JUDGMENT OF THE COURT

20 July 2017*

(Article 93 of Regulation (EEC) No 1408/71 – Regulation (EC) No 883/2004 – Rights of institutions responsible for benefits against liable third parties – Subrogation and direct rights)

In Case E-11/16,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Oslo District Court (*Oslo tingrett*), in a case pending before it between

Mobil Betriebskrankenkasse

and

Tryg Forsikring, supported by **the Norwegian Motor Insurers' Bureau (*Trafikkforsikringsforeningen*)**,

concerning the interpretation of Article 85(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems,

THE COURT,

composed of: Carl Baudenbacher, President, Per Christiansen (Judge-Rapporteur) and Benedikt Bogason (ad hoc), Judges,

Registrar: Gunnar Selvik,

having considered the written observations submitted on behalf of:

- Mobil Betriebskrankenkasse ("the plaintiff"), represented by Patrick Lundevall-Unger, advocate;

- Tryg Forsikring ("the defendant"), represented by Terje Marthinsen, advocate;

* Language of the request: Norwegian.

- the Norwegian Government, represented by Marius Emberland, advocate, Attorney General of Civil Affairs, and Kine Sverdrup Borge, Higher Executive Officer at the Ministry of Foreign Affairs, acting as Agents;

- the German Government, represented by Thomas Henze and Kathleen Stranz, acting as Agents;

- the EFTA Surveillance Authority ("ESA"), represented by Carsten Zatschler and Maria Moustakali, members of its Department of Legal & Executive Affairs, acting as Agents; and

- the European Commission ("the Commission"), represented by Denis Martin, Legal Adviser, and Jonathan Tomkin, member of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

having heard oral argument of the plaintiff, represented by Patrick Lundevall-Unger and Truls Haldorsen, advocates; the defendant, represented by Terje Marthinsen; the Norwegian Motor Insurers' Bureau ("the Motor Insurers' Bureau", intervening before the referring court), represented by Tor Morten Austerheim, advocate; the Norwegian Government, represented by Marius Emberland; ESA, represented by Maria Moustakali and Carsten Zatschler; and the Commission, represented by Denis Martin and Jonathan Tomkin, at the hearing on 1 March 2017,

gives the following

Judgment

I Legal background

EEA law

1 Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 200, p. 1, as corrected by OJ 2007 L 204, p. 30, and EEA Supplement 2015 No 76, p. 40) was incorporated in the Agreement on the European Economic Area ("the EEA Agreement") at point 1 of Annex VI by Joint Committee Decision No 76/2011 of 1 July 2011 (OJ 2011 L 262, p. 33, and EEA Supplement 2011 No 54, p. 46), which entered into force on 1 June 2012.

2 Article 85(1) of Regulation No 883/2004 reads:

> *If a person receives benefits under the legislation of one Member State in respect of an injury resulting from events occurring in another Member State, any rights*

of the institution responsible for providing benefits against a third party liable to provide compensation for the injury shall be governed by the following rules:

(a) where the institution responsible for providing benefits is, under the legislation it applies, subrogated to the rights which the beneficiary has against the third party, such subrogation shall be recognised by each Member State;

(b) where the institution responsible for providing benefits has a direct right against the third party, each Member State shall recognise such rights.

3 At the material time, the framework governing the coordination of social security schemes in force in the EEA was 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 included at point 1 of Annex VI to the EEA Agreement at its entry into force in 1994.

4 Article 22(1) of Regulation No 1408/71 reads:

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 requires benefits in kind which become necessary on medical grounds during a stay in the territory of another Member State, taking into account the nature of the benefits and the expected length of the stay;

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

or

(c) who is authorized 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.

5 Article 36(1) of Regulation No 1408/71 reads:

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.

6 Article 93(1) of Regulation No 1408/71 reads:

If a person receives benefits under the legislation of one Member State in respect of an injury resulting from an occurrence in the territory of another State, any rights of the institution responsible for benefits against a third party bound to compensate for the injury shall be governed by the following rules:

(a) where the institution responsible for benefits is, by virtue of the legislation which it administers, subrogated to the rights which the recipient has against the third party, such subrogation shall be recognised by each Member State;

(b) where the said institution has direct rights against the third party, such rights shall be recognised by each Member State.

