# OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 24 October 2002 [1]

1. The Centrale Raad van Beroep (Higher Social Security Court), Netherlands, has referred questions to the Court of Justice, under Article 234 EC, which concern the interpretation of Articles 21, 22(1), 28 and 31 of Regulation No 1408/71. [2]

The questions referred seek to clarify whether a pensioner, or a member of his family, who is entitled to draw a pension under the legislation of one Member State but who resides in another Member State where, pursuant to Article 28 of Regulation No 1408/71, he receives sickness insurance benefits in kind as though he were a pensioner from that Member State, such benefits being chargeable to the social security institution of the State responsible for paying the pension, is entitled to travel to the territory of the latter in order to receive medical treatment.

## I — The facts of the two disputes in the main proceedings

### A — *The proceedings relating to Mr Van der Duin*

2. Mr Van der Duin, who was born in 1944 in the Netherlands, moved to France in 1989 and registered with the sickness insurance fund there (Caisse primaire d'assurance maladie). Since August 1990, he has been entitled to benefits under the Law on incapacity for work (Algemene Arbeidsongeschiktheidswet) and the Law on invalidity assurance (Wet op de arbeidsongeschiktheidsverzekering), calculated on the basis of a degree of invalidity of between 80 and 100%. Since 1990, registration with the French fund has been based on Article 28 of Regulation No 1408/71 and on Article 29 of Regulation No 574/72, [3] following production of an E 121 form, which certifies the entitlement to benefits under the legislation of the

1 — Original language: Spanish.

2 — Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416), as amended by Council Regulation (EEC) No 2001/83 of 2 June 1983 amending and updating Regulation (EEC) No 1408/71 and also amending and updating Regulation (EEC) No 574/72 (OJ 1983 L 230, p. 6).

3 — Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 (OJ, English Special Edition 1972 (I), p. 159), as updated by Council Regulation (EC) No 3095/95 of 22 December 1995 amending Regulation (EEC) No 1408/71, Regulation (EEC) No 574/72, Regulation (EEC) No 1247/92 and Regulation (EEC) No 1945/93 (OJ 1995 L 335, p. 1).

Member State responsible for paying the pension. [4]

3. In 1993, Mr Van der Duin suffered a serious accident as a result of which he received medical treatment in France for one year. At the end of 1994, he returned to the Netherlands for treatment for post-traumatic dystrophy in his right hand. He was an in-patient at a Rotterdam hospital between 31 January and 29 March 1995. He then settled in the Netherlands again, cancelling his registration with the French sickness insurance fund on 18 August 1995.

4. The hospitals which had treated Mr Van der Duin contacted Onderlinge Waarborgmaatschappij ANOZ Zorgverzekeringen U.A. [5] ('ANOZ Zorgverzekeringen'), a mutual guarantee society, requesting that it reimburse the costs. The society, having established that when he received the benefits Mr Van der Duin was resident in France, was of the opinion that the requirement laid down in Article 22(1)(a) of Regulation No 1408/71 had not been met. Accordingly, it refused to reimburse the costs on the basis that the French sickness insurance fund would not have refunded them under form E 111. [6]

Later, ANOZ Zorgverzekeringen sent an E 107 form [7] to the French sickness insurance fund, asking it to forward an E 112 form [8] to cover Mr Van der Duin retroactively, which would have meant that Article 22(1)(c) would have applied and that the Netherlands sickness insurance fund would have been entitled to reimbursement. The French sickness insurance fund, however, refused to send the form in question.

Accordingly, on 24 November 1995, ANOZ Zorgverzekeringen took the decision to refuse to reimburse the cost of hospitalisation and rehabilitation in the Netherlands, as a result of which the hospitals sought payment directly from Mr Van der Duin. [9]

4 — Pursuant to Regulation No 1408/71 and Regulation No 574/72, the Administrative Commission of the European Communities on Social Security for Migrant Workers, set up under Article 80 of Regulation No 1408/71, has been required to approve a number of standard forms, drafted in all the official languages, which are generally used as certificates. The forms referred to in this case were approved by Decision No 130 of 17 October 1985.

