Court of Justice of the European Union
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Press and Information

Judgment in Case C-243/19
A v Veselības ministrija

# The refusal by a patient's Member State of affiliation to grant prior authorisation for the reimbursement of cross-border healthcare costs when effective hospital treatment is available in that Member State but the method of treatment used is against the insured person's religious beliefs brings about a difference in treatment indirectly based on religion

*That refusal is not contrary to EU law if it is objectively justified by a legitimate aim relating to maintaining treatment capacity or medical competence and is an appropriate and necessary means of achieving that aim*

The son of the applicant in the main proceedings had to have open heart surgery. That operation was available in the latter's Member State of affiliation, Latvia, but could not be carried out without a blood transfusion. However, the applicant in the main proceedings opposed that method of treatment on the ground that he was a Jehovah's Witness, and therefore requested that the Nacionālais veselības dienests (the national health service, Latvia) issue an authorisation so that his son could receive scheduled treatment in Poland, where the operation could be performed without a blood transfusion. As his request was rejected, the applicant brought an action against the health service's refusal decision. That action was dismissed at first instance, a ruling which was upheld on appeal. In the meantime, the applicant's son had heart surgery in Poland, without a blood transfusion.

Hearing an appeal on a point of law, the Augstākā tiesa (Senāts) (Supreme Court, Latvia) is uncertain whether the Latvian health authorities were entitled to refuse to issue the form, allowing the assumption of costs for the scheduled treatment, on the basis of solely medical criteria or whether they were also required to take account of the applicant's religious beliefs. Since it was unsure whether a system of prior authorisation such as that at issue was compatible with EU law, the Augstākā tiesa (Senāts) referred two questions to the Court of Justice for a preliminary ruling relating to the interpretation (i) of Article 20(2) of Regulation No 883/2004,[1] which determines the conditions under which the Member State of residence of an insured person who requests authorisation to travel to another Member State to receive healthcare is required to issue that authorisation, and, consequently, to assume the costs of the healthcare received in the other Member State, and (ii) of Article 8 of Directive 2011/24,[2] which concerns the systems of prior authorisation for reimbursement of cross-border healthcare, read in the light of Article 21(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), which, inter alia, prohibits any discrimination based on religion.

In its judgment of 29 October 2020, the Court (Second Chamber) held, in the first place, that Article 20(2) of Regulation No 883/2004, read in the light of Article 21(1) of the Charter, does not preclude the insured person's Member State of residence from refusing to grant that person the authorisation provided for in Article 20(1) of that regulation, where hospital care, the medical effectiveness of which is not contested, is available in that Member State, although the method of treatment used is contrary to that person's religious beliefs.

[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 corrigendum OJ 2004 L 200, 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 regard, the Court found, inter alia, that the refusal to grant the prior authorisation provided for in Regulation No 883/2004 introduces a difference in treatment indirectly based on religion or religious beliefs. Indeed, patients who undergo a medical procedure including the use of a blood transfusion have the corresponding costs assumed by the social security system of the Member State of residence, while those who decide for religious reasons not to have such a procedure in that Member State and to have recourse, in another member State, to treatment which does not conflict with their religious beliefs, do not benefit from such assumption of costs in the Member State of residence.

Such a difference in treatment is justified where it is based on an objective and reasonable criterion and is proportionate to the aim pursued. The Court found that that was the situation in the present case. First, it observed that if benefits in kind provided in another Member State give rise to higher costs than those relating to benefits which would have been provided in the insured person's Member State of residence, the obligation to refund in full may give rise to additional costs for the Member State of residence. It then noted that if the competent institution were obliged to take account of the insured person's religious beliefs, such additional costs could, given their unpredictability and potential scale, entail a risk in relation to the need to protect the financial stability of the health insurance system, which is a legitimate objective recognised by EU law

The Court concluded from this that, in the absence of a prior authorisation system based exclusively on medical criteria, the Member State of affiliation would face an additional financial burden which would be difficult to foresee and likely to entail a risk to the financial stability of its health insurance system. Consequently, not to take into account the insured person's religious beliefs appears to be a justified measure in the light of the aforementioned objective, which satisfies the requirement of proportionality.

In its judgment, the Court found, in the second place, that Article 8(5) and (6)(d) of Directive 2011/24, read in the light of Article 21(1) of the Charter, precludes a patient's Member State of affiliation from refusing to grant that patient the authorisation provided for in Article 8(1) of that directive, where hospital care, the medical effectiveness of which is not contested, is available in that Member State, although the method of treatment used is contrary to that patient's religious beliefs. The position would be different if that refusal were objectively justified by a legitimate aim relating to maintaining treatment capacity or medical competence, and were an appropriate and necessary means of achieving that aim, which it is for the referring court to determine.

In that regard, the Court noted, first, that the objective of protecting the financial stability of the social security system cannot be relied on by the Latvian Government to justify the refusal to grant the authorisation provided for in Article 8(1) of Directive 2011/24 in circumstances such as those at issue in the main proceedings. The system of reimbursement established by Regulation No 883/2004 is different from that provided for by Directive 2011/24 in that the reimbursement provided for by that directive is, on the one hand, calculated on the basis of the fees for healthcare in the Member State of affiliation, and, on the other hand, does not exceed the actual costs of the treatment received when the cost of the healthcare provided in the host Member State is lower than that of the healthcare provided in the Member State of affiliation. Given that twofold limit, the healthcare system of the Member State of affiliation is not liable to be faced with a risk of additional costs linked to the assumption of cross-border healthcare costs and that Member State will not, as a rule, be exposed to any additional financial costs with respect to cross-border healthcare.

Concerning, next, the legitimate objective of maintaining treatment capacity or medical competence, the Court observed that the refusal to grant the prior authorisation provided for in Article 8(1) of Directive 2011/24, on the ground that the requirements laid down in Article 8(5) and (6) have not been met, introduces a difference in treatment indirectly based on religion. The Court made clear that in order to assess whether that difference in treatment is proportionate to the objective pursued, the referring court will have to examine whether the taking into account of patients' religious beliefs when implementing Article 8(5) and (6) of Directive 2011/24 may give rise to a risk for the planning of hospital treatment in the Member State of affiliation.

**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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