National law

7 Regulation No 1408/71 applied in Norwegian law by virtue of Regulation of 30 June 2006 No 731 on the incorporation of the social security regulations of the EEA Agreement (*forskrift 30. juni 2006 nr. 731 om inkorporasjon av trygdeforordningene i EØS-avtalen*). Following the revision of the social security framework in the EEA, Regulation No 883/2004 was incorporated in Norwegian law by Regulation of 22 June 2012 No 585 on the incorporation of the social security regulations of the EEA Agreement (*forskrift 22. juni 2012 nr. 585 om inkorporasjon av trygdeforordningene i EØS-avtalen*).

8 Section 3-7 of the Norwegian Compensatory Damages Act of 13 June 1969 No 26 (*lov 13. juni 1969 nr. 26 om skadeserstatning*) ("the Norwegian Damages Act") specifies that a social security or pension institution which is responsible for providing benefits compensating an injury may not claim reimbursement from the person who caused the injury unless the latter acted intentionally.

II Facts and procedure

9 On 6 May 2011, Mr Jens Wille, a German national covered by mandatory German health insurance provided by the plaintiff, Mobil Betriebskrankenkasse, was injured in a car accident while on holiday in Norway. The motor vehicle that caused the accident was registered in Norway and covered by liability insurance taken out with the defendant, Tryg Forsikring.

10 Immediately after the accident, Mr Wille was taken to a hospital in Norway, where he received emergency treatment for a number of orthopaedic and internal injuries. He was offered surgery for an arm injury and a knee injury at the hospital. However, at his own request, he was transferred to a hospital in Germany to have the surgery performed there. Due to complications related to the surgery in Germany, his hospital stay was prolonged.

11 As the insurer of the motor vehicle that caused the accident, the defendant accepted liability for the ailments and losses sustained by Mr Wille as a consequence of the traffic accident. Damages were assessed in accordance with the provisions of the Norwegian Damages Act and general Norwegian tort law. The parties agree that the defendant has paid full compensation for Mr Wille's compensable losses, including his expenses and loss of income as a result of the traffic accident.

12 The treatment provided to Mr Wille in Norway and Germany led the plaintiff to make a number of payments under its insurance scheme. It then filed recourse claims against the defendant. The defendant accepted several of the recourse claims, but rejected three specific claims on the basis that they related to expenses for which Mr Wille for different reasons would not have been entitled to claim compensation under Norwegian law.

13 The first disputed claim concerns expenses for hospital treatment in Norway amounting to EUR 11 310. As a holder of a European Health Insurance Card, Mr Wille was not personally liable to pay these expenses, which were paid directly by the plaintiff to the Norwegian public health service. Tryg Forsikring claims that the plaintiff was thereby subrogated to the position of the Norwegian public health service, which under Norwegian law is prevented from filing a recourse claim against the defendant.

14 The second disputed claim concerns expenses for the hospital stay in Germany, and related ambulance expenses, amounting to EUR 55 210.45. According to the defendant, by reason of his duty to mitigate losses, Mr Wille should have accepted the offer to have surgery performed at the hospital in Norway.

15 The third disputed claim concerns expenses of EUR 5 873.16 for treatment not deemed compensable under Norwegian law, including lymph drainage and general massage.

