Court of Justice of the European Union
PRESS RELEASE No 13/10
Luxembourg, 25 February 2010

Press and Information

Advocate General's Opinion in Case C-211/08
Commission v Spain

According to Advocate General Mengozzi, refusal of additional reimbursement for medical expenses arising from unplanned hospital treatment abroad is contrary to the freedom to provide services

Expenses charged to the patient in the State of treatment must also be reimbursed where the level of cover is lower in that State than in the State of affiliation

Under the Spanish law on health[1], Spanish citizens and foreign nationals resident in Spain have a right to the protection of health. Generally speaking, only hospital services provided in Spain by the national health service are covered and free of charge. Where unplanned medical treatment has been received in another Member State, the Spanish system, in accordance with the mechanism provided for in Regulation No 1408/71[2], reimburses, to the institution concerned, the costs borne by the institution in the State in which treatment was administered, on the basis of the tariffs in force in that State[3].

Mr Chollet, a French national resident in Spain and insured with the Spanish social security system, unexpectedly needed to be admitted to hospital during a visit to France. The Spanish social security institution refused his application for refund of the percentage of the costs charged to him by the French hospital (the '*ticket modérateur*') in accordance with the French legislation. This led Mr Chollet to lodge a complaint with the European Commission, which initiated an infringement procedure against Spain.

This is the first time that the reimbursement of medical expenses – a matter which has already proved to be a fertile source of case-law – has been addressed in proceedings against a Member State for failure to fulfil obligations.

Before the Court, the Commission claims that, by refusing persons affiliated to the Spanish national health system additional reimbursement for medical costs arising from unplanned hospital treatment in another Member State, in so far as the level of cover in that State is lower than that provided for under Spanish legislation, Spain is in breach of the European Union law principles relating to the freedom to provide services. According to the Commission, the Spanish health legislation has a restrictive effect both on the provision of the services that initially motivated travel to and temporary stay in another Member State and on the subsequent provision of hospital medical services in that State.

First and foremost, Advocate General Paolo Mengozzi points out that the aim of Regulation No 1408/71 is to coordinate the legislation of the Member States in the various social security sectors. It provides that, where the institutions of a Member State are called upon to pay for the treatment of a worker who is affiliated to a system in another Member State, coverage of that expenditure is based on the tariffs established by the Member State in which the services are provided. Accordingly, whenever the legislation of the Member State of the disbursing institution provides (as

[1] Law No 14/1986 of 25 April 1986.
[2] Council Regulation No 1408/71 of 14 June 1971. That act will be replaced by Regulation (EC) No 883/2004 with effect from 1 May 2010 (the date of entry into force of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009, which lays down the implementing rules).
[3] In exceptional cases, however, where 'urgent, immediate and vital care' has been necessary in another Member State (not the type of situation at issue in the present case), the Spanish health system covers (and reimburses) the full costs.

in France, in the case of Mr Chollet) that a percentage of the costs of the services is to be borne by the recipient, that legislation will apply also where the person in question is insured with another Member State.

The Advocate General points out that the Court has already explained that Community law does not detract from the powers of Member States to organise their social security systems and that it is for each Member State to lay down (i) the conditions for affiliation to a social security system and (ii) the conditions for entitlement to the related benefits. However, Member States must nevertheless comply with Community law when exercising those powers and, in particular, with the provisions on freedom of movement.

Furthermore, according to the Court, medical services provided for payment fall within the scope of freedom to provide services, there being no need to distinguish between care provided in a hospital environment and care provided outside such an environment, and regardless of the way in which the national system with which that person is registered operates.

Lastly, the Court has already had occasion to confirm, in cases concerning planned health treatment, the right of persons affiliated to the social security scheme of a Member State to additional reimbursement, corresponding to the difference between the level of cover offered by the institution in the State in which treatment was received and the level of cover provided in the State of affiliation, but within the limits set by the tariffs applicable in the State of affiliation. The legislation of a Member State which – albeit not preventing affiliated persons from receiving medical treatment in another Member State – does not guarantee, with respect to the expenditure incurred in another Member State, the same level of cover as that offered for treatment received in the State of affiliation, constitutes a restriction on the freedom to provide services.

The Advocate General does not believe that the terms of the problem are altered by the fact that the proceedings brought by the Commission concern situations which have arisen unexpectedly, when the patient is already in another Member State. In the view of the Advocate General, the Spanish rules have a restrictive effect, if only because they deter the patient from prolonging his stay in another State or prompt him to bring forward his return to his State of residence in order to receive the medical treatment there.

The restriction on the freedom of movement, which takes the form of refusal to grant additional reimbursement, cannot be justified by reference to the risk of financial repercussions on the national health service. Indeed, the State of affiliation is not required in any case to reimburse more than the cost that it would have borne if treatment had been given in the national territory.

Moreover, in the view of the Advocate General, the risk of a resurgence of ‘health tourism’ is offset by the fact that the reimbursement is conditional in any event upon the existence of a medical need and that it is also possible to trigger mechanisms for administrative cooperation between the States in order to prevent abuse.

The Advocate General therefore suggests that the Court should declare that, by refusing persons entitled under the Spanish national health system additional reimbursement for medical costs incurred in another Member State as a result of unplanned hospital treatment, in so far as the level of cover applicable in that State is lower than that provided for under Spanish legislation, Spain is in breach of the principle of the freedom to provide services.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355