed to compensate for loss of income linked to an incapacity to work (see, to that effect, *Molenaar*, paragraph 31) and such as to affect the standard of living of the individual concerned and any

members of his family, if he has one. Such is apparent from the reference, first, in Article 23 of Regulation No 1408/71, to the method of calculation based on the earnings of the individual and which may vary with the number of members of his family and, second, from Articles 18 and 24 of Regulation No 574/72, which, as a general rule, make the drawing of cash benefits, under Article 22(1)(c)(ii) of Regulation No 1408/71, contingent on submitting a notification of having ceased work or, if the legislation administered by the competent institution so provides, a certificate of incapacity for work issued by the doctor treating the worker concerned.

32 In *Molenaar*, the Court also classified a care allowance as a 'cash benefit' after observing, first, that payment of that allowance is periodical and is not subject either to certain expenditure having already been incurred, or a fortiori to the production of receipts for the expenditure incurred, second, that the amount of that allowance is fixed and independent of the costs actually incurred by recipients in meeting their daily requirements, and, third, that the latter are to a large extent unfettered in their use of the sums thus allocated to them (paragraph 34). In the light of those characteristics, the Court held that the allowance in question takes the form of financial aid which enables the standard of living of persons requiring care to be improved as a whole, so as to compensate for the additional expense brought about by their condition (paragraph 35).

33 The assessment set out in the preceding two paragraphs indicates that the concept of 'cash benefits' refers to benefits of a periodic nature which procure for persons suffering from illness an income substitute or financial support serving to maintain the overall standard of living of the sick person and of members of his family. By contrast, that concept does not refer to the reimbursement of expenditure already incurred, such as the ancillary costs in issue in the main proceedings.

34 Moreover, according to settled case-law, Article 22(1) of Regulation No 1408/71 is intended to allow an insured person, authorised by the competent institution to go to another Member State to receive there treatment appropriate to his condition, to receive sickness benefits in kind, on behalf of the competent institution, in

accordance with the provisions of the legislation of the State in which the services are provided. By contrast, interpreted in the light of its purpose, that article is not intended to regulate the 'reimbursement by Member States, at the tariffs in force in the competent State, of costs incurred in connection with treatment provided in another Member State' (Case C-158/96 *Kohll* [1998] ECR I-1931, paragraph 27, and *Vanbraekel and Others*, paragraph 36).

35 The cash benefits which, as is laid down by Article 22(1)(c)(ii) of Regulation No 1408/71, are provided by the competent institution in accordance with the provisions of the legislation it administers, may not therefore be construed as covering the reimbursement of costs, such as those at issue in the main proceedings, incurred while treatment was being received in another Member State.

36 As is apparent from the title of the section under which it is found, Article 36 of Regulation No 1408/71, for its part, is exclusively concerned with the issue of reimbursements between institutions. As the Cypriot Government pointed out in its written observations, it does not confer any entitlement on persons insured.

37 It should be noted, as the Spanish Government has done, that Regulation No 1408/71 includes express provisions for the purpose of explaining the legal arrangements governing matters other than benefits in kind or cash benefits, as illustrated by Article 59 of that regulation, set out in the chapter dealing with accidents at work and occupational diseases and relating to the '[c]osts of transporting a person who has sustained an accident at work or is suffering from an occupational disease'.

38 Lastly, attention should be drawn to the fact that the preceding interpretation is understood to be without prejudice to the outcome which would result were Article 49 EC found to be applicable. That article precludes national legislation which

excludes reimbursement of the ancillary costs incurred by a patient authorised to go to another Member State in order there to receive hospital treatment whilst providing for the reimbursement of those costs where the treatment is provided in a hospital covered by the national system in question (see, to that effect, *Watts*, paragraph 139).

39 In the light of the foregoing, the answer to the first question must be that Article 22(1)(c) and (2) and Article 36 of Regulation No 1408/71 must be interpreted as meaning that authorisation by the competent institution for an insured person to go to another Member State in order there to receive hospital treatment appropriate to his medical condition does not confer on such a person the right to be reimbursed by the competent institution for the costs of travel, accommodation and subsistence which that person and any person accompanying him incurred in the territory of that latter Member State, with the exception of the costs of accommodation and meals in hospital for the insured person himself.

40 In the light of that answer, there is no need to examine the second question.

The third question

41 By its third question, the national court seeks in essence to ascertain whether Community law, in particular Articles 10 EC and 249 EC and Article 22 of Regulation No 1408/71, precludes national legislation under which provision is made for entitlement to benefits additional to those provided for in Article 22 of Regulation No 1408/71 in the situation covered by paragraph (1)(a) of that article, but not in that covered by paragraph (1)(c) thereof.