5 — According to information supplied by the Netherlands Government in its written observations, this is the sickness assurance fund with which recipients of a pension under Netherlands law who do not reside in the Netherlands, and who are entitled to benefits paid under a sickness assurance fund pursuant to a Council regulation, must register.

6 — Covering the right to sickness benefits in kind during a stay in another Member State.

7 — Used to request certification of the right to benefits in kind.

8 — Covering the continuation of ongoing treatment under sickness insurance.

9 — The invoices came to NLG 60 896.80, which is equivalent to EUR 27 633.76.

5. The Appeals Committee of the Board responsible for supervision and administration of the sickness insurance funds (Commissie voor beroepszaken van de Ziekenfondsraad), whose opinion must be obtained before an action can be brought, considered the decision to be correct.

6. The Arrondissementsrechtbank (District Court) te 's-Hertogenbosch delivered its judgment on 2 December 1998, dismissing as unfounded the action against the decision to refuse reimbursement, on the basis that there was no requirement for 'urgent treatment' within the meaning of Article 22(1)(a) of Regulation No 1408/71, and that ANOZ Zorgverzekeringen had sufficient grounds for refusing to apply Article 22(1)(c)(i) in view of the fact that the French sickness insurance fund had not granted authorisation. Mr Van der Duin appealed against that judgment to the Centrale Raad Van Beroep.

B — *The proceedings relating to Mrs Van Wegberg-van Brederode*

7. In March 1995, Mrs Van Wegberg-van Brederode, who was born in 1948, left the Netherlands with her husband to live in Spain. Since May 1995, when he reached the age of 65, her husband has been in receipt of a Netherlands pension under the Law on general old-age insurance (Algemene Ouderdomswet). They are both covered by the Law on sickness insurance funds (Ziekenfondswet).

Having lodged an E 121 form pursuant to Article 29 of Regulation No 574/72, the husband of Mrs Van Wegberg-van Brederode was registered, in accordance with Article 28 of Regulation No 1408/71, with the Servei Català de la Salut, which is the institution responsible for the provision of health care in the region where they reside. His wife was registered as a member of the family.

8. In March 1996, Mrs Van Wegberg-van Brederode consulted a gynaecologist in Spain because she was suffering pains, and the gynaecologist advised her that she needed to have a hysterectomy. In view of her medical history and of the language difficulties, they agreed that the best solution would be for Mrs Van Wegberg-van Brederode to return to the Netherlands so that her previous gynaecologist could operate on her. The operation took place on 19 April 1996 in the Netherlands.

9. The hospital contacted ANOZ Zorgverzekeringen requesting payment for the operation, but its request was refused on 25 April 1997 on the grounds that the requirement of Article 22(1)(a) of Regulation No 1408/71 had not been satisfied and that the competent institution had also failed to produce an E 112 form, which is

essential in cases where treatment has been planned in advance. On 9 September 1997, in the light of the unanimous opinion issued by the Board responsible for supervision and administration of the sickness insurance funds, ANOZ Zorgverzekeringen rejected as unfounded the claim brought against its decision to refuse reimbursement.

10. Meanwhile, Mrs Van Wegberg-van Brederode had asked the Spanish sickness insurance fund to issue an E 112 form with retroactive effect, a request which was refused on the basis that the operation could have been performed in Spain. In April 1997, ANOZ Zorgverzekeringen sent an E 107 form, urging, without success, that the request be granted, the original decision to refuse to grant an E 112 form being upheld. In view of the fact that neither fund was prepared to meet the costs of the operation, payment was sought from the patient. [10]

11. That account of the facts, which the national court sets out in its order, does not coincide with the account presented at the hearing by the Agent of the Kingdom of Spain. The Court was informed that, before leaving for the Netherlands to have the operation, Mrs Van Wegberg-van Brederode obtained an E 111 form from the Spanish social security institution, which was valid from 3 April to 2 July 1996. The operation took place on 19 April 1996, but the Netherlands sickness insurance fund did not request an E 112 form from the Spanish institution until 25 April 1997, in other words over a year later. Apparently, the Spanish social security institution has still not received a reply to its request for additional information, although it has agreed to pay two invoices relating to examinations that were carried out on 15 April 1996 and 14 June 1996, on the basis that they could be carried out under form E 111.

