Press and Information

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Advocate General's Opinion in Case C-268/13
Elena Petru v Casa Judeţeană de Asigurări de Sănătate Sibiu and Casa Naţională de Asigurări de Sănătate

According to Advocate General Cruz Villalón, a Member State is obliged to authorise the provision of a service in another EU State when the fact that the service cannot be provided in its territory is the result of an occasional, temporary deficiency in its hospital facilities

The Advocate General however considers if the problem is structural in nature, the Member State is not obliged to authorise the provision of that service in another State, unless that authorisation would not put the viability of its social security system at risk

Under EU law[1], a worker can be authorised to go to the territory of another Member State to receive the medical treatment appropriate to his condition, receiving there the benefits he requires as though he were insured under the social security system of that State, and the costs being reimbursed by the State of residence. The Member State of residence may not refuse that authorisation when the treatment the worker requires is among the benefits provided for by its legislation and when he cannot be given that treatment in good time in its territory having regard to his current state of health and the probable course of the disease.

Ms Elena Petru, a Romanian national, suffers from a serious illness which, when her condition deteriorated, resulted in her being admitted to a specialist medical centre in Timisoara (Romania) where it was determined that her condition was so serious that she required an operation as a matter of urgency. During her stay in that hospital, Ms Petru became aware that the centre lacked basic medical supplies and was overcrowded, and therefore, in view of the complex nature of the surgical operation which she had to undergo, she applied for authorisation to have the operation in Germany.

Although her application was refused, Ms Petru decided to have the operation in Germany. The total cost of the operation was around € 18 000 and she is seeking to recover this sum from the Romanian authorities.

The Tribunalul Sibiu (Tribunal of Sibiu, Romania), which is hearing the case, has asked the Court of Justice to determine whether a widespread lack of basic healthcare resources in the State of residence is a situation in which it is impossible to provide treatment, so that a national of that Member State may exercise his right to be authorised to receive treatment in another Member State at the expense of the social security system of the State of residence.

Although case-law of the Court of Justice exists in this area, this is the first time that the necessity of receiving medical treatment in another Member State is based on the dearth of resources in the State of residence.

In today's Opinion, Advocate General Pedro Cruz Villalón examines two separate issues: (1) whether a deficiency or lack of resources in a hospital can, in certain circumstances, amount to a

[1] 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). The facts of the case in the main proceedings took place before the entry into force of the reform made by Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008 (OJ 2008 L 177, p. 1).

situation in which it is not possible to provide in good time in a Member State a particular healthcare service included among the benefits covered by that State's social security system, and (2) whether the same also holds true when such lack or shortage affecting healthcare facilities is structural in nature.

After noting that healthcare services, including public healthcare services, are economic in nature and subject to free movement of services, the Advocate General emphasises that, although Member States may make the provision of those services in another Member State at the expense of the State of residence subject to prior authorisation, they may withhold authorisation only when the same or equally effective treatment may be obtained in good time in its territory.

The Advocate General examines the case-law in this area, noting that a patient from a Member State, insured under a public health system, is entitled to travel to another Member State, at the expense of the social security system of the State of residence, if the same or equally effective treatment can be obtained without undue delay in that other Member State but not in the State of residence. In such a situation, the system under which the patient is insured will cover the costs incurred abroad. If those conditions are not satisfied, the patient will be able to go abroad to receive the service to which he was entitled in the State of insurance, but will be able to recover the cost of the treatment only at the price applicable in the State of insurance, and not at the price charged in the place where the service was provided.

With regard to the first question, the Advocate General states that, given that the law of the EU draws no distinction as to the reasons why a particular service cannot be provided in good time, **an occasional lack of material resources must be regarded as equivalent to a shortage connected with lack of medical staff**. Therefore, in his opinion, **the Member State is required to authorise the provision in another Member State of a medical service**, included among the benefits covered by its social security system, **when a cyclical shortage in one of its hospitals actually makes it impossible to provide the service.**

In contrast, in answer to the second question under consideration, the Advocate General considers that, when **the lack of material resources** for carrying out the medical treatment in question **is the result of a structural shortage, the Member State is not obliged to authorise the provision in another Member State of a service from among the benefits covered by its social security system**, even though this could mean that certain healthcare services cannot actually be provided. **The Member State will be obliged to give that authorisation only if it does not put at risk the viability of its social security system.**

The Advocate General indicates, in this respect, that a Member State finding itself in such a situation of structural shortages **would be unable to meet the costs arising from a mass health-related exodus** of those insured under its social security system, and he stresses, in particular, that **one of the limits to the freedom to provide services in the healthcare sector is that those services and the planning and rationalisation efforts in that vital healthcare sector in the patient's State of residence should not be put at risk.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full text of the Opinion is published on the CURIA website on the day of delivery.

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