16 The plaintiff brought the dispute before Oslo District Court (*Oslo tingrett*), which decided to stay the proceedings and refer the following questions to the Court:

> *Question 1, concerning the interpretation of Article 85(1)(a) of [Regulation No 883/2004]:*

When an institution in the injured party's home country that is responsible for providing benefits, under that country's legislation "is subrogated to" the injured party's right against a "third party", other EEA States must recognise the institution's subrogation to the claim. Does this mean

- *that other EEA States must recognise that the claim has passed from the injured party to the institution and that the existence and scope of the claim depends on the home country's legislation,*

- *that other EEA States must recognise that the claim has passed from the injured party to the institution and that the existence and scope of the claim depends on the legislation in the country where the injury occurred, or*

- *that other EEA States must recognise that the claim has passed from the injured party to the institution, but that the Social Security Regulation [Regulation No 883/2004] has no bearing on the choice of law as regards the existence and scope of the claim?*

Question 2, concerning the interpretation of Article 85(1)(b) of [Regulation No 883/2004]:

Where the institution responsible for providing benefits has a direct right against the third party, other EEA States shall recognise such rights. Does this mean

- *that other EEA States must recognise the right in full, including that its existence and scope depends on the home country's legislation, or*

- *that other EEA States must recognise the right, subject to those limitations that follow from the rules of law in the country where the injury occurred?*

17 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

18 The oral hearing was held on 1 March 2017. Since Judge Páll Hreinsson was prevented from sitting after the closure of the oral procedure, the case was reassigned to Judge Per Christiansen as Judge-Rapporteur. By letter of 8 May 2017, the Court informed the parties and those who had participated at the oral hearing that an ad hoc Judge would be appointed in accordance with Article 30(4) of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice to replace Judge Hreinsson and to complete the Court. In the same letter, the parties and participants of the hearing were given the opportunity until 12 May 2017 to request the reopening of the oral procedure. By letters of 8, 9 and 12 May 2017, the Commission, the plaintiff and ESA informed the Court that they would not request to be heard again. Accordingly,

on 16 May 2017, the Court informed the parties and the other participants of the hearing that it had appointed Benedikt Bogason to act as an ad hoc Judge in the present case and that it had decided to proceed to judgment without reopening the oral procedure.

III Answers of the Court

Preliminary remarks

19 The referring court has submitted two questions. As they are closely related, they will be addressed together. In essence, the Court is asked to clarify the extent of the obligation on an EEA State to recognise that an institution providing benefits in respect of an injury that was sustained in the territory of another EEA State has subrogated or direct rights against the third party responsible for the injury. More specifically, the referring court asks whether the existence and extent of the subrogated or direct right is to be determined by the legislation of the EEA State of the institution providing benefits, or whether it is determined by the legislation of the EEA State in which the injury occurred.

20 The referring court has requested an interpretation of Article 85(1) of Regulation No 883/2004. However, the facts of the case relate to the period prior to the entry into force of that regulation, which took effect on 1 June 2012. Upon a question from the bench at the hearing, the parties took the view that the applicable provision, in the case at issue, is Article 93(1) of Regulation No 1408/71 and not Article 85(1) of Regulation No 883/2004. The other participants at the hearing also presented arguments based on Regulation No 1408/71. In any event, the two provisions are essentially identical in substance. No arguments have been presented to the Court that would make it necessary to assess potential differences between these regulations, for example, in relation to their scope of application.

21 Accordingly, the Court will consider the questions referred against the background of Regulation No 1408/71.

Observations submitted to the Court

22 The plaintiff considers that the disputed claims are based on social security legislation only and not on tort law. Further, all the disputed claims have passed from Mr Wille to the plaintiff by subrogation and should therefore fall in their entirety under Article 93(1)(a) of Regulation No 1408/71.

23 According to the plaintiff, Article 93(1)(a) requires other EEA States to recognise that the claim has passed from the injured party to the institution responsible for benefits if and to the extent that this is provided for in the social security law of the EEA State where the institution is based. This includes all medical treatment that the responsible institution considers necessary due to its causal link to the accident.

24 The plaintiff acknowledges that the law of the EEA State in which the injury occurred sets the limits within which an institution can claim coverage from the liability insurer.

However, the plaintiff submits that Norwegian law includes no limitation on its right of subrogation in this regard, as foreign institutions are not subject to Section 3-7 of the Norwegian Damages Act. Therefore, the plaintiff is free to make a recourse claim and can claim compensation for the payments that it is obliged to make to the injured person under German law.

