Joined Cases of Geraets-Smits and Peerboom
C-157/99

Country: Netherlands
Region: Europe
Year: 2001
Court: European Court of Justice European Court of Justice
Health Topics: Chronic and noncommunicable diseases, Health care and health services, Health systems and financing
Human Rights: Freedom of movement and residence, Right to social security

Facts

In the Netherlands, the sickness insurance scheme was based principally on the Law on Sickness Funds (the â€œZFWâ€•), the Law on General Insurance for Special Sickness Costs and the Law on Access to Sickness Insurance. Such insurance scheme required prior authorization for treatment which was not carried out by a contracted provider; almost all contracted providers were located in the Netherlands. Such prior authorization for reimbursement would not be granted if such proposed treatment was determined to not be â€œin accordance with what is normal in the professional circles concernedâ€• or if such proposed treatment was not necessary (taking into consideration whether adequate treatment was otherwise available in the Netherlands without undue delay).

Mrs. Geraets-Smits suffered from Parkinsonâ€™s disease and requested her sickness insurance fund to reimburse the costs of care she received in Germany for the treatment of her disease. Her sickness insurance fund refused to reimburse her costs under the ZFW, claiming that satisfactory and adequate treatment for Parkinsonâ€™s disease had been available in Netherlands and, because the specific treatment she had received in Germany provided no additional advantage, there was therefore no medical necessity justifying such treatment. Mrs. Geraets-Smits lodged an appeal with the national court.

Following a road accident, Mr. Peerbooms fell into a coma. After his initial entry into a hospital in the Netherlands he was transferred in a vegetative state to a clinic in Austria. The Austrian clinic gave Mr. Peerbooms special intensive therapy which was not available to him in the Netherlands.Â Mr. Peerboomâ€™s neurologistâ€™s request for reimbursement was rejected by the sickness insurance fund on the grounds that adequate treatment could have been obtained in the Netherlands. When Mr. Peerbooms came out of his coma he lodged an appeal before the national court against his sickness insurance fundâ€™s decision not to reimburse his Austrian medical costs.

In both Mrs. Geraets-Smits and Mr. Peerboomâ€™s cases the national court found that the sickness insurance fundâ€™s refusal was based on the facts that (a) such treatment was not regarded as normal within the relevant professional circles, and was thus not a ZFW-covered benefit and (b) satisfactory and adequate treatment had been available in the Netherlands.

Based on the above facts, the national court referred two questions to the Court:

(1)Â Â whether Articles 59 and 60 of the EC Treaty must be interpreted such that the relevant national health law provisions would be inconsistent with such treaty obligations where the national rules provide that a person must obtain prior authorization from a sickness insurance fund to claim entitlement to benefits obtained outside the Netherlands. The national court related also asked for the Courtâ€™s answer to the question above where such sickness insurance fund authorization was refused on various grounds (including because such treatment was not considered â€œas normal in professional circlesâ€• or because adequate care could have been obtained in the Netherlands);

(2) whether, â€œif the requirement to obtain such authorization constitutes a barrier to the freedom to provide services enshrined in Articles 59 and 60 of the EC Treaty, are the overriding reasons in the general interest relied on by the defendants . . . sufficient in order for the barrier to be justifiedâ€•

Decision and Reasoning

The Court first noted that although Community law did not detract from the power of the member states to organize their social security systems, member states must comply with Community law when exercising such power. The Court then determined that the medical activities at issue did fall within the ambit of the freedom to provide services provided for in Articles 59 and 60 of the EC Treaty.

The Court noted that Article 59 of the EC Treaty precluded the application of national rules which made the provision of services between member states more difficult than the provision of services strictly within one member state. The Court further noted that the conditions that such treatment must be â€œnormal in the professional circles concernedâ€• and unable to be obtained in hospitals within the Netherlands limited the circumstances in which authorization to obtain treatment outside of the Netherlands would be obtained and, ergo, restricted the ability of a patient obtain reimbursement for such costs.

The Court concluded that, as most of the hospitals which had partnered with ZFW were in the Netherlands, the rules at issue would deter insured persons from applying to medical providers outside of the Netherlands, and thus such rules constituted a barrier to the freedom to provide services.

The Court then analyzed whether there were (a) â€œoverriding reasons which can be accepted as justifying barriers to freedom to provide medical services supplied in the context of a hospital infrastructureâ€•, (b) whether the requirement to obtain prior authorization was â€œjustifiable in light of such overriding needsâ€• and (c) â€œwhether the conditions governing the grant of prior authorization can themselves be justified.â€•

In relation to (a), the Court concluded that there were overriding reasons connected with the risk of undermining a social security systemâ€™s financial balance, maintaining a balanced medical and hospital service open to all and general public health which could justify such barriers.

In relation to (b), the Court concluded that, the planning that â€œgoes into the contractual system in an effort to guarantee a rationalized, stable, balanced and accessible supply of hospital servicesâ€• might be jeopardized if insured persons were able to freely use hospitals which their sickness insurance funds had no contractual arrangements with. Therefore the requirement that an insured person must obtain prior authorization from the sickness insurance fund prior to obtaining medical treatment at a non-contracted hospital was acceptable, so long as the conditions attached to the grant of such authorization were justified and proportional.