12. The Arrondissementsrechtbank te Utrecht held on 28 July 1999 that the action brought against the decision of 9 September 1997 was well founded, and it accordingly annulled that decision. It took the view that, in a situation such as that in the present case, Article 31 of Regulation No 1408/71 cannot be accorded decisive weight; that the Spanish social security institution was not the competent institution for the purpose of granting the authorisation referred to in Article 22(1)(c); and that effect of Articles 28 and 31 of Regulation No 1408/71, construed together, is that the costs of treatment are chargeable to the Netherlands institution. ANOZ Zorgverzekeringen appealed against that judgment to the Centrale Raad van Beroep.

10 — According to the information available to the Commission, the invoice came to NLG 8 359.08, which is equivalent to EUR 3 793.10.

## II — The questions referred for a preliminary ruling

13. With a view to resolving the two disputes, the Centrale Raad van Beroep referred three questions to the Court of Justice, which read as follows:

'(1) Does Article 22(1)(c) of Regulation No 1408/71 also apply to (a member of the family of) a pensioner who is entitled under Article 28 of Regulation No 1408/71 to receive benefits from the institution of the place of residence (in the present cases from the French or the Spanish sickness insurance funds respectively), those benefits being chargeable to the institution competent in accordance with Article 28(2)(a) of Regulation No 1408/71, that is to say the Netherlands sickness insurance fund, in a situation in which the pensioner (or a member of his family) travels to the Member State where the competent institution is situated (in this case the Netherlands) in order to receive medical treatment?

(2) If the answer to Question 1 is in the affirmative, which institution is responsible for granting the authorisation referred to in Article 22(1)(c) of Regulation No 1408/71?

(3) If the answer to Question 1 is negative, do the provisions of Article 21 or those of Article 31 of Regulation No 1408/71 govern the entitlement to benefits of (a member of the family of) a pensioner who is entitled under Article 28 of Regulation No 1408/71 to receive benefits from the institution of the place of residence (the French and Spanish sickness insurance funds respectively), those benefits being chargeable to the institution competent in accordance with Article 28(2)(a) of Regulation No 1408/71, that is to say the Netherlands sickness insurance fund, in a situation where the person concerned is staying in the competent State?'

## III — The proceedings before the Court of Justice

14. Mr Van der Duin, the German, Spanish, French, Netherlands and United Kingdom Governments, and the Commission submitted written observations in these proceedings within the period prescribed in Article 20 of the EC Statute of the Court of Justice.

At the hearing, which was held on 26 September 2002, oral argument was presented by the representatives of Mr Van der Duin and of ANOZ Zorgverzekeringen, by the Agents of the Kingdom of Spain, the Kingdom of the Netherlands and the United Kingdom, and by the Agent of the Commission.

## IV — Analysis of the questions referred for a preliminary ruling

### A — *The first question*

15. In the first question, the national court enquires whether Article 22(1)(c) of Regulation No 1408/71 also applies to a pensioner, or to a member of his family, who, in accordance with Article 28 of Regulation No 1408/71, receives sickness insurance benefits in kind from the institution of his country of residence, those benefits being chargeable to the institution of the Member State competent in respect of pensions, where the pensioner travels to the territory of the latter Member State in order to receive medical treatment.

16. Mr Van der Duin submits that, when he received the medical treatment concerned in the Netherlands, he was insured both in that country and in France; that he travelled to his country of origin on the recommendation of the Ziekenfondsraad; and that he believed that he was covered for the cost of medical treatment in the Netherlands under form E 111. Mr Van der Duin asserts that the treatment was urgent and, in the opinion of a consultant, necessary. At the hearing, Mr Van der Duin's representative added that when Mr Van der Duin was treated in hospital in the Netherlands he was once again resident in that country.