25 According to the plaintiff, it is incorrect to claim that Mr Wille did not have to pay the expenses incurred in Norway. The Norwegian health service recovered the costs of the treatment from the plaintiff. Mr Wille did not have to cover these hospital expenses due to the European Health Insurance Scheme. In other words, health care in Norway was not provided free of charge as the insurer, that is the plaintiff, covered the relevant costs.

26 The plaintiff contends that the defendant's submission concerning the obligation to mitigate losses cannot succeed. First, the plaintiff would not have saved any expenses had Mr Wille not been transferred, at his own request, to Germany. The plaintiff is obliged to pay for all treatment administered in Norway. Second, Mr Wille is not obliged to receive treatment in the place with the most favourable costs. Under German law, injured persons may choose their own doctor. In addition, had Mr Wille stayed in Norway, this would have jeopardised the payment from the plaintiff, as he was dependent on the latter's consent before undergoing further treatment at its expense.

27 The defendant, supported by the Motor Insurers' Bureau, acknowledges the plaintiff's right of subrogation in accordance with Article 93(1) of Regulation No 1408/71. However, that right cannot exceed the limits set by the law of the EEA State in which the injury occurred (reference is made to the judgments of the Court of Justice of the European Union in *L'Etoile-Syndicat général*, 78/72, EU:C:1973:51, paragraphs 4 and 5; *DAK*, C-428/92, EU:C:1994:222; and *Kordel and Others*, C-397/96, EU:C:1999:432, paragraph 2 of the operative part). Where tort law in that EEA State provides for a ceiling that must be observed by the injured person, this ceiling must also be observed by the party enjoying a right of recourse (reference is made to the Opinion of Advocate General Lenz in *DAK*, C-428/92, EU:C:1994:136, point 31).

28 In the view of the defendant and the Motor Insurers' Bureau, there is no causal link warranting compensation under Norwegian law in the present case. As a holder of a European Health Insurance Card, Mr Wille did not have to pay for the hospital treatment in Norway. The Motor Insurers' Bureau adds that even though a full reimbursement takes place between the relevant institutions for the treatment, these expenses cannot be regarded as costs incurred by the directly injured person.

29 Moreover, the defendant and the Motor Insurers' Bureau submit that the costs for hospital treatment in Germany and related ambulance expenses could have been avoided had Mr Wille mitigated his loss by accepting treatment in Norway. The defendant contends in this regard that authorisation from the plaintiff was not required as Mr Wille did not travel to Norway for the purpose of receiving benefits in kind.

30 As regards costs related to lymph drainage and general massage, the defendant submits that these costs are not compensable under Norwegian law. The Motor Insurers' Bureau

adds that the reason for this is that it has not been scientifically proven that such treatment has any lasting effect.

31 Consequently, the defendant and the Motor Insurers' Bureau argue that if Mr Wille had personally covered the expenses under the three disputed claims, and then claimed reimbursement from the defendant, he would have been unsuccessful. As far as these claims are concerned, Mr Wille therefore had no right to which the plaintiff could be subrogated.

32 At the hearing, upon a question from the bench, the advocate for the defendant stated that in Norway the costs for urgent hospital care are initially the costs of the regional health authority or the national social security scheme. Those authorities are not entitled to claim compensation from the defendant or any other responsible party should they present their claim directly. Under Norwegian tort law, they are considered third parties; only in certain circumstances is a third party entitled to compensation.

33 The Norwegian Government submits that if the legislation administered by the institution providing benefits provides for a subrogated or direct right for the institution, Article 93(1) of Regulation No 1408/71 requires other EEA States to recognise such right. The exercise of that right, however, is determined by the legislation of the State in whose territory the injury occurred. Article 93(1) does not purport to alter the applicable rules for determining whether and to what extent non-contractual liability on the part of the third party who caused the injury is to be incurred (reference is made to the judgment in *Kordel and Others*, cited above, paragraph 15).

