OPINION OF ADVOCATE GENERAL GEELHOED

delivered on 19 January 2006 [1]

I — Introduction

1. In these proceedings, the Tribunal Superior de Justicia (High Court of Justice) de Cantabria, Spain, seeks a preliminary ruling on,among other things, the interpretation of Article 22 of Council 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 ('Regulation No 1408/71' or 'the Regulation'). [2]

2. Those questions were raised in proceedings between Mr Acereda Herrera and the Servicio Cántabro de Salud concerning the latter's refusal to reimburse travel, accommodation and subsistence costs for Mr Acereda Herrera and an accompanying relative in connection with hospital treatment in Paris.

1 — Original language: English.

2 — OJ, English Special Edition 1971 (II), p. 416; see in particular codified version resulting from Council Regulation (EC) No 118/97 of 2 December 1996 amending and updating Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 1997 L 28, p. 1).

II — Legal Background

A — *Community law*

3. Article 22(1) of Regulation No 1408/71 provides:

'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;

...

(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'.

4. The second subparagraph of Article 22(2) provides that 'the authorisation required under paragraph 1(c) may not be refused where the treatment in question is among the benefits provided for by the legislation of the Member State on whose territory the person concerned resides and where he cannot be given such treatment within the time normally necessary for obtaining the treatment in question in the Member State of residence taking account of his current state of health and the probable course of the disease'.

5. Section 7 of Chapter 1 in Title III of Regulation No 1408/71 [3], headed 'Reimbursement between institutions', contains a single provision, Article 36, which is worded as follows:

'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.

3 — See codified version resulting from Council Regulation (EC) No 118/97 of 2 December 1996 amending and updating Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community.

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.'

B — *National law*

6. Article 18(1) of Decree No 2766/1967 of 16 November 1967 ('Decree No 2766/1967'), as worded when Regulation No 1408/71 entered into force, provided essentially that, where the beneficiary has recourse to institutions other than those ordinarily available to him, the institutions responsible for providing medical treatment are not to assume responsibility for costs which may have been incurred, except in the cases provided for in paragraphs 3 and 4. Therefore, entitlement to reimbursement was provided for in cases where a social security institution refused, without justification, to authorise medical treatment when it was obliged to do so (paragraph 3) and in cases where the use of medical services other than the ones available to the patient under the social security scheme was attributable to the need for urgent life-saving treatment (paragraph 4).

7. The referring court observed that, in the cases provided for in paragraphs 3 and 4 of Article 18 of Decree No 2766/1967, the Spanish competent social security institution refunded to the individual concerned the costs of travel, accommodation and subsistence for himself and, where appropriate, for an accompanying person.

8. According to the order for reference, the system of reimbursement of the costs of travel, accommodation and subsistence became applicable in Spain to the cases referred to in Article 22(1)(a) and (c) of Regulation No 1408/71 because of their similarity to the two cases referred to in Article 18 of Decree No 2766/1967.

9. In 1995, Article 18 of Decree No 2766/1967 was repealed and replaced by Article 5 of Royal Decree No 63/1995, paragraph 3 of which reduces the availability of reimbursement of costs to a single case, namely that of an immediate, life-threatening emergency, thereby abolishing the right of reimbursement on the grounds of unjustified refusal to authorise treatment. The national court's order for reference is concerned with a situation which arises under the new rules: where medical treatment is provided in another Member State under Article 22(1)(a) of Regulation No 1408/71, there is entitlement to reimbursement of the costs of travel, accommodation and subsistence for the individual concerned and, where applicable, for an accompanying person, whereas there is no entitlement to that benefit in cases covered by Article 22(1)(c).

III — Facts and preliminary questions

10. Mr Acereda Herrera, a Spanish national, is covered as a self-employed worker by the Spanish public social security scheme.

11. In July 2002, Mr Acereda Herrera was diagnosed with a serious illness, for which he initially received treatment.

12. Owing to a number of shortcomings in the medical services provided, and taking account of the seriousness of his illness, Mr Acereda Herrera applied for the issue of an E-112 form to enable him to receive treatment appropriate to his condition in a Paris hospital.