In relation to (c), when analyzing the condition that the proposed treatment be â€œnormalâ€•, the Court found that â€œCommunity law cannot in principle have the effect of requiring a Member State to extend the list of medical services paid for by its social insurance systemâ€•. However, in order to comply with the EC Treaty, the medicinal preparations excluded from reimbursement must be drawn up without reference to the origin of the products. Moreover, a prior administrative authorization scheme could only be justified if it was based on objective, non-discriminatory criteria which limited the discretion of the authorities to act arbitrarily, and if such scheme were based on an accessible, impartial and timely procedural system with quasi-judicial features to permit challenges to refusals to grant such authorization.

Applying such criteria to the system of sickness insurance laid down by ZFW, the Court found that the condition that the proposed treatment be â€œnormalâ€• was based on the prevailing views within national medical circles and would therefore not offer the requisite guarantees of objectivity and independence but would rather ensure that Dutch providers of treatment would be preferred. Â However, such a condition would be permissible where the determination was based on whether â€œtreatment is sufficiently tried and tested by international medical science.â€•

In relation to (c), when analyzing the condition concerning the necessity of the proposed treatment, the Court found that such condition could be justified under Article 59 of the EC Treaty provided that such condition only permitted refusal where â€œthe same or equally effective treatment can be obtained without undue delay from an establishment with which the insured personâ€™s sickness insurance fund has contractual arrangements.â€

Decision Excerpts

â€œ43. By its two questions, which fall to be dealt with together, the national court is asking essentially whether Articles 59 and 60 of the Treaty are to be interpreted as precluding legislation of a Member State, such as the legislation at issue in the main proceedings, which makes the assumption of the costs of care provided in a hospital establishment in another Member State conditional upon prior authorization by the sickness insurance fund with which the insured person is registered, that authorization being granted only in so far as the following two conditions are satisfied. First, the proposed treatment must be among the benefits for which the sickness insurance scheme of the first Member State assumes responsibility, which means that the

treatment must be regarded as â€˜normal in the professional circles concernedâ€™. Second, the treatment abroad must be necessary in terms of the medical condition of the person concerned, which supposes that adequate care cannot be provided without undue delay by a care provider which has entered into an agreement with a sickness insurance fund in the first Member State.â€•

â€œ60. It is necessary to determine whether there is a restriction on freedom to provide services within the meaning of Article 59 of the Treaty where the costs of treatment provided in a hospital in another Member State is assume under the sickness insurance scheme only on condition that the person receiving the treatment obtains prior authorization, which is granted only if the treatment concerned is covered by the sickness insurance scheme of the Member State in which the patient is insured, which requires that the treatment be 'normal within the professional circles concernedâ€™, and where the insured personâ€™s sickness fun has decided that his medical treatment requires that he be treated in the hospital establishment concerned, presupposing that adequate timely treatment cannot be provided by a contracted care provider in the Member State in which the patient is insured.â€•

â€œ90. It likewise follows from settled case-law that a scheme of prior authorization cannot legitimize discretionary decisions taken by the national authorities which are liable to negate the effectiveness of the provisions of Community law, in particular those relating to a fundamental freedom such as that at issue in the main proceedings . . . . Therefore, in order for a prior administrative authorization scheme to be justified even though it derogates from such a fundamental freedom, it must, in any event, be based on objective, non-discriminatory criteria which are known in advance, in such a way as to circumscribe the exercise of the national authoritiesâ€™ discretion, so that it is not used arbitrarily (Analir and Others, paragraph 38). 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 challenged in judicial or quasi-judicial proceedings.â€•

â€œ97. If, on the other hand, the condition that the treatment must be regarded as â€˜normalâ€™ is extended in suc way that, where treatment is sufficiently tried and tested by international medical science, the authorization sought under the ZFW cannot be refused on that ground, such a condition, which is objective and applies without distinction to treatment provided in the Netherlands and to treatment provided abroad, is justifiable in view of the need to maintain an adequate, balanced and permanent supply of health care on national territory and to ensure the financial stability of the sickness insurance system, so that the restriction of the freedom to provide services of hospitals situated in other Member States which might result from the application of that condition does not infringe Article 59 of the Treaty.â€•

â€œ108. In view of all of the foregoing considerations, the answer to be given to the national court must be that Articles 59 and 60 of the Treaty do not preclude legislation of a Member State, such as that at issue in the main proceedings, which makes the assumption of the costs of treatment provided in a hospital located in another Member State subject to prior authorization from the insured personâ€™s sickness insurance fund and the grant of such authorization subject to the condition that (i) the treatment must be regarded as â€˜normal in the professional circles concernedâ€™, a criterion also applied in determining whether hospital treatment provided on a national territory is covered, and (ii) the insured personâ€™s medical treatment must require that treatment. However, that applies only in so far as

-Â Â Â Â Â Â Â Â Â the requirement that the treatment must be regarded as â€˜normalâ€™ is construed to the effec authorization cannot be refused on the grounds where it appears that the treatment concerned is sufficiently tried and tested by international medical science, and

authorization can be refused on the ground of lack of medical necessity only if the same or equally effective treatment can be obtained without undue delay at an establishment having a contractual arrangement with the insured personâ€™s sickness insurance fund.â€•