17. ANOZ Zorgverzekeringen and the Governments of the Member States which have participated in these proceedings agree that Article 28(1)(a) of Regulation No 1408/71 entitles pensioners who have sickness insurance cover in one Member State but who reside in another Member State to receive benefits in kind chargeable to the latter, in the same way as if they were pensioners under the legislation of that Member State and were entitled to the benefits in question. A transfer of competence relating to health care is thereby effected, since the pensioner becomes a full member of the scheme operating in his new State of residence and is treated in the same way as pensioners who are nationals of that State. ANOZ Zorgverzekeringen and the abovementioned governments also consider that Article 22(1)(c) applies to pensioners, with the result that they may receive sickness insurance benefits in kind in any Member State, provided that they have obtained the authorisation of the competent institution, that is to say the institution of the Member State in which they reside.

The Spanish Government goes on to observe that, if pensioners were entitled to travel to the Member State responsible for paying their pensions in order to receive medical treatment without the prior authorisation of the institution of the Member State of residence, the result would be to invalidate Article 95 of Regulation No 574/72, which is based on the average national cost, which only includes those costs arising from the provision, from time to time, of medical treatment abroad under Article 31 of Regulation No 1408/71. The Spanish Government notes that it would be particularly detrimental to the countries of the Mediterranean basin, where thousands of retired persons from other Member States are permanent residents, if those

persons were entitled to return to the Member States responsible for paying their pensions in order to receive medical treatment which was chargeable to the Member State of residence. [11]

18. The Commission explains that, under the scheme governed by Article 28 of Regulation No 1408/71, from the moment when the pensioner and the members of his family register with the social security institution in the new Member State of residence, that State becomes the competent Member State. The situation in which a pensioner who is covered by that provision receives sickness benefits in kind in a Member State other than the one in which he resides is governed by Article 31 of Regulation No 1408/71, if he needs treatment during a stay in another State, and by Article 22(1)(c) of Regulation No 1408/71 if he travels to another State in order to receive specific medical treatment. The fact that the Member State in which he receives the medical treatment is the one which is responsible for paying his pension is immaterial.

19. I would observe that in this case the Member States which have submitted observations unanimously agree that the reply to the first question should be in the affirmative, a view which is shared by the Commission. However, there does not appear to be the same consensus of opinion among the Netherlands courts in which the two main disputes have been heard thus far. The Centrale Raad van Beroep explains in its order for reference that, in the light of the facts of the two cases, which are very similar, the Arrondissementsrechtbank te 's-Hertogenbosch found that ANOZ Zorgverzekeringen was not obliged to reimburse the cost of Mr Van der Duin's hospital stay and treatment, since no authorisation had been granted by the French sickness insurance fund, whereas the Arrondissementsrechtbank te Utrecht held that the Spanish sickness insurance fund was not the institution competent to grant the authorisation referred to in Article 22(1)(c) of Regulation No 1408/71 and that the operation carried out on Mrs Van Wegberg-van Brederode was chargeable to ANOZ Zorgverzekeringen. The order for reference states that, since Article 22 governs the provision of medical care outside the competent State, it does not apply to the two disputes, in view of the fact that, pursuant to Article 1(o), (p) and (q) of Regulation No 1408/71, the Netherlands had not ceased to be the competent State *vis-à-vis* the two insured persons concerned, despite the fact they had taken up residence in another country. Accordingly, the national court takes the view that Article 31 of Regulation 1408/71 applies to both cases. [12]

11 — It should be pointed out that, if Article 22(1)(c) of Regulation No 1408/71 did not apply to those pensioners, even more countries would suffer financial detriment. The United Kingdom Government states that it pays pensions or benefits to around 40 000 persons who are resident in Ireland. If those persons were entitled to travel to the United Kingdom to receive medical treatment, the United Kingdom would be required to pay for their treatment twice: first, by way of the annual lump sum it pays to Ireland to cover the cost of such treatment, and, second, through the provision of benefits in kind which it would not be entitled to recover.

