



Press and Information

Court of Justice of the European Union
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Judgment in Case C-777/18
WO v Vas Megyei Kormányhivatal

The principle of the freedom to provide services and the directive on cross-border healthcare preclude national legislation which excludes the reimbursement without prior authorisation of the costs connected to emergency surgery undergone by an insured person, who is a resident of a Member State, in another Member State

Such restriction on the principle of the freedom to provide services is disproportionate and fails to have regard to the directive

In 1987, WO, a Hungarian national, suffered a retinal detachment in his left eye and lost his vision in that eye. In 2015, WO was diagnosed with glaucoma in his right eye. The treatments he received in several medical establishments in Hungary were not effective, as his visual field continued to decrease and his eye pressure remained high.

On 29 September 2016, WO contacted a doctor practising in Recklinghausen (Germany) and set up an appointment with that doctor for a medical examination on 17 October 2016. The doctor informed him that he should extend his stay until 18 October 2016, when, if necessary, eye surgery would be carried out.

In the meantime, WO's intra-ocular pressure was assessed as considerably higher than the level at which it is regarded as normal. The examination carried out on 17 October 2016 in Germany led the doctor practising in that Member State to consider that the eye surgery had to be carried out urgently in order to save WO's sight. WO was operated on successfully on 18 October 2016.

The application for reimbursement of the costs of the treatments given in Germany was rejected by the Hungarian authorities, on the ground that that healthcare constituted scheduled treatment in respect of which WO had not obtained prior authorisation provided for by the EU regulations on the coordination of social security systems.¹

The applicant brought an action against the decision rejecting the application for reimbursement of the costs of the treatments referred to above before the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szombathely, Hungary), and that court asks the Court of Justice whether the regulations, the directive on cross-border healthcare² or the principle of the freedom to provide services preclude a rule of a Member State which is interpreted as excluding, in all cases, payment for healthcare given in another Member State without prior authorisation regardless of the state of health of the patient and the urgency of the healthcare in question.

By today's judgment, the Court, examining, first of all, the interpretation of the regulations on the coordination of social security systems, holds that the healthcare received in a Member State other than the state in which the insured person resides, on his or her own initiative, constitutes scheduled treatment within the meaning of the regulations, the reimbursement of which is subject to the granting of prior authorisation by the Member State of residence.

¹ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1) and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation No 883/2004 (OJ 2009 L 284, p. 1).

² Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ 2011 L 88, p. 45).

In that connection, the Court recalls its case-law³ according to which an insured person, even without properly issued prior authorisation before the provision of scheduled treatment begins in another Member State, is entitled to be reimbursed directly by the competent institution for the costs incurred in respect of that treatment in an amount equivalent to that which would ordinarily have been reimbursed by that institution if the insured person had been granted such authorisation. This possibility is available when, inter alia, for reasons relating to his or her state of health or to the need to receive urgent treatment, the insured person was prevented from applying for such authorisation or was not able to wait for the decision of that institution on such application ('individual circumstances').

To that end, it is for the competent institution, subject to review by the national courts, to examine whether (i) the case before it involves individual circumstances and (ii) the conditions for the assumption of costs by the competent institution pursuant to the second sentence of Article 20(2) of Regulation No 883/2004⁴ are met.

In the present case, the Court notes that, regarding the first condition relating to individual circumstances, the examination carried out in Hungary on 15 October 2016, the result of which confirmed the urgency of the eye surgery that WO in fact underwent in Germany on 18 October 2016, might serve to indicate that **he could not have waited for the decision of the competent institution on an application for authorisation**. However, it will be for the Hungarian court to examine, having regard to all the circumstances specific to the dispute in the main proceedings, whether both conditions set out above are met.

Should the Hungarian court come to the conclusion that WO is not entitled to obtain, on the basis of the regulations on the coordination of social security systems the reimbursement of the costs of the treatment which he received in Germany, the Court examines, in the second place, whether the principle of the freedom to provide services and directive 2011/24⁵, which gives concrete expression to that principle, precludes national legislation, such as that at issue in the main proceedings, which excludes, in all cases, reimbursement in respect of hospital treatment given to the insured person in another Member State without prior authorisation, even when there is a genuine risk that that person's state of health will irreversibly deteriorate.

In that regard, the Court finds that a system of prior authorisation such as the system established under the national legislation at issue in the main proceedings **constitutes a restriction of the freedom to provide services**.

As regards the Hungarian Government's argument that such restriction is justified by the objective of ensuring the optimal planning and management of healthcare and ensuring the control of costs relating to that healthcare, the Court notes that **such a requirement can be relied on only in respect of hospital care or major non-hospital care** and is therefore inadmissible in respect of a medical consultation. It is therefore for the referring court to satisfy itself that the eye surgery in question falls within either of those two categories of care.

Should the Hungarian court find that the eye surgery in question constitutes hospital care or major non-hospital care, the Court considers that national legislation which excludes the reimbursement, by the competent institution, of the costs of such care, without prior authorisation, including in the individual circumstances referred to above, even though all other conditions for such costs to be assumed are met, contains **a disproportionate restriction of the freedom to provide services and fails to have regard to the directive 2011/24**.

³ Judgment of the Court of 5 October 2010, Elchinov ([C-173/09](#)).

⁴ Under the second sentence of Article 20(2) of Regulation No 883/2004: 'The authorisation shall be accorded where the treatment in question is among the benefits provided for by the legislation in the Member State where the person concerned resides and where he cannot be given such treatment within a time limit which is medically justifiable, taking into account his current state of health and the probable course of his illness'.

⁵ The reimbursement of the costs of cross-border healthcare to which an insured person in a Member State is entitled is limited to the level of costs that would have been assumed by that Member State had this healthcare been provided in its territory without exceeding the actual costs of healthcare received.

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 European Union 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 judgment is published on the CURIA website on the day of delivery.

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