42 In that connection, without there being any need to decide whether or not the situations covered in subparagraphs (a) and (c), respectively, of Article 22(1) are comparable, it should be noted that the additional benefits at issue are not covered by Article 22. In those circumstances, as Ireland and the Polish and United Kingdom Governments observed in their written observations, legislation such as that at issue in the main proceedings cannot be regarded as limiting the entitlement to benefits in kind and cash benefits conferred by Article 22(1)(c) of Regulation No 1408/71 on insured persons authorised by the competent institution, in accordance with that provision, to go to another Member State for medical purposes.

43 Accordingly, that legislation does not fail to comply with the obligations stemming from Article 22(1)(c) of Regulation No 1408/71 and thus does not obstruct the direct effect of that provision.

44 It does not infringe the principle of cooperation in good faith laid down in Article 10 EC.

45 In the light of the foregoing, the answer to the third question must be that national legislation in which provision is made for entitlement to benefits additional to those provided for in Article 22(1) of Regulation No 1408/71 in the situation covered by paragraph (1)(a) of that article, but not in that covered by paragraph (1)(c) thereof, does not obstruct the direct effect of that provision or infringe the principle of cooperation in good faith stemming from Article 10 EC.

The fourth question

46 By its fourth question, the national court essentially seeks to establish whether Articles 12 EC, 49 EC, 81 EC, 82 EC and 87 EC preclude an amendment such as that

made to the national legislation in 1995, whereby an insured person who has a medical condition for which the national health service cannot provide the necessary treatment within a reasonable period cannot claim direct payment of the costs associated with the medical treatment received from professionals established in Spain but not included in that service, notwithstanding that the Spanish authorities are obliged to authorise the insured person to go to another Member State for the purpose of receiving treatment there at their expense under the conditions laid down in Article 22 of Regulation No 1408/71.

47 It must be recalled that, according to settled case-law, 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 (see, inter alia, Case C-415/93 *Bosman and Others* [1995] ECR I-4921, paragraph 59, and Case C-36/99 *Idéal tourisme* [2000] ECR I-6049, paragraph 20).

48 Nevertheless, the Court has held that it cannot give a preliminary ruling on a question submitted by a national court where it is quite obvious that the ruling sought by that court on the interpretation or validity of Community law bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see *Bosman and Others*, paragraph 61, and *Idéal tourisme*, paragraph 20).

49 The justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute (Case C-314/96 *Djabali* [1998] ECR I-1149, paragraph 19).

50 In the present case, as is apparent from the actual wording of the fourth question and the supporting grounds expounded by the national court, that court seeks to submit to the Court of Justice's assessment the question of whether there is any discrimination against a Spanish individual entitled to benefits under the social security system to whom that system cannot provide medical treatment within a reasonable period and who has applied to a Spanish private treatment provider inasmuch as, since the legislative amendment enacted in 1995, such an individual is no longer entitled under national law to direct payment of the medical expenses incurred by using such a provider other than in a medical emergency, whereas an individual authorised by the competent institution to receive medical treatment in another Member State is entitled, in accordance with Article 22(1)(c) of Regulation No 1408/71, to have such expenses reimbursed.

51 The unavoidable conclusion, as the Spanish and United Kingdom Governments have noted in their written observations, is that the fourth question bears no relation to the subject-matter of the main proceedings, which addresses the question whether travel, accommodation and subsistence costs incurred by insured persons and the persons accompanying them to other Member States in order there to receive hospital treatment, with the authorisation of the competent institution, are reimbursable or not.

52 There is therefore no need to reply to the fourth question.

Costs

53 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 (First Chamber) hereby rules:

1. **Article 22(1)(c) and (2) and Article 36 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, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, must be interpreted as meaning that authorisation by the competent institution for an insured person to go to another Member State in order there to receive hospital treatment appropriate to his medical condition does not confer on such a person the right to be reimbursed by the competent institution for the costs of travel, accommodation and subsistence which that person and any person accompanying him incurred in the territory of that latter Member State, with the exception of the costs of accommodation and meals in hospital for the insured person himself.**

2. **National legislation in which provision is made for entitlement to benefits additional to those provided for in Article 22(1) of Regulation No 1408/71, as amended and updated by Regulation No 118/97, in the situation covered by paragraph (1)(a) of that article, but not in that covered by paragraph (1)(c) thereof, does not obstruct the direct effect of that provision or infringe the principle of cooperation in good faith stemming from Article 10 EC.**

[Signatures]