34 The Norwegian Government argues that there is no legal basis for the submission made by ESA and the Commission that the defendant's interpretation would nullify the essence of Article 93(1) of Regulation No 1408/71. To the contrary, there is fairly explicit case law suggesting that tort law in the EEA State where the injury occurred determines the rights to which an institution is subrogated.

35 The German Government submits that Article 85(1) of Regulation No 883/2004 entails that other EEA States must recognise that the claim in question has passed from the injured person to the competent institution, or that the institution can make direct claims against the party that caused the injury. To the extent that these claims are made on the basis of provisions of social law only and irrespective of any claims made under civil law, they are to be determined in line with the legal provisions to which the institution responsible for providing the benefits is bound.

36 Regulation No 883/2004 has no bearing on whether and to what extent any liability claims can be made under civil law. That regulation merely specifies that EEA States must recognise subrogation, but does not establish the conflict-of-laws rule to be used in determining the scope of the subrogated claims. Therefore, the referring court must base its conclusion on the conflict-of-laws rules set out in private international law and applicable under national law.

37 ESA and the Commission submit that the law of the EEA State to which the institution is subject determines whether that institution is subrogated to the rights of the injured person, as well as the nature and extent of the claims to which that institution is subrogated. However, the substantive content of the subrogated rights and the requirements that must be satisfied in order to enable an action before the courts of the EEA State where the accident occurred must be determined according to the legislation of that State, including applicable private international law provisions. Article 93(1) of Regulation No 1408/71 does not create additional rights for the recipient of the benefits against third parties (reference is made to the judgments in *Kordel and Others*, cited above, paragraphs 17, 21, 22 and 27; *DAK*, cited above, paragraphs 17, 18 and 21; and *L'Etoile-Syndicat général*, cited above, paragraphs 5 and 6). In ESA's view, the same principles apply as regards direct rights.

38 The application of these principles must not undermine or nullify the substance of the subrogated or direct rights in question. EEA States must ensure the effectiveness of EEA law and exercise national competences in a manner that ensures respect for such law, even in the fields falling within the competence of the EEA States (reference is made to Cases E-28/15 *Jabbi* [2016] EFTA Ct. Rep. 577, paragraph 79; and E-11/12 *Koch and Others* [2013] EFTA Ct. Rep. 272, paragraph 76).

39 ESA and the Commission maintain that the defendant's refusal to pay compensation for hospital treatment in Norway would in essence nullify the right of subrogation provided for in Article 93(1) of Regulation No 1408/71. According to Article 22 of that regulation, benefits provided by the institution in the place of stay are provided on behalf of the competent institution. Therefore, the treatment is not free of charge as such.

40 The Commission argues further that the situation where an individual's treatment is funded by the Norwegian healthcare system is not the same as that where the treatment is merely administered by that system, but funded by the competent institution of another EEA State. Accordingly, while Norwegian law may limit the subrogation rights of its own public health service, it does not follow that it can also limit the subrogation rights conferred directly on other institutions responsible for providing a benefit under Regulation No 1408/71 (reference is made, by analogy, to the judgment in *Axa Belgium*, C-494/14, EU:C:2015:692).

41 ESA and the Commission submit that the plaintiff should also have a right to compensation for the expenses relating to Mr Wille's hospital treatment in Germany. While it is not known exactly how much the treatment in Norway would cost, it would certainly not have been provided free of charge. The fact that Mr Wille was entitled to receive treatment in Norway does not mean that he was obliged to do so. It is only natural for an injured person to wish to be transferred to a hospital in his home country. Moreover, he would possibly have had to receive authorisation from the competent institution in Germany for continuing his treatment in Norway. Finally, the Commission notes that the duty to mitigate loss applies to the patient's loss, and does not extend to a general obligation to reduce the potential exposure of the party responsible for the injury.

42 As regards expenses related to lymph drainage and general massage, ESA and the Commission submit that, insofar as Mr Wille could not have recovered such costs against the responsible party under Norwegian law, such costs are equally not recoverable through subrogation by the institution responsible for providing the benefit.