12 — Article 31 governs the circumstances in which a pensioner and the members of his family are entitled to medical treatment during a stay in a Member State other than the one in which they reside, under form E 111. See the Opinion I delivered on 15 October 2002 in Case C-326/00 *Ioannidis*, Judgment of 25 February 2003, ECR I-1703, I-1707.

20. In that connection, I should like to point out that, in accordance with Article 249 EC, Regulation No 1408/71, and Regulation No 574/72, implementing it, both of which were adopted to give effect to Article 42 EC, are directly applicable in the Member States. Their provisions must, therefore, also be subject to uniform application by national authorities, which include national courts.

21. Article 22 of Regulation No 1408/71 comes under Title III, Chapter 1, which deals with sickness and maternity benefits. Section 2 of Chapter 1, which contains Articles 19 to 24, deals with employed and self-employed persons and members of their families. [13]

Article 22 governs three situations: where medical care is provided during a stay outside the competent Member State, where a person returns to that Member State or transfers his residence to another State during an illness, and where a person needs to travel to another Member State to receive appropriate treatment.

22. Only the third situation, which is referred to in Article 22(1)(c)(i) and in the second subparagraph of Article 22(2), is relevant for the purposes of these proceedings. Under that provision, a worker who meets the conditions for the receipt of treatment laid down in the legislation of one Member State, and who has been authorised by the relevant institution to travel to the territory of another Member State to receive the appropriate treatment, is entitled to benefits in kind provided on behalf of the competent institution by the institution of the place of stay, as though he were insured with the latter. The authorisation may not be refused where the treatment concerned is of a kind which is provided for under the legislation of the Member State of residence and where, having regard to the current state of health of the worker and to the probable evolution of the illness, the treatment cannot be provided within the normal period for obtaining that treatment in the Member State of residence.

As may be seen, the provision requires the person concerned to obtain the authorisation of the competent institution prior to travelling, although the Court has acknowledged that where the request of an insured person for authorisation on the basis of Article 22(1)(c) has been refused and it is subsequently established, either by the competent institution itself or by a court decision, that that refusal was unfounded, that person is entitled to seek from the competent institution reimbursement of an

13 — In order to facilitate temporary stays and access to medical care in European Union territory, with the authorisation of the competent institution, the Council adopted Regulation No 3095/95 which extended the benefit of Article 22(1)(a) and (c) to all Community citizens who are insured under the legislation of a Member State, and to members of their families residing with them, even if they are neither employed nor self-employed.

amount equivalent to that which that institution would ordinarily have borne if authorisation had been granted in the first place. [14]

23. In *Pierik II*, [15] the Court defined the scope of Article 22(1)(c) of Regulation No 1408/71 *ratione personae*. The Court was required to determine whether Article 22, under which a 'worker' is entitled to benefits in kind, also applies to a pensioner 'who is not, or is no longer, at work' and who asks the competent institution for authorisation to go to a Member State other than the one where he resides to receive there the treatment appropriate to his state of health.

The Court held that the definition of 'worker', adopted 'for the purpose of this regulation', has a general scope and covers any person who is insured under the social security legislation of one or more Member States, whether or not he pursues a professional or trade activity. Accordingly, even if they do not pursue a professional or trade activity, pensioners come within the provisions of the regulation concerning 'workers' by virtue of their insurance under a social security scheme, unless they are subject to special provisions. [16]

24. The Court went on to note that Articles 27 to 33 come under Title III, Chapter 1, Section 5, which covers pensioners and their families, and that those provisions apply exclusively to the latter insured persons, the effect of which, in my view, is twofold. Firstly, Article 31 entitles pensioners to receive benefits in kind if they need such benefits during a stay in a Member State other than the one in which they reside.

The second effect is that Article 22(1)(c) of Chapter 1, Section 2 governs the entitlement to receive sickness assurance benefits in kind of anyone who is resident in a Member State and who asks the competent institution for authorisation to travel to another Member State in order to receive the appropriate medical treatment, since Section 5 contains no specific provision for pensioners who find themselves in that situation.