13. On 17 January 2003 Mr Acereda Herrera received prior authorisation under Article 22(1)(c) of Regulation No 1408/71 from the Servicio Cántabro de Salud to travel to France to receive treatment there.

14. Mr Acereda Herrera travelled to France on a number of occasions to receive the treatment for which authorisation had been granted, accompanied by a family member on account of his poor state of health. As a result, he incurred costs in respect of travel, accommodation and subsistence, for himself and his relative, which totalled EUR 19 594.

15. Mr Acereda Herrera claimed reimbursement of those costs from the Servicio Cántabro de Salud, but the claim was refused. Mr Acereda Herrera therefore brought an action before the Juzgado de lo Social n° 1 de Santander, which dismissed his claim on 17 November 2003. On 21 January 2004 Mr Acereda Herrera appealed to the Tribunal Superior de Justicia de Cantabria, for that judgment to be overturned.

16. The Tribunal Superior de Justicia de Cantabria, decided to stay the proceedings and to refer the following questions to the Court of Justice of the European Communities:

(1) Must Article 22(1)(c) and (2) and Article 36 of Council Regulation (EEC) No 1408/71 of 14 June 1971, in the version arising from the consolidated text approved by Council Regulation (EC) No 118/97, 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 (formerly Article 5 of the EC Treaty), and with the legal status of Community regulations laid down in Article 249 EC (formerly Article 189 of the EC Treaty), 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 Council Regulation (EEC) 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 of the kind contained in 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 of the kind contained in 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 of the kind contained in 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, 82 and 87 EC?

17. Written observations have been submitted by Spain, Belgium, Cyprus, Finland, Ireland, Poland, the United Kingdom and the Commission. With the exception of Belgium and Finland, they were all represented at the hearing.

IV — The first question

18. By its first question, the national court 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 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, accommodation and subsistence in the territory of the Member State in question.

Submissions

19. The Spanish, Finnish, Cypriot, and United Kingdom Governments and Ireland propose that the Court answer the first question in the negative. They argue essentially that Article 22(1)(c)(i) confers entitlement to benefits in kind including, as in the present case, entitlement to hospital treatment in another Member State provided on behalf of the competent institution of the insured person's Member State of residence. That provision does not cover the matter of travel and accommodation costs, so there is no obligation on the Member State of insurance to bear those expenses. The Spanish Government adds that the ruling given in *Leichtle* [4] cannot be applied to the present case. Unlike the German legislation, the Spanish legislation does not grant entitlement to reimbursement of travel, accommodation and subsistence costs, not even in cases where treatment is provided in Spain.

20. The Belgian Government considers that Community law does not prescribe entitlement to reimbursement of additional costs but does not preclude the Member State of treatment from granting such entitlement. In that case, the legislation of the Member State where the treatment is provided applies unless the tariffs applied by the Member State of insurance are more advantageous for the patient. [5]

21. The Polish Government takes the view that travel, accommodation and subsistence costs may only be claimed in the context of Article 22 of the Regulation to the extent to which entitlement to reimbursement exists under national law. It adds that the obligation of the Member States to ensure the effective operation of the system established by Article 22 of the Regulation may imply that the competent institution is required to meet such costs.

22. The Commission relies on the Court's rulings in *Kohl*, [6] *Vanbraekel* [7] and *Inizan*, [8] taking the view that Articles 22 and 36 of Regulation No 1408/71 do not impose an obligation on the competent institution to reimburse additional costs directly to the insured person. However, it follows from *Leichtle* [9] and *Molenaar* [10] that Article 22(1)(c) imposes an obligation on the institution of the Member State of treatment to reimburse such costs to the insured person, since those costs can be regarded as an integral part of benefits in kind within the meaning of Article 22(1)(c). Subsequently, the institution of the Member State of treatment must pay those costs in accordance with the provisions of the legislation which it administers, as though the insured person were insured with it. The competent institution is then required to reimburse, directly, the institution of the Member State of treatment in compliance with the conditions laid down in Article 36 of Regulation No 1408/71.