Findings of the Court

43 According to Article 93(1) of Regulation No 1408/71, each EEA State must recognise the subrogation of the institution responsible for benefits to the rights which the recipient has against the third party bound to compensate for the injury, or the direct rights of the institution responsible against the third party, where that institution is so subrogated or has such rights under the legislation of the EEA State to which it is subject.

44 Article 93(1) of Regulation No 1408/71 applies in situations, such as that at issue, where a social security institution in one EEA State has paid benefits in respect of an injury that was sustained in another EEA State. The provision has the objective of allowing that institution to exercise the rights of action provided for by the legislation which it administers against the third party liable for the injury. This may be done, for example, by means of subrogation. The rights thus conferred on national social security institutions constitute a logical and fair counterpart to the extension of the obligations of those institutions throughout the entire EEA as a result of the provisions of Regulation No 1408/71 (compare the judgment in *DAK*, cited above, paragraph 16 and case law cited).

45 Article 93(1) of Regulation No 1408/71 is thus a conflict-of-laws rule which requires the national court to apply the law of the EEA State to which the institution responsible is subject to determine whether and to what extent that institution is subrogated by law to the rights of the injured party or has direct rights against the third party liable (compare the judgment in *Kordel and Others*, cited above, paragraph 22 and case law cited).

46 However, the provision is intended only to ensure that the rights that the institution responsible may have under the legislation it administers are recognised by other EEA States. Its purpose is not to alter the rules for determining the extent of non-contractual liability on the part of the third party who has caused the injury. The third party's liability is governed by the substantive rules which are normally to be applied by the national court before which proceedings are brought by the injured person or those entitled under him, that is to say, in principle, the legislation of the EEA State in whose territory the injury occurred (compare the judgment in *Kordel and Others*, cited above, paragraph 15 and case law cited).

47 It follows from this that the law of the EEA State of the institution responsible for benefits determines whether the institution is subrogated to the rights of the injured person against the third party liable for the injury. However, the law of the EEA State where the injury occurred, including applicable rules of private international law, determines the scope of those rights. Accordingly, the rights of the institution responsible for benefits cannot exceed the rights that the injured party has against the

third party as a result of the injury (compare the judgment in *Kordel and Others*, cited above, paragraphs 16 and 17).

48 Thus, provided that the institution's subrogated right is recognised, the scope of the third party's liability remains subject to the legislation of the EEA State in which the injury occurred, in this case Norwegian law. Under EEA law, national courts are bound, as far as possible, to interpret domestic law in light of the wording and the purpose of the relevant EEA law in order to achieve the result it seeks (see Case E-28/13 *LBI* [2014] EFTA Ct. Rep. 970, paragraph 42 and case law cited).

49 It is for the referring court to assess the facts of the case and to determine Mr Wille's rights and the possible limitations of those rights under Norwegian tort law, which are subsequently conferred upon the plaintiff by way of subrogation. However, in light of the conflicting views expressed on the three claims at issue, the Court finds it appropriate to provide some further points of clarification.

50 According to the referring court, the parties agree that the plaintiff is the institution responsible for benefits within the meaning of Article 93(1) of Regulation No 1408/71. The parties also agree that, under certain conditions, German law provides that the injured person's claim against a third party liable to pay damages is subrogated to the plaintiff.

51 The parties disagree on three specific claims: (i) the costs related to the hospital treatment in Norway, (ii) the costs related to the hospital treatment in Germany, as well as the related ambulance expenses, and (iii) the expenses related to lymph drainage and general massage.

52 As for the first and second claims, it is undisputed that this treatment was necessary and that the plaintiff was obliged to pay the costs of the treatment. However, the defendant argues that Mr Wille has no claim himself against the third party, since he received, and could have continued to receive, hospital treatment in Norway, which did not give rise to any costs for Mr Wille himself. Consequently, according to the defendant, the plaintiff is prevented from claiming damages with regard to these two claims.