25. Responsibility for medical treatment required by a pensioner who resides in a Member State other than the one responsible for paying his pension, where he enjoys no right to benefits, is governed by Article 28 of Regulation No 1408/71, which provides that a pensioner who finds himself in those circumstances is entitled to receive sickness benefits, for himself and for his family, provided that he would be

14 — Judgment in Case C-368/98 *Vanbraekel and Others* [2001] ECR I-5363, paragraph 34.

15 — Judgment in Case 182/78 *Pierik* [1979] ECR 1977, paragraph 3.

16 — Ibid. paragraph 4.

entitled thereto under the legislation of the Member State competent in respect of pensions if he were resident in the territory of that State. The benefits in kind are provided to him, on behalf of the institution in the Member State responsible for paying the pension, by the institution of the place of residence, as though the person concerned were a pensioner under the legislation of that Member State and were entitled to benefits in kind.

Therefore, in addition to applying the principle of equality, by treating such pensioners in the same way as pensioners governed by national legislation, Article 28 of Regulation No 1408/71 serves to bring about a change of the institution responsible for providing sickness benefits, with the result that such institution ceases to be the one with which the pensioner is registered, in other words the institution of the Member State responsible for paying the pension, and the responsibility is instead assumed by the social security institution of the Member State in which the pensioner resides.

Article 28 of Regulation No 1408/71 is a specific provision which applies exclusively to pensioners and their families, and through it the initial aim of the Community legislature appears to have been to facilitate the resettlement of migrant workers in their Member States of origin at the end of their working lives. However, in recent years, the provision has enabled numerous European pensioners to take up residence in warm countries whose climate is beneficial to their health, by ensuring that they are entitled to sickness benefits.

26. The transfer of responsibility for the provision of those benefits to the institution of the Member State of residence is not automatic, however, and does not occur merely as a result of a change of address. Instead, the insured person must signal that he wishes the transfer to occur before it becomes effective.

Article 29 of Regulation No 574/72 provides that, in order to receive benefits in kind in the territory of the Member State in which he resides, under Article 28(1) of Regulation No 1408/71, a pensioner must register with the institution of the place of residence by submitting a certified statement testifying that he is entitled to the said benefits under the legislation under which a pension is payable. The certified statement must be issued, at the request of the pensioner, by the institution responsible for paying the pension. If the pensioner does not submit the certified statement, the institution of the place of residence may obtain it directly from the institution responsible for paying the pension. Whilst awaiting the receipt of this certified statement, the institution of the place of residence may, in the light of the documentary evidence accepted by it, register the pensioner and the members of his family provisionally. That registration does not entail obligations for the institution responsible for the payment of benefits in kind until the institution of the place of residence has issued the certified statement.

27. Once the registration has been effected, the institution of the place of residence is

responsible for the provision of sickness benefits in kind. [17] Once pensioners from other Member States have been placed on an equal footing with national pensioners, they all receive medical treatment on the same basis, be it in the territory of the Member State of residence, or in any other Member State — either because they are staying there, in which case Article 31 of Regulation No 1408/71 will apply, or because they have travelled there to receive medical treatment under Article 22(1)(c)(i) and (2).

28. An additional argument in support of that interpretation is provided by Article 95 of Regulation No 574/72, which sets out in great detail the rules governing the refund, by one institution to another, of benefits in kind provided under sickness insurance to pensioners and their families who reside in a Member State other than the one responsible for paying the pension. [18]

Under Article 95, the amount of the benefits in kind provided under Article 28(1) of Regulation No 1408/71 is refunded by the competent institutions to the institutions which provided the said benefits on the basis of a lump sum which is as close as possible to the actual expenditure incurred. The lump sum is determined by multiplying the average annual cost per pensioner by the average annual number of pensioners to be taken into account, and by reducing the resultant amount by 20%. [19] Article 95(3) sets out the rules according to which the factors necessary for calculating the lump sum are determined, while Article 95(4) provides for the maintenance of a list by the institution of the place of residence, so that the number of pensioners to be taken into account can be determined.