4 — Case C-8/02 *Leichtle* [2004] ECR I-2641.

5 — Case C-368/98 *Vanbraekel and Others* [2001] ECR I-5363, paragraph 53.

6 — Case C-158/96 *Kohll* [1998] ECR I-1931.

7 — Case C-368/98 *Vanbraekel and Others*, cited above.

8 — Case C-56/01 *Inizan* [2003] ECR I-12403.

9 — Case C-8/02 *Leichtle*, cited above, paragraph 35

10 — Case C-160/96 *Molenaar* [1998] ECR I-843, paragraph 31.

23. The Commission adds that the social security institutions must, in accordance with Article 10 EC and Article 84 of Regulation No 1408/71, cooperate in order to ensure that Articles 22(1)(c) and 36 are applied correctly and, consequently, that the rights conferred on the insured person are fully respected. Therefore, when the institution of the Member State of treatment has not properly fulfilled its obligation under Article 22 to provide benefits in kind and the competent institution has declined to facilitate the fulfilment of that obligation, it is for the latter institution, without prejudice to the possible liability of the institution of the Member State of treatment, to reimburse the costs incurred directly to the insured person. [11]

Assessment

24. First of all, as is evident inter alia from the fourth recital in its preamble, Regulation No 1408/71 does not pursue any harmonisation of the Member States' social security legislation but merely sets up a system of coordination between institutions in different Member States in order to contribute to the free movement of workers within the Community. [12]

25. Article 22(1)(c) of the Regulation makes provision for insured persons to be authorised by the competent institution in a Member State to go to another Member State in order to receive treatment appropriate to their condition. In such cases, the person concerned is to be entitled, under the first subparagraph of Article 22(1) of Regulation No 1408/71, to benefits in kind [13] provided on behalf of the competent institution by the institution of the place of stay or residence, in accordance with the legislation which the latter administers, as though he or she were insured with it. The period during which those benefits may be received is governed by the legislation of the competent Member State.

26. The second subparagraph of Article 22(2) specifies the conditions under which authorisation for care abroad may not be refused: 'when the treatment in question is part of the services provided for by the legislation of the Member State where the person concerned resides and when those services cannot be provided within the period that is normally necessary, in view of his current state of health and the probable course of his disease'.

27. It should be noted that any Member State may grant authorisations for treatment in another Member State on a much wider

11 — Case C-326/00 *IKA* [2003] ECR I-1703, paragraphs 51 and 61

12 — See also Case 807/79 *Gravina* [1980] ECR 2205, paragraph 7; Case 21/87 *Borowitz* [1988] ECR 3715, paragraph 23; Case C-227/89 *Ronfeldt* [1991] ECR I-323, paragraph 12 and joined Cases C-393/99 and C-394/99 *Hervein and Others* [2002] ECR I-2829, paragraph 50.

13 — Under Article 22(1)(c)(ii), an insured person who has been granted authorisation is also entitled to cash benefits. It follows from Case C-160/96 *Molenaar* (cited above), paragraph 31, that 'cash benefits are essentially those designed to compensate for a worker's loss of earnings through illness'. Therefore, these benefits are irrelevant to the present case.

basis. The Regulation merely indicates when such authorisations may not be refused but it does not set any limits as to when they may be granted. [14]

28. A person who is authorised to go to another Member State for treatment is issued with a Form E-112 to establish entitlement to the treatment. [15] It follows that a patient has access to treatment in the other Member States on conditions as favourable as those enjoyed by persons covered by the legislation of those other States. [16] The issue of Form E-112 implies a commitment by the competent institution of the Member State of insurance to pay the cost of treatment to the competent body in the Member State where the treatment is provided. [17] The usual situation is that the costs are refunded directly to the competent body where the treatment is provided. The point of reference for calculating the reimbursement is the rates in force under the legislation of the Member State of treatment. [18]

29. It follows from the clear wording of Article 22 of Regulation No 1408/71 that a person's entitlement is limited to healthcare during a temporary stay in another Member State. That provision does not cover the aspect of additional costs, such as those of travel, accommodation and subsistence, incurred in respect of medical treatment abroad. Moreover, the mechanism created by Article 22, in conjunction with Article 36, of the Regulation, provides for the costs only of medical treatment being refunded directly between institutions at the rates applicable in the Member State of treatment. The reimbursement of additional costs is, therefore, a matter for national law. Such costs may only be claimed to the extent to which entitlement to reimbursement exists under national law.

