



LUXEMBOURG

## Press and Information

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Judgment of the Court of Justice in Case C-444/05

*Aikaterini Stamatelaki v NPDD Organismos Asfaliseos Eleftheron Epangelmation (OAEE)***THE ABSOLUTE EXCLUSION OF THE REIMBURSEMENT OF THE COSTS OF HOSPITAL TREATMENT ABROAD IS CONTRARY TO COMMUNITY LAW***A system of prior authorisation or the determination of scales for reimbursement could be more in keeping with the principles of Community law*

Dimitrios Stamatelakis, a resident of Greece, was insured with the Organismos Asfaliseos Eleftheron Epangelmation (Insurance Institution for the Liberal Professions), the successor of the Tamio Asfalisesos Emboron (Merchants' Insurance Fund). In 1998 he was admitted on two occasions to London Bridge Hospital, a private hospital in the United Kingdom, and paid GBP 13 600 for his treatment. Reimbursement of that expenditure was refused on the ground that, under Greek law,<sup>1</sup> the cost of treatment in private hospitals abroad is paid for only where it relates to children under 14 years of age.

After his death, his wife and heir, Aikaterini Stamatelaki, brought an action before the Diikitiko Protodikio Athinon (Administrative Court of First Instance, Athens), which asked the Court of Justice of the European Communities whether Greek legislation was consistent with Treaty principles concerning the freedom to provide services.

In its judgment, the Court of Justice recalls first of all that Community law leaves intact the power of the Member States to organise their social security systems: in the absence of harmonisation at Community level, it is for each Member State to determine the conditions in which social security benefits are granted. However, when exercising that power Member States must comply with Community law, in particular with the principle of freedom to provide services. This principle prohibits the Member States from introducing or maintaining unjustified restrictions on the exercise of that freedom in the healthcare sector.

The Court then observes that a citizen who receives treatment in a public hospital, or in a private hospital which is located in Greece and with which an agreement has been entered into, has no costs to pay for his treatment. However, he must pay the costs, and is not reimbursed, if he is admitted to a private hospital in another Member State. In addition, a patient is reimbursed the costs of emergency treatment in a private hospital in Greece with which no agreement has been

<sup>1</sup> Decree 35/1385/1999 of the Minister for Labour and Social Security on the Health Branch of the Insurance Institution for the Liberal Professions (FEK B 1814).

entered into, but not in the case of emergency treatment in a private hospital in another Member State.

The Court considers it to be clear that **such legislation deters, or even prevents, patients from seeking treatment from providers of hospital services established in Member States other than the Member State under whose schemes they are insured and thus constitutes a restriction on the freedom to provide services.**

Can such legislation be objectively justified?

The Court holds that **the absolute nature of the prohibition** (with the exception of children under 14 years of age) **is not appropriate to the objective** of maintaining treatment capacity or medical competence on national territory or of safeguarding the financial balance of the national social security system.

On the other hand, **measures which are less restrictive and more in keeping with the freedom to provide services could be envisaged**, such as a prior authorisation scheme which complies with the requirements of Community law, or the determination of scales for reimbursement.

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

*Languages available: FR DE EN ES EL IT*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-444/05>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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