

Press and Information Division

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Judgment of the Court of Justice on a reference for a preliminary ruling in Case C-8/02

Ludwig Leichtle v Bundesanstalt für Arbeit

GERMAN LEGISLATION APPLYING TO CIVIL SERVANTS AND GOVERNING THE REIMBURSEMENT OF EXPENDITURE IN RESPECT OF A HEALTH CURE IS, IN PART, CONTRARY TO THE FREEDOM TO PROVIDE SERVICES

The condition by which the prospects of success must be greater outside Germany constitutes an unjustified barrier

Mr Leichtle, a German national, is an official of the Bundesanstalt für Arbeit (Federal Labour Office). In 2000 he requested it to reimburse the expenditure associated with a health cure which he proposed to take at Ischia (Italy).

Under the Allgemeine Verwaltungsvorschrift für Beihilfen in Krankheits-, Pflege-, Geburts- und Todesfällen (General Administrative Provisions on Assistance in the event of Sickness, Treatment, Birth and Death), the grant of assistance in respect of a health cure covers the medical expenses and the expenditure on board, lodging, travel, visitors' tax and the making of a final medical report. The reimbursement of the expenditure is subject to the obtaining of prior recognition of eligibility and to the condition that the health spa is listed on a Register of Health Spas. So far as concerns a health cure taken outside Germany, that recognition is granted only after a medical report establishing that the cure envisaged is absolutely necessary because of the greatly increased prospects of success in another country.

The Bundesanstalt rejected Mr Leichtle's request on the ground that the cure provided at Ischia did not offer greater prospects of success than the health cures available in Germany. Mr Leichtle brought an action against that decision before the Verwaltungsgericht Sigmaringen and then went to Ischia to take the cure without

waiting for that court's decision. The Verwaltungsgericht Sigmaringen asks the Court whether the freedom to provide medical services precludes the German legislation.

First of all, the Court makes clear that the question referred does not concern the reimbursement of expenditure relating to the actual treatment provided in the course of a health cure but other expenditure relating to such a cure. The costs in connection with board and lodging, travel and visitors' tax can, however, be regarded as forming an integral part of the cure itself or as being inextricably linked to it. Any conditions governing reimbursement of those various items are capable of having an influence on the choice of the place of the cure.

The Court points out that the requirement for prior recognition of eligibility for assistance of those various expenses applies in respect of a health cure taken either in Germany or in another Member State. Consequently, that requirement does not have the effect of making the provision of services between Member States more difficult than the provision of services purely within one Member State.

As regards the conditions for such recognition, the Court holds that, under the German legislation, the necessity for a medical report applies without distinction to expenditure occasioned in respect of health cures inside or outside Germany. By contrast, the condition by which the prospects of success must be greater outside Germany has the effect of deterring officials from approaching health cure centres established in other Member States. According to the Court, such a barrier to the freedom to provide services is acceptable only if it can be justified with regard to the Treaty, in particular by the existence of a risk of serious prejudice to the financial equilibrium of the social security system or by the need to ensure the maintenance of treatment capacity and medical competence essential in Germany. However, the Court notes that no clear evidence has been put forward in support of such a justification.

So far as concerns the requirement by which the health spa concerned must be listed in a Register of Health Spas, the Court observes that such a condition which is probably intended to guarantee that the spas are in a position to provide the necessary treatment is also laid down for health cures taken in Germany. It follows that such a requirement does not appear, *a priori* and as a rule, to be such as to have the effect of making the provision of services between Member States more difficult than the provision purely within one Member State. It is, however, for the national court to determine, in the light of the conditions to which the registration of health spas in such a Register of Health Spas may be subject, whether that registration requirement is such as to constitute a restriction on the freedom to provide services.

Finally, the fact that the person concerned has not awaited the conclusion of any court proceedings brought against the decision which refused his request for prior recognition of eligibility, before commencing the cure in question, cannot exclude the reimbursement of the expenditure. The Court decides that, were it otherwise, the practical effect of Community law would be jeopardised since the majority of patients cannot await the result of proceedings before receiving the treatment which their state of health requires.

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Available languages: DE, EN, FR

The full text of the judgment can be found on the internet (www.curia.eu.int).

In principle it will be available from midday CET on the day of delivery.

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