30. It appears from *Leichtle* [19] that, where the legislation of a given Member State provides for the reimbursement of additional expenses in respect of medical treatment received in national territory, the same limits and conditions should apply as for treatment provided in another Member State. In such a

14 — Case C-368/98 *Vanbraekel and Others*, cited above, paragraph 31.

15 — See Case 182/78 *Pierik II* [1979] ECR 1977, paragraph 15, in which the Court held that 'since the costs relating to the treatment in question are chargeable to the competent institution which granted the authorisation, the institution of the Member State to which the person concerned goes to receive the treatment is required to provide it upon presentation of such an authorisation even if, under the legislation which it administers, it does not have a duty but only has a power to grant it'.

16 — Case C-368/98 *Vanbraekel and Others*, cited above, paragraph 32 and Case C-56/01 *Inizan*, cited above, paragraph 21.

17 — The reimbursement of the costs of care between the institutions is governed by Article 36 of Regulation No 1408/71, in conjunction with Article 93 of Regulation No 574/72. Under Article 36, benefits in kind provided by the institution of the Member State of treatment are to be fully refunded, by the institution of the State of insurance, in accordance with the procedure provided for by Article 93 of Regulation No 574/72. Claims and debts between the institutions are settled either on production of proof of actual expenditure or on the basis of lump-sum payments, unless the Member States concerned, or the competent authorities of those States, have provided for other methods of reimbursement or waived all reimbursement between institutions under their jurisdiction. See, also Case C-326/00 *IKA*, cited above, paragraph 54.

18 — This follows from the wording of Article 22 that states that benefits in kind must be provided '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'. See, also Case C-368/98 *Vanbraekel and Others*, cited above, paragraph 55.

19 — Case C-8/02 *Leichtle*, cited above.

situation, the extent of the obligation to reimburse a patient's additional costs depends on the extent of his entitlement under national law.

31. The referring court points out in the present case that a situation is envisageable where the need to travel to and stay in another Member State is necessitated precisely by the failure of the competent institution to provide the treatment within an acceptable time-limit. That is the situation where a patient is entitled to be treated in a hospital in another Member State, under the second subparagraph of Article 22(2).

32. In such a situation and in the absence of entitlement as described in point 30, the fairest solution would be for a Member State of insurance to ensure that an insured person who has been granted authorisation under Article 22 of Regulation No 1408/71 is enabled effectively to receive the medical treatment outside the national healthcare system to which he is entitled: in other words, that Member State provides assistance to the insured person with regard to travel, accommodation and subsistence costs necessarily incurred to receive the treatment outside the national healthcare system.

33. However, as mentioned above, such entitlement to assistance or reimbursement does not follow from Article 22 of Regulation No 1408/71. It is for the Member States alone to determine whether to provide such assistance to a patient or to reimburse certain costs, such as travel, accommodation and subsistence costs.

34. Furthermore, I would add that it is indisputable that services such as transport in specialised medical vehicles to establishments or a stay in a hospital and the meals provided in a hospital have to be considered as forming an integral part of the treatment itself, that is to say as benefits in kind. All those services are governed by Article 22 of the Regulation.

35. In view of the foregoing I consider that the Court should rule in reply to the first question that Article 22(1)(c) and (2) and Article 36 of Regulation No 1408/71 cannot 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, accommodation and subsistence in the territory of the Member State in question.

