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Judgment of the Court of Justice in Case C-326/00

Idryma Koinonikon Asfaliseon (IKA) v Vasileios Ioannidis

THE COURT OF JUSTICE GIVES A FURTHER JUDGMENT ON MEDICAL TREATMENT ABROAD

A Member State may not subject payment of the medical expenses of a pensioner who has visited another Member State either to authorisation or to the condition that the illness he suffers has manifested itself suddenly

Mr Ioannidis resides in Greece and receives an old-age pension there. During a visit to Germany, he had to be admitted to hospital urgently because of angina pectoris. He had a valid Form E 111 ¹ issued by the Greek Social Insurance Institute (IKA); he requested the German sickness fund to pay the costs of the hospital treatment directly and then arrange for reimbursement by the IKA, as provided for by Regulation No 1408/71. However, the German sickness fund asked the IKA to issue a Form E 112, which is the form required where an insured person wishes to obtain authorisation to go to another Member State to receive medical treatment there.

The IKA then refused to fund the expenditure in question, on the grounds that Mr Ioannidis was suffering from a chronic illness and that the deterioration in his state of health had not been sudden. The **Greek legislation** requires, in order for *ex post facto* authorisation of reimbursement of the medical expenses incurred by a pensioner abroad

¹ Form E 111 is used for obtaining medical benefits in kind which become necessary during a stay in another Member State.

to be possible, that **the illness manifests itself suddenly** during the stay and the treatment is immediately necessary.

When the complaint brought by Mr Ioannidis was upheld, the IKA brought proceedings in the Greek courts. The Greek court put questions to the Court of Justice on the compatibility with Community law of the Greek legislation referred to above.

The Court of Justice points out, first, that it is for the national court to establish whether the treatment provided to the person concerned was **planned in advance** and whether his stay in another Member State was **planned for medical purposes**, in which case Regulation No 1408/71 imposes a system of prior authorisation (Form E 112) for the direct funding of benefits in kind by the institution of the Member State in which the treatment is provided. In the present case, it appears that the national court considered that this was not the case.

The Court then observes that, as regards the funding of **medical treatment which has become necessary during a stay** in a Member State other than the State in which the insured person resides, Regulation No 1408/71 lays down **differences between the situation of pensioners and that of workers**. According to the Court, the aim pursued by the Community legislature appears to have been, in particular, to promote effective mobility of pensioners, taking into account their increased vulnerability and dependence in matters of health.

Thus the Community rules do not make the funding of treatment provided to a pensioner during a stay in another Member State subject to the condition . which, by contrast, applies to workers . that the condition of the person concerned necessitates immediate treatment during that stay.

According to the Court, the entitlement to benefits in kind guaranteed to pensioners by Regulation No 1408/71 **must not be limited solely to cases where the treatment appears necessary as a result of a sudden illness**. In particular, the mere fact that the pensioner suffers from a chronic illness which is already known before his stay cannot prevent him from enjoying the benefit of the treatment which the development of his state of health requires during the stay.

The Court points out, moreover, that the principle applicable to the funding thus guaranteed of the medical expenses of pensioners in another Member State is that of the reimbursement of the cost to the institution of the place of stay by the institution of the place of residence.

The Court rules, however, in this respect that **if the institution of the place of stay has wrongly refused to fund the benefits and the institution of the place of residence has not contributed as it must do to facilitating such funding, the insured person is entitled to obtain directly from the institution of the place of residence reimbursement of the cost of treatment he has had to bear. Furthermore, this reimbursement may not be subject to any authorisation procedure or to the requirement that the illness has occurred suddenly.**

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