



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 56/10**

Luxembourg, 15 June 2010

Judgment in Case C-211/08  
Commission v Spain

**Where unscheduled hospital care is administered during a temporary stay in a Member State other than the Member State of affiliation, the latter is not required to reimburse the patient as regards costs which, in the State where the care was administered, fall to be paid by the patient**

*The institution of the Member State of affiliation is required to reimburse the institution of the Member State of stay, in which the care was administered, only as regards the costs incurred by that institution on the basis of the level of cover applicable in the Member State of stay*

Under the Spanish legislation on healthcare, it is a general rule that only the benefits provided under the national health system to persons covered by that system are entirely free of charge. Nevertheless, in accordance with the mechanism established in Regulation No 1408/71<sup>1</sup>, where a person insured under the Spanish national health system receives unscheduled healthcare in another Member State (that is to say, hospital care made necessary by changes in the person's state of health during a temporary stay in that Member State), the Spanish system reimburses the institution of the Member State of stay, in which the care was administered, as regards the costs incurred by that institution on the basis of the level of cover applicable in the Member State of stay<sup>2</sup>. Consequently, the insured person in question has no right, in principle, to insurance cover at the expense of the Spanish institution in respect of that part of the cost of the care which is not covered by the institution of the Member State of stay and which falls to be paid by the patient.

Following a complaint from a person insured under the Spanish national health system who had had to be admitted to hospital unexpectedly during a stay in France and who, on his return to Spain, was refused reimbursement of the portion of the hospital costs which, in accordance with French legislation, he had been left to pay, the Commission decided to bring the present action against Spain for failure to fulfil obligations. The Commission maintains that the Spanish legislation is in breach of the principle of freedom to provide services, since it refuses persons insured under the national health system reimbursement for that portion of the costs of care which is not covered by the institution of the Member State of stay. In that way, the effect of the legislation in question is to restrict not only the provision of hospital care, but also the provision of tourist or educational services, the obtaining of which can be the reason for a temporary stay in another Member State.

In its judgment, delivered today, the Court of Justice holds that the freedom to provide services encompasses the freedom of an insured person established in a Member State to travel – as a tourist or student, for example – to another Member State for a temporary stay and to receive hospital care there from a provider established in that Member State, where the need for such care during that stay arises because of his state of health. Nevertheless, **the Court considers that, viewed globally, the Spanish legislation cannot be regarded as restricting the freedom to provide hospital care services, tourist services or educational services.**

<sup>1</sup> Regulation (EEC) No 1408/71 of the Council 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, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), and as subsequently amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006 (OJ 2006 L 392, p. 1). That regulation was replaced by Regulation (EC) No 883/2004 with effect from 1 May 2010 (OJ 2007 L 166, p. 1).

<sup>2</sup> However, in exceptional cases of 'immediate, urgent, life-saving' treatment given in another Member State – which the present case does not concern, however – the Spanish national health system covers and reimburses all costs in full.

In that regard, the Court takes care to distinguish the case of unscheduled treatment in another Member State from that of scheduled treatment in another Member State, for which the insured person has received authorisation.

The Court considers that, in the case of an insured person whose travel to another Member State is for reasons relating to tourism or education, for example, and not – as in the case of scheduled treatment – to any inadequacy in the health service to which he is affiliated, the conditions attached to a hospital stay in another Member State may, according to circumstance, be to the insured person's advantage or disadvantage. That situation is explained by the disparities between the various Member States in matters of social security cover and the fact that the objective of Regulation No 1408/71 is to coordinate the national laws but not to harmonise them<sup>3</sup>.

On the other hand, the Court points out that, where unscheduled hospital care is necessary because of circumstances relating, inter alia, to the urgency of the situation, the seriousness of the illness or the accident, or even the fact that a return to the Member State of affiliation is ruled out for medical reasons, the Spanish legislation cannot be regarded as having any restrictive effect on the provision of hospital services by providers established in another Member State. In such cases, it is not open to the person concerned to choose between hospitalisation in the Member State of temporary stay and an early return to Spain.

Moreover, as regards cases where the unscheduled treatment takes place in situations in which the insured person was not deprived by force of circumstance of the choice between going to hospital in the Member State of temporary stay or making an early return to Spain, the Court points out that any decision by the insured person to make an early return to Spain or to cancel a journey to another Member State would depend on (i) the possibility that, in the course of his temporary stay, his state of health makes it necessary for him to receive hospital treatment and (ii) the level of cover applicable in the Member State of temporary stay for the hospital treatment in question, the overall cost of which is, at that time, not known. The Court therefore concludes that, in such cases, the possibility that persons insured under the Spanish national health system might be induced to return early to Spain in order to receive hospital treatment there which has been made necessary by a deterioration in their health, or to cancel a trip to another Member State, because they cannot count on the competent institution making a complementary contribution, appears too uncertain and indirect.

Furthermore, the Court points out that, by contrast with scheduled treatment, the number of cases of unscheduled treatment is unpredictable and uncontrollable. In that context, **the Court holds that the application of Regulation No 1408/71 is based on the principle of overall compensation of risk.** Thus, the mechanism established by that regulation for unscheduled treatment operates in such a way as to create a general counterbalancing of costs. Cases in which unscheduled hospital treatment in another Member State bring about – as a consequence of the application of the Member State of stay – a heavier financial burden for the Member State of affiliation than if that treatment had been provided in one of its own establishments are counterbalanced by cases in which, on the contrary, application of the legislation of the Member State of stay leads the Member State of affiliation to incur lower financial costs than those which would have resulted from the application of its own legislation.

Accordingly, **the fact of imposing on a Member State the obligation to guarantee to persons insured under the national system that the competent institution will provide complementary reimbursement whenever the level of cover applicable in the Member State**

---

<sup>3</sup> In that regard, the Court states that its case-law on the freedom to provide services in respect of scheduled treatment cannot be applied to unscheduled treatment. On that point, the Court observes that cases of scheduled hospital treatment received in another Member State are the result of a finding that the treatment in question, or treatment which is comparable in terms of effectiveness, is not available in the Member State of affiliation within a medically acceptable length of time. Accordingly, contrary to the system governing unscheduled hospital treatment, in the case of scheduled treatment, the Member State of affiliation must, under the rules on freedom to provide services and thus in addition to meeting its obligations under Regulation No 1408/71, ensure that the insured person has a level of cover which is equally as advantageous as the level of cover which would have been recognised if that treatment had been available under its own national health system within a medically acceptable length of time.

**of stay in respect of the unscheduled hospital treatment in question proves to be lower than that applicable under its own legislation would ultimately undermine the very fabric of the system which Regulation No 1408/71 sought to establish.** In every such case, the competent institution of the Member State of affiliation would be systematically exposed to the highest financial burden, whether through the application of the legislation of a Member State of stay under which the level of cover is higher than that provided for under its own or through the application of its own legislation in the contrary situation.

**The Court therefore dismisses the action brought by the Commission.**

---

**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

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.

---

*Unofficial document for media use, not binding on the Court of Justice.*

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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