V — The second question

36. The national court submitted the second question in case the Court of Justice were to hold in response to the first question that Article 22(1)(c) and (2) and Article 36 of Regulation No 1408/71 confer on the

individual concerned the right to be reimbursed for the costs of travel, accommodation and subsistence.

37. Since I propose that the first question be answered in the negative, there is no need to examine the second question.

VI — The third question

38. By its third question, the referring court seeks in essence to ascertain whether Article 10 EC and Article 249 EC are to be interpreted as precluding rules of a Member State, such at those at issue in the main proceedings, which make provision for more favourable reimbursement of costs in situations falling within Article 22(1)(a) of the Regulation than in situations falling within Article 22(1)(c).

Submissions

39. The Spanish Government submits that the third question bears no relation to the main proceedings.

40. The Commission is of the view that Article 22 of Regulation No 1408/71 is not intended to govern reimbursements for insured persons under the provisions in force in the competent Member State. Article 22 is not applicable to that legislation and neither restricts the right of the competent Member State to grant additional benefits to the insured person under national law, nor requires it to grant them. The fact that rules such as those at issue in the main proceedings provide for reimbursement of travel, accommodation and subsistence costs in the circumstances referred to in Article 22(1)(a), but not in the cases referred to in Article 22(1)(c), cannot as such be considered to be contrary to Article 22 of Regulation No 1408/71 in conjunction with Article 10 EC and Article 249 EC.

41. The Belgian Government submits that the fact that a Member State makes provision in its national law for additional rights to be granted in situations which are identical to those referred to in Community provisions, but precludes those rights being obtained when only Community law is invoked, is not compatible with primary and secondary Community legislation.

42. The Polish and United Kingdom Governments and Ireland take the view that a Member State is obliged to ensure that national law does not in any way undermine

or inhibit the provisions of a regulation and prevent or limit the availability of a benefit to a person who would otherwise be entitled to it under a regulation. The Cypriot and United Kingdom Governments add that there is no breach of Community law because the national conditions are not applied differently depending on whether the health care is provided within Spain or in another Member State, and do not therefore make it more difficult to obtain healthcare in other Member States than in Spain.

43. The Finnish Government submits that it cannot be inferred from Article 10 EC and Article 249 EC that the national legislature is under any obligation to make provision for an insured person whose circumstances fall within Article 22(1)(c) to be entitled to the reimbursement of costs associated with the treatment obtained.

Assessment

44. It has already been established that Article 22 of Regulation No 1408/71 does not govern the matter of additional costs, such as those of travel, accommodation and subsistence, incurred in respect of medical treatment abroad. It follows that Articles 10 EC [20] and 249 EC [21] do not preclude national legislation from granting benefits broader than those provided for by Regulation No 1408/71.

45. Therefore, it is for the Member States alone to determine whether or not to adopt additional provisions which confer entitlement to reimbursement of certain costs.

46. Moreover, the fact that national legislation reduces the availability of reimbursement of costs to a single case, namely that of an immediate, life-threatening emergency, thereby abolishing the right of reimbursement on the grounds of unjustified refusal to authorise treatment, does not change the position. As Ireland rightly points out, the fact that a national legislature has chosen to

20 — Under Article 10 EC, which enshrines the principle of cooperation in good faith, Member States are obliged to secure the implementation and enforcement of regulations.

21 — Pursuant to the second subparagraph of Article 249 EC, regulations have general application and are directly applicable in all Member States. Accordingly, owing to their very nature and their place in the system of sources of Community law, regulations operate to confer rights on individuals which the national courts have a duty to protect. The direct application of a regulation means that its entry into force and its application in favour of or against those subject to it are independent of any measure of reception into national law. By virtue of the obligations arising from the Treaty and assumed on ratification, Member Sates are under a duty not to obstruct the direct applicability inherent in Regulations and other rules of Community law. Strict compliance with this obligation is an indispensable precondition for the simultaneous and uniform application of Community regulations throughout the Community (Case 34/73 *Fratelli Variola* [1973] ECR 981, paragraphs 8 and 10). The national courts, whose task it is to apply the provisions of Community law in areas within their jurisdiction, must ensure that they take full effect. See, inter alia, Case 106/77 *Simmenthal* [1978] ECR 629, paragraph 16, Case C-213/89 *Factortame and Others* [1990] ECR I-2433, paragraph 19, and Case C-453/99 *Courage and Crehan* [2001] ECR I-6297, paragraph 25.

confer an additional benefit on a person availing himself of a right under Article 22(1)(a), where that benefit does not form part of the obligations of a Member State under Article 22(1)(a), does not constitute an impediment to an individual's exercise of his right under Article 22(1)(c).

