

SUMMARY

ECJ 23 September 2020, Case C-777/18 (Vas Megyei Kormányhivatal (Soins de santé transfrontaliers)), Free Movement, Social Insurance

WO - v - Vas Megyei Kormányhivatal, Hungarian case

Summary

In principle, healthcare received on initiative of an insured person, in another Member State than the Member State of residence, constitutes ‘scheduled treatment’ within the meaning of Article 20 of Regulation 883/04/EC, the reimbursement of which is subject to prior authorization. This can be different in ‘individual circumstances’.

Questions

Must Article 20 of Regulation No 883/2004 or Article 26 of Regulation No 987/2009, laying down the procedure for implementing the former, be interpreted as meaning that healthcare received in a Member State other than the insured person’s Member State of residence, on that person’s own initiative, taken once it has been established that all the treatments received in several medical establishments in his or her Member State of residence are ineffective, comes within the definition of ‘scheduled treatment’ and, if so, whether those provisions must be interpreted as meaning that the insured person can apply for the reimbursement, by the competent institution, of the costs he or she has incurred for the scheduled treatment received during his or her stay in the other Member State, even if that person has not applied for prior authorisation for that purpose from that institution, at the very least when individual circumstances, relating in particular to his or her state of health and probable course of the illness, are capable of justifying the absence of such authorisation and, as a result, permitting the reimbursement requested?

Must Article 56 TFEU and Article 8(1) of Directive 2011/24 be interpreted as precluding national legislation that makes the reimbursement of costs of healthcare received by an insured person in another Member State subject, in all cases, to prior authorisation, even when there is, while waiting for such authorisation to be granted, a genuine risk that that person's state of health will irreversibly deteriorate?

Must Article 9(3) of Directive 2011/24, requiring Member States to set out reasonable periods of time for processing requests for cross-border healthcare, be interpreted as precluding national legislation which, irrespective of the medical condition of the patient who has applied for prior authorisation for the assumption of the costs of cross-border healthcare, provides for a time limit of 31 days to grant such authorisation and 23 days to refuse it?

Ruling

The combined provisions of Article 20 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 and Article 26 of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation No 883/2004, read in the light of Article 56 TFEU, must be interpreted as meaning that:

healthcare received in a Member State other than the Member State in which the insured person resides, on his or her own initiative, on the ground that, according to that person, that treatment or treatment with the same efficacy was unavailable within a time limit which is medically justifiable, comes within the definition of 'scheduled treatment' within the meaning of those provisions, so that the receipt of such treatment is, in accordance with the conditions laid down in Regulation No 883/2004, in principle subject to the granting of an authorisation by the competent institution of the Member State of residence;

an insured person who has received scheduled treatment in a Member State other than his or her Member State of residence, without having applied for authorisation from the competent institution, pursuant to Article 20(1) of that regulation, is entitled to reimbursement, under the conditions laid down in that regulation, of the cost of that treatment, if

first, between the date on which the appointment for the purposes of a medical examination and possible treatment in another Member State was made and the date on which that treatment was given to the insured person in that Member State, to which he or she had to travel, that person was, for reasons relating to his or her state of health or to the need to receive urgent treatment, in a situation which prevented him or her from applying for such

authorisation from the competent institution or was not able to wait for the decision of that institution on such application, and
second, the other conditions for the assumption of the costs of the benefits in kind, pursuant to the second sentence of Article 20(2) of that regulation are also met.

It is for the referring court to carry out the necessary verifications in that respect.

Article 56 TFEU and point (a) of the first subparagraph of Article 8(2) of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare must be interpreted as precluding national legislation which, in the absence of prior authorisation, excludes reimbursement, within the limits of the cover provided by the health insurance scheme in the Member State of affiliation, of the costs of a medical consultation incurred in another Member State.

Article 56 TFEU and Article 8(1) of Directive 2011/24 must be interpreted as precluding national legislation – in a case where the insured person was prevented from applying for such authorisation or was not able to wait for the decision of the competent institution on the application for authorisation, for reasons relating to his or her state of health or to the need to receive urgent hospital care or healthcare involving the use of highly specialised and cost-intensive medical equipment, even though all other conditions for such costs to be assumed are met – which, in the absence of prior authorisation, excludes reimbursement, within the limits of the cover provided by the health insurance scheme in the Member State of affiliation, of the costs of that care given to that person in another Member State

Article 9(3) of Directive 2011/24 must be interpreted as not precluding national legislation which provides for a time limit of 31 days to grant prior authorisation of the assumption of costs of cross-border healthcare and 23 days to refuse it, while allowing the competent institution to take into account the individual circumstances and the urgency of the case in question.

Creator: European Court of Justice (ECJ)

Verdict at: 2020-09-23

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