



Press and Information

Court of Justice of the European Union

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Judgment in Case C-535/19
A (Public health care)

The Court confirms the right of economically inactive Union citizens residing in a Member State other than their Member State of origin to be affiliated to the public sickness insurance system of the host Member State

EU law does not, however, impose the requirement of affiliation to that system free of charge

A, an Italian national married to a Latvian national, left Italy and settled in Latvia to live with his wife and their two infant children.

Shortly after arriving in Latvia on 22 January 2016, he applied to the Latvijas Nacionālais Veselības dienests (National Health Service, Latvia) to become affiliated to the Latvian social security system. His request was refused by decision of 17 February 2016, which was confirmed by the Ministry of Health on the ground that A was not included within any of the categories of recipients of medical care financed by the State since he was neither employed nor self-employed in Latvia.

His action against the refusal decision of the Latvian authorities having been dismissed, A brought an appeal before the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia), which also delivered a judgment unfavourable to him.

It was in that context that the Augstākā tiesa (Senāts) (Supreme Court, Latvia), hearing an appeal brought by A, decided to ask the Court of Justice about the compatibility of the dismissal by the Latvian authorities of A's request with EU law in the areas of citizenship and social security.

In its judgment, pronounced by the Grand Chamber, **the Court confirms the right of economically inactive Union citizens residing in a Member State other than their Member State of origin to be affiliated to the public sickness insurance system of the host Member State in order to obtain medical care financed by that State. The Court explains, however, that EU law does not impose the obligation of affiliation free of charge to that system.**

Findings of the Court

First, the Court reviews the applicability of Regulation No 883/2004 to the provision of medical care such as that at issue in the main proceedings. It concludes that benefits financed by the State and granted without any individual and discretionary assessment of personal needs, to persons falling within the categories of recipients defined by national legislation, constitute 'sickness benefits' within the meaning of Article 3(1)(a) of Regulation No 883/2004.¹ Those benefits accordingly fall within the scope of that regulation, not being 'social and medical assistance' excluded from that scope of application.²

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), as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 (OJ 2009 L 284, p. 43).

² In accordance with Article 3(5)(a) of Regulation No 883/2004.

Second, the Court examines, in essence, whether Article 11(3)(e) of Regulation No 883/2004 and Article 7(1)(b) of Directive 2004/38³ preclude national legislation which excludes from the right to be affiliated to the public sickness insurance system of the host Member State, in order to obtain medical care financed by that State, economically inactive Union citizens who are nationals of another Member State and who fall, by virtue of Article 11(3)(e) of that regulation, within the scope of the legislation of the host Member State and who are exercising their right of residence in the territory of that State under Article 7(1)(b) of that directive.

In that regard, the Court states, first, that, in the context of the system of conflict rules established by Regulation No 883/2004,⁴ for determining the national legislation applicable to the receipt of the social security benefits, **economically inactive persons are, in principle, covered by the legislation of the Member State in which they reside.**

It notes, next, that, when they lay down the conditions establishing the right to become a member of a social security scheme, the Member States are under an obligation to comply with the provisions of EU law in force. In particular, the conflict rules laid down by Regulation No 883/2004 are mandatory for the Member States, they cannot determine to what extent their own legislation or that of another Member State is applicable.

Accordingly, **a Member State cannot, under its national legislation, refuse to affiliate to its public sickness insurance scheme a Union citizen** who, under Article 11(3)(e) of Regulation No 883/2004, on the determination of the legislation applicable, comes under the legislation of that Member State.

Finally, the Court examines the effect on the social security scheme of the host Member State of the provisions of Directive 2004/38, in particular Article 7(1)(b). It follows from the latter provision that, throughout the period of residence in the territory of the host Member State of more than three months and less than five years, economically inactive Union citizens must in particular have comprehensive sickness insurance cover for themselves and their family members so as not to become an unreasonable burden on the public finances of that Member State.

As regards the relationship between that condition for residence in accordance with Directive 2004/38 and the obligation of affiliation under Regulation No 883/2004, the Court states that **the host Member State of an economically inactive Union citizen may provide that access to that system is not free of charge in order to prevent that citizen from becoming an unreasonable burden on the public finances of that Member State.**

The Court considers that the host Member State is entitled to make the affiliation to its public sickness insurance scheme of an economically inactive Union citizen residing in its territory on the basis of Article 7(1)(b) of Directive 2004/38 subject to conditions, such as the conclusion or maintenance by that citizen of comprehensive private sickness insurance, enabling the reimbursement to that Member State of the health expenses which it incurred for that citizen's benefit, or the payment, by that citizen, of a contribution to that Member State's public sickness insurance scheme. It is nevertheless for the host Member State to ensure that the principle of proportionality is observed in that context and, therefore, that it is not excessively difficult for that citizen to comply with such conditions.

The Court concludes that Article 11(3)(e) of Regulation No 883/2004, read in the light of Article 7(1)(b) of Directive 2004/38, precludes national legislation which excludes from the right to be affiliated to the public sickness insurance system of the host Member State, in order to obtain medical care financed by that State, economically inactive Union citizens who are nationals of another Member State and who fall, by virtue of that regulation, within the scope of the legislation

³ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77 and corrigendum OJ 2004 L 229, p.35).

⁴ Article 11(3)(e) of Regulation No 883/2004.

of the host Member State and who are exercising their right of residence in the territory of that Member State under that directive.

Those provisions, by contrast, do not preclude the affiliation of such Union citizens to that system from not being free of charge in order to prevent those citizens from becoming an unreasonable burden on the public finances of the host Member State.

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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