47. In view of the foregoing I consider that the Court should rule in reply to the third question that Article 10 EC and Article 249 EC do not preclude rules of a Member State, such at those at issue in the main proceedings, which make provision for more favourable reimbursement of costs in situations falling within Article 22(1)(a) than in situations falling within Article 22(1)(c).

VII — The fourth question

48. By its fourth question, the referring court seeks in essence to ascertain whether Article 12 EC, Article 49 EC, and Articles 81, 82 and 87 EC are to be interpreted as precluding rules of a Member State, such at those at issue in this case, which abolish 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 in Spanish territory and not affiliated to the Spanish social security system.

Submissions

49. The Spanish Government considers that the fourth question bears no relation to the main proceedings. The United Kingdom Government agrees. In its view, having regard to the facts of the case, the issue raised in the fourth question is purely hypothetical.

50. The Cypriot and Finnish Governments and Ireland argue essentially that Community law does not apply to a situation where a person residing in Spain seeks medical services from a private Spanish provider, since there is no cross-border element. Moreover, they submit that Articles 81, 82 and 87 EC cannot apply to legislative measures such as those challenged in the present case.

51. The Belgian Government submits that the situation described in the fourth question is compatible with Article 49 EC and that there is no distortion of competition with non-affiliated or private healthcare providers in Spain.

52. The Polish Government considers that there would be an infringement of Article 82 EC and Article 86 EC if it were found that the field of healthcare services was limited in a manner detrimental to patients and if the

dominant position of the public Spanish healthcare bodies was liable to affect trade between Member States, which would be the case if the healthcare provided by private medical practitioners could also have an impact on nationals of other Member States.

53. The Commission takes the view, having regard to the facts of the case, that the Spanish legislation is not contrary to Articles 12, 49, 81, 82 and 87 EC.

Assessment

54. 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. [22] 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. [23]

55. It appears from the order for reference that the national court seeks essentially to ascertain whether a situation in which a medical establishment or practitioner established in Spanish territory and not affiliated to the social security scheme is excluded from the right to provide medical treatment to an individual entitled to benefits under the social security scheme, whereas such medical treatment can be provided to him by a medical establishment or practitioner established in another Member State, is contrary to Article 12 EC, Article 49 EC, and Articles 81, 82 and 87 EC.

56. However, the main proceedings are concerned not with that point, but with the question whether Mr Acereda Herrera, who seeks reimbursement of travel, accommodation and subsistence costs for himself and an accompanying relative in connection with hospital treatment in Paris, is entitled to such reimbursement.

57. There is therefore no need to answer the fourth question.

22 — See, inter alia, Case C-415/93 *Union Royale Belge des Sociétés de Football Association and Others* v *Bosman and Others* [1995] ECR I-4921, paragraph 59.

23 — See, inter alia, Case C-36/99 *Idéal tourisme* [2000] ECR I-6049, paragraph 20.

VIII — Conclusion

58. I therefore consider that the questions referred to the Court by the Tribunal Superior de Justicia de Cantabria should be answered as follows:

(1) Article 22(1)(c) and (2) and Article 36 of Regulation No 1408/71 cannot 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, accommodation and subsistence in the territory of the Member State in question.

(2) Article 10 EC and Article 249 EC do not preclude rules of a Member State, such at those at issue in the main proceedings, which make provision for more favourable reimbursement of costs in situations falling within Article 22(1)(a) than in those falling within Article 22(1)(c).