



Joined cases of *Müller-Fauré* and *van Riet v Onderlinge Waarborgmaatschappij UA*

Case C-385/99

Country: Netherlands

Region: Europe

Year: 2003

Court: European Court of Justice European Court of Justice

Health Topics: Health care and health services, Health systems and financing, Hospitals

Human Rights: Right to social security

Facts

This case concerns a referral from the Centrale Raad van Beroep (the Netherlands Court of Appeal) to the European Court of Justice from two conjoined cases for the correct interpretation and application of Articles 59 and 60 of the EC Treaty (which relate to the freedom of services throughout the EU). Both cases concern Dutch sickness insurance schemes (regulated by the *ZFW* Dutch national legislation) which allow its insured persons to receive free medical treatment abroad only if, except in exceptional circumstances such as an emergency, their sickness fund gives its prior agreement to the provision of such treatment. Under the *ZFW*, if their fund does not give such agreement, then it will not be possible to obtain reimbursement for the costs of such treatment.

Ms. *Müller-Fauré* underwent dental treatment whilst on holiday in Germany. Upon her return, she applied to her sickness fund to receive reimbursement of costs for such treatment. The fund refused to give such reimbursement on advisement from its dental officer. The Centrale Raad van Beroep affirmed the fund's refusal due to Ms. *Müller-Fauré*'s failure to demonstrate the right grounds under the national legislation to receive reimbursement. As for Ms. Van Riet, she went to Belgium to receive a medical examination on her wrist. Whilst such treatment was available in the Netherlands, it could be done a lot sooner in Belgium. She received the treatment and requested her sickness fund to reimburse her. The Centrale Raad van Beroep refused her appeal on the grounds that she received the treatment without the prior authorization of the Dutch sickness fund, and that such treatment did not constitute an emergency which justified her receiving the treatment in Belgium.

The Centrale Raad van Beroep requested that the European Court of Justice answer several questions for a preliminary ruling. The first question was whether the provisions of the *ZFW*, which requires the prior authorization of the Dutch sickness fund in order for their insured persons to receive treatment in other Member States, are compatible with Articles 59 and 60 of the EC Treaty which allow for the freedom to provide services across Member States. If not, then the second question is if there were any overriding reasons to justify such restrictions to the freedom to provide services. Finally, the third question was whether the answers to the previous questions were affected by whether one refers to the treatment as a whole or only the portion involving hospital care.

Decision and Reasoning

The Court provided a preliminary answer to the first question against *ZFW*. The Court noted that, as a general rule, Articles 59 and 60 of the EC Treaty do not preclude any national legislation which makes the provision of medical treatment in another Member State conditional upon the sickness fund giving its prior authorization. In addition, Articles 59 and 60 do not preclude national legislation from requiring that the treatment must be necessary before such authorization is given. However, as the *ZFW* would only reimburse without prior authorization when prior agreements existed or there was a medical necessity, the Court found that the requirements generally imposed a barrier to freedom to provide services.

When the Court reviewed the second and third questions, it found that the *ZFW* requirement for prior authorization for hospital care was acceptable due to an overriding general interest. The Court noted that facial violations of Article 59 and 60 are OK when there is an overriding general-interest and the result couldn't be achieved by less restrictive rules. The Court noted that countries' health programs, like *ZFW*, are carefully designed to ensure supply of health resources while reducing costs. Allowing free usage of hospitals

in other States would jeopardize the underpinnings of the ZFW program. Thus, the Court found that requiring prior authorization was "necessary and reasonable." However, authorization could only be refused in circumstances where the "same or equally effective" treatment can be obtained "without undue delay" in institution with whom the sickness fund had already concluded an agreement for the supply of services. In order to determine this, national authorities must have regard for all circumstances of the specific case which include, but are not limited to, the patient's medical condition, their degree of pain, or any relevant disability.

However, the European Court held that Articles 59 and 60 do preclude national legislation from providing the costs of non-hospital care conditional upon prior authorization from the fund. Such national legislation will be in violation of Articles 59 and 60 even where the legislation sets up a system of benefits in kind where the person can only receive the treatment free of charge, and are not entitled to reimbursement for the costs of the medical treatment. It is precisely that requirement of prior authorization for reimbursement of expenses which creates the restriction on freedom to provide services. The insured person has no freedom to go to a medical service provider of their choice.

Decision Excerpts

"In order for a prior administrative authorization scheme to be justified even though it derogates from a fundamental freedom of that kind, it must be based on objective, non-discriminatory criteria which are known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion, so that it is not used arbitrarily. Such a prior administrative authorization scheme must likewise be based on a procedural system which is easily accessible and capable of ensuring that a request for authorization will be dealt with objectively and impartially within a reasonable time and refusals to grant authorization must also be capable of being challenging in judicial or quasi-judicial proceedings." (Para. 85)

"In order to determine whether treatment which is equally effective for the patient can be obtained without undue delay in an establishment having an agreement with the insured person's fund, the national authorities are required to have regard to all the circumstances of each specific case and to take due account not only of the patient's medical condition at the time when authorization is sought and, where appropriate, of the degree of pain or the nature of the patient's disability but also of his medical history." (Para. 90)