European Ombudsman

Summary of query from the National Coordinator of Regional Ombudsmen in Italy concerning the reimbursement of certain medical expenses incurred in another Member State - Q1/2016/EIS

Decision
Case Q1/2016/EIS - **Opened on** 21/01/2016 - **Decision on** 25/08/2016

Facts and background

The National Coordinator of Regional Ombudsmen in Italy submitted the query on 23 December 2015. The query referred to a complaint received by the Ombudsman of Tuscany. It concerned the reimbursement of certain medical expenses incurred in another Member State. Due to an on-going dispute about the reimbursement of some of the costs, the family of a patient, who underwent medical treatment in Austria, submitted the complaint.

In 2011, a German citizen residing in Italy suffering from leukaemia sought prior authorisation to receive medical treatment in Austria. The Italian authorities gave their prior authorisation (by issuing an E112 form) to cover the expenses. The patient, who was seriously ill already at that time, went to Austria to receive medical treatment there. However, it turned out that no more beds were available in the public hospital in Vienna where the treatment was originally supposed to take place, so he was transported to a private clinic instead. He received treatment there.

The patient was transported back to Italy as soon as his medical condition made it possible. However, he died from the disease at a later stage.

The Italian authorities received an invoice of EUR 7,123.60 from the Austrian authorities. This invoice covered the costs of the patient's 'ordinary treatment' [1] at the private clinic. The invoice was subsequently settled. However, the clinic also sent an additional invoice of EUR 63,372.90 to the family members of the patient. The clinic argued that the patient and his family had been warned several times that the extra costs (which allegedly went beyond the 'ordinary treatment' but formed part of the 'special treatment' [2] instead) might not be covered by the prior authorisation given by the Italian authorities but would ultimately have to be covered by the family of the patient. Moreover, the clinic invoked the fact that the patient and his family signed a contract whereby they agreed to pay any such costs, which were initially estimated to be

around EUR 40,000. Moreover, it was added that the language of communication between all the parties concerned was always German, which they master without any problems. Therefore no linguistic misunderstandings could be invoked.

It appears that the Italian authorities would have been ready to reimburse more money for the treatment of the patient, but the Austrian authorities only issued the above¤mentioned invoice of EUR 7,123.60 to the Italian authorities. As regards the remaining part of the reimbursement claimed, the Austrian authorities explained that, as it was an invoice sent by a private clinic in its capacity of providing 'special treatment' not covered by public healthcare reimbursement schemes, it could not be charged from the Italian authorities either. In fact, the costs covered by the invoice of the private clinic belonged to the 'special treatment' scheme, which is not covered by the public health insurance scheme.

In 2013, the National Coordinator of the Regional Ombudsmen in Italy also contacted the Austrian Ombudsman Board who concluded that it could not intervene in the issue, given the fact that private hospitals fall outside its remit. The Austrian Ombudsman Board added that 'special' medical treatment received under the *Sonderklasse* scheme is excluded from reimbursement under the public health insurance also in Austria.

Legal issues at stake

The National Coordinator of Regional Ombudsmen in Italy sought clarification on the issue whether the interpretation given by the Austrian authorities is in line with the right to receive treatment in another Member State in accordance with the relevant EU legislation and whether the interpretation constituted discrimination towards citizens residing in another Member State.

It appeared that, according to Article 20(2) of Regulation (EC) No 883/20043, " *[a]n insured person who is authorised by the competent institution to go to another Member State with the purpose of receiving the treatment appropriate to his condition* **shall receive the benefits in kind provided, on behalf of the competent institution, by the institution of the place of stay, in accordance with the provisions of the legislation it applies, as though he were insured under the said legislation** . *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* " (emphasis added).

Query

On 21 January 2016, the European Ombudsman decided to open a query procedure in order to seek an opinion of the Commission's services as regards Regulation 883/2004 in the context of the case.

Commission's reply

On 17 March 2016, DG EMPL transmitted its reply. It explained that there are two sets of EU legislation which cover healthcare (both planned and unplanned) in another Member State. The first are Regulations 883/2004 and 987/2009 on the co-ordination of social security systems ('the Regulations'). The second is Directive 2011/24/EU on the application of patients' rights in cross-border healthcare ('the Directive').

DG EMPL noted that, in the field of social security, EU law provides for the *coordination* and not harmonization of the Member States' national social security systems. This means that each Member State is free to determine the details of its own social security system, including which benefits are provided, the conditions for eligibility, how these benefits are calculated and which contributions should be paid. In particular Regulation 883/2004 on the coordination of social security systems establishes common rules and principles which must be observed by all national authorities when applying national law. These rules ensure that the application of the different national legislations respects the basic principles of equality of treatment and non-discrimination. By doing so, the application of the different national legislations does not adversely affect persons exercising their right to free movement within the European Union.