If, in accordance with Article 28, the institution of the place of residence becomes responsible for the provision of benefits, being reimbursed in return by the competent institution, that is the institution of the State responsible for paying the pension, the latter institution is discharged from the principal obligation of providing the benefits for as long as the pensioner remains registered with the institution of the place of residence.

17 — At the hearing, the Agent of the Kingdom of Spain told the Court that there are currently 83 600 Community citizens registered with that country's social security institutions under this provision, of which almost 7 000 are pensioners, and their families, in receipt of a Netherlands pension.

18 — In order to bring the amount of the lump sum to be refunded a little closer to the real costs incurred by the institutions of the Member States, this provision was amended by Council Regulation (EC) No 3095/95 of 22 December 1995 (OJ 1995 L 335, p. 1). A transitional period was established for relations with the French Republic, in view of the likely administrative difficulties which could arise in that Member State.

19 — The cost varies greatly from State to State. See, by way of example, the average costs calculated in respect of benefits in kind provided per person per month in 1999. For Spain the amount was EUR 119.11, whereas for Austria it was EUR 214.83 (OJ 2001 C 76, p. 5). The Agent of the Kingdom of Spain submitted further significant data at the hearing. In 1998 the average cost was EUR 111 in Spain, EUR 243 in Germany, and EUR 322 in the Netherlands. In 1999, the figures for those countries were, respectively, EUR 119, EUR 253 and EUR 340, while for 2000 the figures were EUR 127, EUR 261 and EUR 358.

29. In conclusion of my reasoning, I should like to point out that form E 121, which the social security institution of the State responsible for paying the pension provides to each insured person to give to the institution of the State of residence, does not contain any information concerning the practical consequences that such action implies for an insured person's right to sickness benefits in kind. One would be justified in wondering whether there might have been instances where situations like the ones which gave rise to the two disputes in the main proceedings have arisen through pure ignorance on the part of the sick person, who, being in a distressed state, simply followed the instinctive reaction of seeking a cure for his illness in his own country.

In order to avoid such situations, it seems reasonable to me that the section of the form which provides instructions to the pensioner [20] should state clearly that, once a person has registered with the social security institution of the State of residence, that institution has sole responsibility for providing him with any medical care he might need for as long as he remains so registered, meaning that he must seek the prior authorisation of that institution when he needs planned treatment abroad. [21]

30. For the reasons set out, I believe that the reply to the first question should be in the affirmative and that the Court should inform the national court that Article 22(1)(c) of Regulation No 1408/71 also applies to a pensioner or a member of his family who is entitled, under Article 28 of Regulation No 1408/71, to receive benefits from the institution of the place of residence, those benefits being chargeable to the Member State competent in respect of pensions, in a situation in which the pensioner travels to the latter State in order to receive medical treatment.

B — *The second question*

31. In the event of an affirmative answer to the first question, the Centrale Raad van

20 — It currently only provides two pieces of information: the name of the social security institution in the destination country to which the form must be submitted in order to effect registration, and the duty to notify that institution of any change likely to affect the entitlement to receive benefits in kind, such as the suspension or withdrawal of the pension, or a change of residence.

21 — My proposal is hardly revolutionary. Information of that nature appears, for example, on the E 111 form, which clearly states that the form does not provide entitlement to benefits in kind if the insured person travels to another country in order to receive medical treatment.

Beroep goes on to enquire which institution is responsible for granting the authorisation referred to in Article 22(1)(c) of Regulation No 1408/71.

32. I agree with the view shared by ANOZ Zorgverzekeringen, the Member States who have participated in the proceedings, and the Commission, which is that it is the institution of the Member State of residence, with which the insured person has registered, that is competent to grant or refuse authorisation for that person to travel to the territory of another Member State to receive medical treatment.

When Article 28 of Regulation No 1408/71 applies, the institution of the country of residence becomes responsible for the provision of appropriate medical treatment to pensioners from other Member States, and to the members of their families, as though such persons were in receipt of a pension under national legislation. In the same way that the institution concerned issues E 112 forms for its own pensioners when they intend to travel to another Member State for medical treatment, it must also issue them for pensioners from other States who are registered with it to receive sickness benefits in kind.

