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Judgment in Case E-11/16 *Mobil Betriebskrankenkasse* v *Tryg Forsikring*

EXTENT OF SUBROGATED RIGHTS OF INSTITUTIONS RESPONSIBLE FOR BENEFITS AGAINST A THIRD PARTY LIABLE FOR AN INJURY

In a judgment delivered today, the Court answered questions referred to it by Oslo District Court (*Oslo tingrett*) concerning the interpretation of Article 93(1) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community ("the Regulation").

In 2011, a German national was injured in a car accident while on holiday in Norway. He received emergency treatment in a Norwegian hospital, and was later transferred to a German hospital for further treatment. The expenses were covered by a German health insurance provided by Mobil Betriebskrankenkasse ("Mobil"). Mobil then filed recourse claims against Tryg Forsikring ("Tryg"), the insurer of the car that caused the accident. Tryg partially rejected the claims. In its view, the injured person had no rights against Tryg to which Mobil could subrogate, since all necessary treatment could have been provided free of charge to him by the Norwegian public health service. Mobil brought the dispute before Oslo District Court, which decided to seek an advisory opinion from the Court on the extent of the obligation to recognise the subrogated or direct rights of the institution responsible for benefits against the third party bound to compensate for the injury.

The Court held that Article 93(1) of the Regulation 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.

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.

Concerning the disputed claims, the Court found that the fact that, under the law of the EEA State in which the injury occurred, necessary treatment was provided without giving rise to any costs for the injured person himself does not preclude the institution responsible for benefits from claiming compensation from the third party for costs incurred due to such treatment.

The full text of the judgment may be found on the internet at: www.eftacourt.int.