53 This argument is not convincing. The person liable to compensate for an injury must, in principle, pay the costs for necessary hospital treatment. Such treatment may be provided by the public health service free of charge to the injured person. In such cases, the injured person has not borne the costs himself and has no claim against the responsible party. However, the purpose of such a public health system is not to relieve the responsible party of liability for the costs, but to ensure that the necessary treatment is available to the injured person, regardless of his financial situation or of that of the responsible party. Accordingly, many EEA States equip their social security institutions with a right to seek reimbursement from the third party responsible for the injury, for example, by way of subrogation. This right must apply whether or not the injured person himself has a claim.

54 It is that right to seek reimbursement that Article 93(1) of Regulation No 1408/71 guarantees in situations where the institution responsible for benefits is located in an EEA State other than that in which the injury occurred. An interpretation to the effect that the institution could not file a claim against a responsible third party for costs related to necessary hospital treatment for the reason that those costs were initially borne by the public health system of the EEA State where the injury occurred, would nullify the effect of Article 93(1). It is likewise incompatible with Article 93(1) to refuse compensation of the costs related to any necessary treatment in, and ambulance transportation to, Germany, on the sole basis that the treatment could have been provided in Norway, without giving rise to any costs for Mr Wille himself.

55 Article 93(1) of Regulation No 1408/71 does not preclude national law limiting the right of national institutions to submit a recourse claim against the third party responsible for an injury, as Section 3-7 of the Norwegian Damages Act appears to do. However, it would not be compatible with Article 93(1) of Regulation No 1408/71 to apply such national law to institutions in other EEA States, such as the plaintiff. As provided for under Article 22(1)(a)(i) of Regulation No 1408/71, the health care services Mr Wille received in Norway were provided on behalf of the competent institution in Germany by the institution of the place of stay. Under such circumstances, pursuant to Article 36(1) of that regulation, the benefits in kind provided must be fully refunded by the institution responsible for paying benefits to the injured person.

56 As for the third disputed claim, concerning expenses related to lymph drainage and general massage, the parties appear to agree that such costs are not compensable under Norwegian tort law. This is for the referring court to ascertain.

57 In light of the above, the answer to the questions referred must be that where an institution responsible for benefits has, by virtue of the legislation which it administers, a subrogated or direct right against a third party responsible for an injury sustained in another EEA State, Article 93(1) of Regulation No 1408/71 requires other EEA States to recognise such rights as provided for under the law of the EEA State to which that institution is subject.

58 However, that subrogated or direct right cannot exceed the rights that the injured person has against the third party responsible for the injury under the national law of the EEA State where the injury occurred, including any applicable rules of private international law.

59 Nevertheless, the fact that, under the law of the EEA State in which the injury occurred, necessary treatment has been provided without giving rise to any costs for the injured person himself does not preclude the institution responsible for providing benefits from claiming compensation from the third party for costs incurred due to such treatment.

IV Costs

60 The costs incurred by the Norwegian Government, the German Government, ESA and the Commission, which have submitted observations to the Court, are not recoverable.

Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties and for the Motor Insurers' Bureau is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by Oslo District Court hereby gives the following advisory opinion:

1. **Where an institution responsible for benefits has, by virtue of the legislation which it administers, a subrogated or direct right against a third party responsible for an injury sustained in another EEA State, Article 93(1) of Regulation (EEC) No 1408/71 requires other EEA States to recognise such rights as provided for under the law of the EEA State to which that institution is subject.**

2. **However, that subrogated or direct right cannot exceed the rights that the injured person has against the third party responsible for the injury under the national law of the EEA State where the injury occurred, including any applicable rules of private international law.**

3. **Nevertheless, the fact that, under the law of the EEA State in which the injury occurred, necessary treatment has been provided without giving rise to any costs for the injured person himself does not preclude the institution responsible for providing benefits from claiming compensation from the third party for costs incurred due to such treatment.**

Carl Baudenbacher Per Christiansen Benedikt Bogason

Delivered in open court in Luxembourg on 20 July 2017.

Birgir Hrafn Búason
Acting Registrar

Carl Baudenbacher
President