As regards the case at hand, the Commission explained that the treatment received by the patient should be considered as planned treatment in terms of the EU rules on coordination of social security systems. In such a case, under EU rules, a prior authorisation is a necessary condition to receive health care provided in another Member State than the Member State where the person concerned is insured. In accordance with Article 20(1) of Regulation 883/2004, insured persons and members of their families who travel to another Member State with the purpose to receive benefits in kind there must seek authorisation from their competent institution. Under this Regulation, prior authorisation may not be refused if the care is among the benefits provided under the legislation of Member State where the person resides and cannot be provided in the Member State competent for this person within a time limit which is justified from the medical point of view, taking into account the current state of health and the probable course of the illness of the person. Otherwise, Member States may choose whether to grant or refuse such authorisation.

Consequently, as the Commission explained, prior authorisation has to be requested in advance to the treatment received and presented to the institution of the place of stay. In such a case, the reimbursement of costs of such treatment would, as a rule, take place between the two institutions.

In addition, the Commission explained that the essential rule at the heart of the Directive on cross border healthcare is that a patient who is entitled to a given treatment in their home system may claim reimbursement for that treatment when they receive it in another Member State. The patient is entitled to be reimbursed up to the amount that the home system would have paid, had that treatment been received at home. Unlike the above Regulations, the Directive covers all healthcare providers, regardless of their relationship with the public health

system. Costs of private providers could be covered on this basis.

Since the Directive requires Member States to set up at least one National Contact Point, the Commission advised the patient's family to contact the Italian National Contact point to find out about the possible rights they could have on the basis of the Directive in their concrete case [3] .

Moreover, as the issue at stake concerns the coverage of costs in accordance with Austrian national law, the Commission explained that the relevant Austrian law distinguishes three different types of hospitals. The first group of hospitals are those which are financed by the Austrian Social Insurance and the Federal State through the Regional Health Fund and are therefore considered public hospitals. If such a hospital financed by the Regional Health Fund does not exist within the area of the insured person, the latter is entitled to access a private hospital that has a contract with a Social Insurance Carrier fed by contributions of the Social Insurance Carriers. Such a treatment within a private hospital is treated equally to a treatment within a public hospital. Thus, the insured person is again not obliged to pay for the provided treatments. The hospital can nevertheless claim reimbursement of costs from the "PRIKRAF" fund.

If none of the above-mentioned hospitals are available and the insured person is therefore obliged to access a private hospital, the social insurance has to award a grant for the costs of care according to the relevant Austrian law. This means that the insured person has to carry the costs of the treatment him or herself and can then apply for the grant.

However, the situation where an insured person has been treated by a public hospital and is then sent to a private hospital due to a lack of the possibility to provide an appropriate treatment within the public hospital is not explicitly regulated by the relevant Austrian law. Nevertheless, the Austrian Supreme Court has held that in such cases the private hospital provides the treatment in the name and at the expense of the public hospital that has sent the insured person to the private one, because the private hospital fulfils a legal obligation of the public hospital. Thus, the treatment is provided without additional costs for the patient because it is treated like a treatment of the public hospital itself.

The costs of the treatment provided by a private hospital in duty of the public hospital thus have to be borne by the public hospital that sent the insured person to the private hospital. Due to the fact that the public hospital can only claim the fixed reimbursement rates defined by the Regional Health Fund, additional costs due to a higher room standard or a special therapy are at the expense of the public hospital.

Taking into consideration the above, the Commission concluded that it is not in a position to examine the factual circumstances of the individuals, and it is initially up to the Member State concerned to ensure the correct application of the EU law. Therefore, within the framework of the administrative cooperation on the handling of individual cases on the co-ordination of social security schemes, **the Commission decided to propose to transmit the case at hand to the Austrian contact point for the examination of factual circumstances in light of EU law** . The Commission thus asked for an expressed consent of the patient's mother and brother for

the handling of the personal data pursuant to Regulation 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

Feedback

The Commission's reply was forwarded to the case-handler of the National Coordinator of Regional Ombudsmen with an invitation to submit observations.

In order to proceed with the case, the Commission needed an explicit consent for the transfer of personal data to the relevant social security database. On 4 July 2016, the case handler of the National Coordinator of Regional Ombudsmen in Italy confirmed that the patient's family members had formally given their consent for the handling and transfer of the personal data.

Closing procedure

The Commission had provided an exhaustive reply concerning the interpretation of the relevant provisions (.

Moreover, in order to resolve this particular case, the Commission said that it would transfer the case to the national contact point within the framework of the administrative cooperation on the handling of individual cases on the co-ordination of social security schemes.

Taking into account the Commission's exhaustive interpretation of the relevant provisions and its efforts to bring the case to a satisfactory end, the European Ombudsman concluded that the query was successfully completed. The Commission was requested to inform the Ombudsman of the outcome of the case.

The European Ombudsman thanked the Commission for its co-operation in this query procedure.

[1] In Austria, this category of medical costs appeared to be referred to as the *'allgemeine Gebührenklasse'* .

[2] In Austria, this category of medical costs appeared to be referred to as the ' *Sonderklasse* '. Such medical costs appear to be excluded from public health insurance reimbursement also in Austria.

[3] Italian Ministry of Health, Directorate-General for Health Planning: http://www.salute.gov.it/portale/temi/p2_4.jsp?lingua=englisharea=healthcareUE [Link].