



## ORDER OF THE PRESIDENT

11 September 2018

*(Denial of request for accelerated procedure)*

In Case E-2/18,

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 the Princely Court of Liechtenstein (Fürstliches Landgericht), in the case between

**C**

and

**Concordia Schweizerische Kranken- und Unfallsversicherung AG,  
Landesvertretung Liechtenstein**

concerning the interpretation 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 PRESIDENT,

makes the following

### Order

#### **I Facts and procedure**

- 1 This reference for an advisory opinion concerns the interpretation of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1) (“the Regulation”), referred to at point 1 of Annex VI to the Agreement on the European Economic Area.
- 2 The request has been made in proceedings between C, as plaintiff, and Concordia Schweizerische Kranken- und Unfallsversicherung AG, Landesvertretung Liechtenstein (“Concordia”), as defendant. Concordia is a private insurance company offering mandatory health insurance under Liechtenstein law. The case essentially concerns Concordia’s refusal to cover C’s costs for an in-patient hospital stay in Spain, his country of residence.
- 3 According to the request for an advisory opinion, C worked in Liechtenstein from 1977 to 1999. Since 1 December 2000 he is in receipt of a disability pension under the Liechtenstein disability insurance scheme. He resided in Liechtenstein until 31 May 2003. On 1 June 2003, he moved his residence to Spain. He has taken out a mandatory

health insurance under Liechtenstein law with Concordia. In addition to providing the cover prescribed by Liechtenstein law, the insurance also grants him a free choice of doctor worldwide.

- 4 C suffers from mental and physical disorders of a chronic nature. For several years he has received benefits in kind in various institutions, predominantly in Spain. Concordia bore the costs of C's in-patient stay at a psychiatric institution in Spain. The commitment to cover costs was granted until 31 March 2016.
- 5 For the period after 31 March 2016, invoices for continued treatment in Spain have been submitted to Concordia on C's behalf. Initially, Concordia refused to pay these invoices. Based on advice from its own Medical Examiner's Office, it granted a commitment to cover costs for monitoring C in a psychiatric clinic in Switzerland for three months. However, C's representative stated that his health prevented him from travelling to Switzerland.
- 6 Based on further investigations, Concordia concluded in March 2017 that, due to the chronic condition of C's disorders, there was no longer a need for hospital care after 1 April 2016. C should be transferred to a care home, for which Concordia would pay nursing fees.
- 7 On 6 September 2017, Concordia informed C's lawyer that it would cover in full the in-patient stay at the Spanish institution up to 31 March 2016 in accordance with its commitment, and up to 30 June 2016 as a transitional period. In respect of the period after that, Concordia would pay C a daily contribution to care costs amounting to CHF 37.60. In addition, Concordia would reimburse C's costs for some other medical services in this period.
- 8 Concordia adopted two orders, which are at issue in the proceedings before the national court. First, Concordia ordered C to claim reimbursement of benefits in kind received in Spain after 1 September 2017 from the competent Spanish institution. Invoices partly or fully rejected by the competent Spanish institution were to be submitted to Concordia. Concordia also reserved the right to recover over-reimbursed benefits in the period from 2003 to 2017. In the second order, Concordia held that it would pay C's care costs of CHF 37.60 per day from 1 July 2016 to 30 November 2017, unless benefits in kind were already provided in Spain. Payments after that period would be dependent on a request for a commitment to cover costs.
- 9 In November 2017, C challenged the two orders before the Princely Court. On the basis of his insurance policy, he argues that Concordia should be ordered to pay for all medically prescribed treatments. His contract covers the free choice of doctor and the cost of treatment in Liechtenstein and abroad, up to the amount of the statutory tariff. C argues that the Regulation is not applicable. The Spanish national health system does not cover costs arising in the private insurance system. Invoicing the Spanish institution would also delay the procedure, as compared to invoicing Concordia directly.

- 10 Concordia, on the other hand, argues that the action should be dismissed. It argues that, under Article 24 of the Regulation, C is entitled to benefits in kind in Spain as if he were insured under Spanish legislation. His invoices for treatment must be submitted to the relevant Spanish institution which will reimburse him and then settle with Concordia. He may submit invoices to Concordia only to the extent they are not covered by the Spanish institution, and only up to the maximum of the tariffs applicable to his insurance. Since Concordia had already provided benefits in excess of that limit, it argues that it is entitled to recover these over-reimbursed benefits.
- 11 In those circumstances, the Princely Court decided that a determination of the applicability of the Regulation in the present case, and of the procedure for reimbursement of costs for benefits in kind, was necessary for the outcome of the dispute. It therefore decided on 13 July 2018 to stay the proceedings and to request an advisory opinion from the Court. The referring court also requests the Court to apply an accelerated procedure pursuant to Article 97a(1) of the Rules of Procedure (“RoP”). The request for an advisory opinion was registered at the Court on 17 July 2018. The translation of the request was finalised on 27 August 2018.

## **II Findings**

- 12 Article 97a(1) RoP provides that, at the request of the national court, and on a proposal from the Judge-Rapporteur, the President may exceptionally decide to apply an accelerated procedure derogating from the provisions of the Rules of Procedure to a request for an advisory opinion, where the circumstances referred to establish that a ruling on the question put to the Court is a matter of exceptional urgency.
- 13 In support of its request for an accelerated procedure, the referring court states that C is suffering severely, and that his financial situation depends largely on the outcome of the present dispute.
- 14 In the present case, the information provided to the Court does not contain anything to indicate that the applicant is in a situation that is particularly precarious and would necessitate an urgent reply to the questions referred (compare the order in *A*, C-489/14, EU:C:2015:19, paragraph 19).
- 15 Furthermore, while the referring court has evoked the possible adverse consequences of the extension of the proceedings for the applicant concerned, it has not established that the nature of the case requires that it be dealt with in a short time. In the absence of evidence to indicate that such consequences could be avoided if the case were to be dealt with under an accelerated procedure, the legal uncertainty affecting the applicant in the main proceedings is not capable as such of constituting an exceptional circumstance that could justify recourse to an accelerated procedure (compare orders in *I v. Health Service Executive*, C-255/13, EU:C:2013:507, paragraph 15 and *O and Others*, Joined Cases C-356/11 and C-357/11, EU:C:2011:566).

- 16 Moreover, the economic interests of the applicant, to which the national court refers, although significant and legitimate, does not justify the use of the accelerated procedure (compare the order in *Newby Foods*, C-453/13, EU:C:2014:87, paragraph 16).
- 17 Lastly, since the case has been pending before the referring court since November 2017, it does not appear that it was the subject of an urgent treatment before a decision was taken in July 2018 to refer questions to the Court. While not in itself decisive, this period of time does not support the argument that the Court should adopt a decision that the present reference for an advisory opinion be determined pursuant to an accelerated procedure, under Article 97a RoP, derogating from the other provisions of those rules.
- 18 It follows that the request of the Princely Court of Liechtenstein that the present case be determined pursuant to an accelerated procedure cannot be granted.

On those grounds,

THE PRESIDENT

hereby orders:

**The request to apply an accelerated procedure, pursuant to Article 97a of the Rules of Procedure, derogating from the provisions of the Rules of Procedure to a reference for an advisory opinion is denied.**

Ólafur Jóhannes Einarsson  
Registrar

Páll Hreinsson  
President