



Press and Information

Court of Justice of the European Union

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Judgment in Case C-512/08
Commission v France

French legislation concerning reimbursement for planned healthcare treatment in another Member State is compatible with EU law

The Commission brought an action against France before the Court for failure to fulfil obligations, taking the view that some provisions of national law relating to the reimbursement of certain planned treatment – that is to say, treatment that the insured person proposes to obtain in a Member State other than France – are contrary to European Union law.

In the first place, the Commission considered that the provisions of the French Social Security Code making reimbursement in respect of treatment planned, outside a hospital setting, in another Member State subject to prior authorisation by the competent French institution when that treatment requires the use of major medical equipment are contrary to the freedom to provide services¹. That includes, for example, nuclear magnetic resonance imaging or spectrometry apparatus used to detect and treat, in particular, cancer, certain cerebral palsies etc.

In that regard, the Court finds that, in accordance with its settled case-law, medical services supplied for consideration fall within the ambit of freedom to provide services, and there is no need to distinguish treatment provided in a hospital environment from treatment provided outside such an environment.

It points out that the freedom to provide services includes the freedom for the recipients of services, including persons in need of medical treatment, to go to another Member State in order to receive those services there without being hampered by restrictions. The prior authorisation required under French legislation for reimbursement in respect of medical treatment involving the use of major medical equipment is capable of deterring, or even preventing, persons insured under the French system from applying to providers of medical services established in another Member State, which in fact constitutes a restriction of the freedom to provide services.

However, **regardless of the setting, hospital or otherwise**, in which it is installed and used, it must be possible for the major medical equipment exhaustively listed in the Public Health Code to be the subject of planning policy, such as that defined by the French legislation, with particular regard to quantity and geographical distribution, in order to help ensure throughout national territory a rationalised, stable, balanced and accessible supply of up-to-date treatment, and also to avoid, so far as possible, any waste of financial, technical and human resources. For example, the cost of purchasing and using the equipment necessary for detecting and treating cancer comes to thousands, even millions, of euro.

Consequently, having regard to the dangers both to the organisation of public health policy and to the balance of the financial social security system, the requirement of prior authorisation for that kind of treatment is, as European Union law now stands, a justified restriction.

The Court notes, however, that a prior authorisation scheme must be based on objective, non-discriminatory criteria known in advance, in such a way as to circumscribe the exercise of the

¹ France, supported by Spain, Finland and the United Kingdom of Great Britain and Northern Ireland, challenges the grounds of that head of claim.

national authorities' discretion so that it is not used arbitrarily. Such a system must, furthermore, be based on a procedural system which is easily accessible and capable of ensuring for the persons concerned that a request for authorisation will be dealt with objectively and impartially within a reasonable time, and it must, in addition, be possible for refusals to grant authorisation to be challenged in judicial proceedings. In the present case, the Commission has not put forward any specific criticism of the French procedural and substantive rules regulating the prior authorisation measure.

In the second place, the Commission maintained that France had not given effect to the Court's decision that, if the reimbursement of costs incurred for hospital services provided in the Member State of stay, calculated under the rules in force in that State, is less than the amount which application of the legislation in force in the Member State of affiliation would afford to a person receiving hospital treatment in that State, additional reimbursement covering that difference must be granted to the insured person by that institution².

On that point, the Court observes that the French legislation provides that a patient may receive, in respect of hospital treatment provided in another Member State, reimbursement on the same conditions as if the treatment had been received in France, and within the limits of the costs actually incurred by the person insured. Thus those provisions include entitlement to an additional reimbursement to be paid by the competent French institution when there is a difference between the levels of social cover in the State of affiliation and the State of the place of the hospital treatment, as referred to in the Court's case-law.

That finding is borne out by the fact that the Commission has identified no provisions of national law constituting an obstacle to the Court's decisions. Likewise, the Commission has not mentioned any decisions given by French courts denying that right to an additional reimbursement or any administrative practice whatsoever that could have deprived insured persons of that right.

Consequently, the Commission's action against France is dismissed in its entirety.

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.

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

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² Case [C-368/98](#) *Vanbraekel and Others*; see also Press Release No. [33/01](#).