33. That interpretation would appear to be confirmed by Article 93 of Regulation No 574/72, which provides that the actual amount of benefits in kind, provided under Article 22 of Regulation No 1408/71, is to be refunded by the competent institution to the institution which provided the said benefits, as shown in the accounts of the latter institution. For the purposes of that rule, Article 93(2) provides that the institution of the place of residence of the pensioner, or of the members of his family, is to be considered as the competent institution.

34. Articles 95 and 93 of Regulation No 574/72, read together, provide a clear overall idea of the Community legislature's intention with regard to the financing of medical care required by a pensioner who resides in a Member State other than the Member State responsible for paying his pension. Once a pensioner has registered to receive sickness benefits in kind in the State of residence, the institution of that State is responsible for ensuring he receives appropriate medical treatment on an equal footing with national pensioners. In return, the institution of the State responsible for paying the pension refunds to the State of residence the amount laid down in Article 95. In the event that the institution of the place of residence authorises the pensioner, under Article 22(1)(c) of Regulation No 1408/71, to travel to the territory of one of the other Member States in order to receive medical treatment, that institution is required, in accordance with Article 93 of Regulation No 574/72, to refund to the institution which provides the benefits the actual amount of the said

benefits as shown in the latter's accounts. Given that the cost of medical treatment provided to pensioners varies from country to country, it is not hard to guess that the social security institution of the Member State of residence is not going to grant authorisation in response to every request it receives from sick persons, especially if the treatment required can be provided within an appropriate time under the arrangements that are already in place.

35. There is a final argument which I also find convincing. If the institution competent to grant authorisation were the institution of the Member State responsible for paying the pension, it would be virtually impossible to apply Article 22(1)(c) of Regulation No 1408/71 to pensioners covered by Article 28, since when it came to deciding whether it could refuse authorisation pursuant to the second subparagraph of Article 22(2), it would be difficult for that institution to ascertain: (a) whether the treatment required by the insured person could be provided in the Member State of residence, and (b) whether, in view of his health and the probable evolution of the illness, the treatment could not be provided within the normal period for obtaining that treatment in the Member State of residence. It should also be borne in mind that in all likelihood the pensioner would need to travel to the Member State responsible for paying the pension to be examined or, alternatively, that the latter would, at the very least, have to send a consultant to examine the pensioner in the Member State of residence.

36. For the reasons set out, I believe that the institution of the Member State in which a pensioner (or a member of the family) resides, with which he is registered to receive sickness benefits in kind under Article 28 of Regulation No 1408/71 and Article 29 of Regulation No 574/72, is the institution competent to authorise that person to travel to one of the other Member States, including the Member State responsible for paying the pension, under Article 22(1)(c) of Regulation No 1408/71.

C — *The third question*

37. The third question was referred for a preliminary ruling only in the event that a negative reply was given to the first question. Since I have suggested that the Court should answer to the first question in the affirmative, it is not necessary to consider the final question.

## V — Conclusion

38. In the light of the foregoing considerations, I propose that the Court of Justice should reply to the Centrale Raad van Beroep as follows:

(1) Article 22(1)(c) of Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, as amended by Council Regulation (EEC) No 2001/83 of 2 June 1983, also applies to a pensioner (or a member of his family), who is entitled under Article 28 of Regulation No 1408/71 to receive benefits from the institution of the place of residence, those benefits being chargeable to the institution competent in respect of pensions, in a situation in which the pensioner (or a member of his family) travels to the competent Member State in order to receive medical treatment.

(2) The institution of the Member State in which a pensioner (or a member of his family) resides, with which he is registered to receive sickness benefits in kind under Article 28 of Regulation No 1408/71 and Article 29 of Regulation No 574/72, is the institution competent to authorise that person to travel to one of the other Member States, including the Member State responsible for paying the pension, under Article 22(1)(c) of Regulation No 1408/71.