Yvonne Watts v. Bedford Primary Care Trust and Secretary of State for Health
C-372/04

Country: United Kingdom
Region: Europe
Year: 2006
Court: European Court of Justice

Health Topics: Health care and health services, Health systems and financing
Human Rights: Right to health, Right to social security

Facts

This case was a reference for a preliminary ruling, concerning the interpretation of Articles 48-50 of the Treaty establishing the European Community, as well as Article 22 of Council Regulation 1408/71 on the application of social security schemes to employed persons, self-employed persons and members of their families moving within the Community.

The reference arose from the English Court of Appeal decision in Secretary of State for Health v. R (on the application of Watts), which concerned the refusal of Bedford Primary Care Trust to reimburse the cost of hospital treatment received by Yvonne Watts.

The claimant Yvonne Watts, a resident of the UK, brought an action against the Secretary of State for Health claiming reimbursement for an operation she underwent in France. In September 2002, she was diagnosed with osteoarthritis in both of her hips and it was determined soon thereafter that she required bilateral hip replacement surgery. The wait time for such an operation in the UK was approximately one year.

The claimant’s daughter reached out to Bedford Primary Care Trust (PCT) to determine if it was possible for her mother to undergo the surgery abroad with costs covered by the National Health Service (NHS), which provided medical services free of charge to all legal residents of the UK. The PCT informed the claimant’s daughter that the NHS would not reimburse Watts since her condition was routine for someone suffering from osteoarthritis, and having to wait one year for her operation in the UK did not constitute undue delay.

On January 31, 2003, a consultant orthopedic surgeon re-examined Watts. He recognized that her condition had deteriorated to some extent and there was some concern she would soon be too weak for surgery, and therefore re-classified her as a “soon” case, which meant that she should be operated on in three to four months. Watts did not wait until April, and elected to have the operation done on March 7, 2003 in France. The cost of the operation and hospital stay was approximately £3,900.

Decision and Reasoning

The Court ruled that, under Article 22(2) of Council Regulation (EEC) No 1408/71, the National Health Service (NHS) was entitled to refuse to authorize a patient to seek hospital treatment in another Member State only if the NHS could establish that the waiting time for the specific treatment in the UK was acceptable given the clinical needs of the patient. If the waiting time in the UK was not acceptable based on an objective medical assessment, then the NHS could not refuse to authorize the patient to seek treatment elsewhere.

The Court also held Article 49 of the Treaty establishing the European Community, which prohibited restrictions on services provided for the community, did not preclude reimbursement from being made subject to the grant of prior authorization. However, the procedure for obtaining prior authorization must be based on objective, non-discriminatory criteria which were known in advance, in order to ensure that such authorization was not refused arbitrarily. Moreover, authorization could not be refused on the grounds of long waiting lists, an alleged distortion of the normal order of priorities, the fact that treatment provided in the national system was free, the obligation to make specific funds available to reimburse the cost of treatment, or a comparison of the cost of treatment between the home and host Member States. Article 49 must be interpreted to mean that in situations where the hospital treatment to be provided under the specific national health service was free of charge, and where the Member State in which such health service was received did not provide full
reimbursement for the treatment, the competent institution in the patient’s home state must reimburse the difference.

In the context of the UK, if a patient was entitled to free treatment with the NHS, but instead received this treatment in France and the French system did not reimburse the patient fully for the service, the NHS was obligated to reimburse the patient for whatever cost still remained.

Article 22(1)(c)(i) of Regulation No 1408/71 was also interpreted to mean that a patient was entitled to reimbursement for costs related strictly to medical services and treatment, and would not be covered for ancillary costs. Under Article 49 of the Treaty establishing the European Community, however, the Court held that a patient from the UK who was treated in France was entitled to reimbursement from the NHS for ancillary costs, so long as the NHS would reimburse these costs if the patient had gone to a local hospital within the NHS system.

Decision Excerpts

In applying the case-law set out in paragraph 94 of the present judgment, the conditions for the NHS’s assuming the cost of hospital treatment to be obtained in another Member State should not be compared to the situation in national law of hospital treatment received by patients in private local hospitals. On the contrary, the comparison should be made with the conditions in which the NHS provides such services in its hospitals.

Thus, in order for a system of prior authorisation to be justified even though it derogates from a fundamental freedom of that kind, 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 authorities’ discretion, so that it is not used arbitrarily. Such a system must furthermore be based on a procedural system which is easily accessible and capable of ensuring that a request for authorisation will be dealt with objectively and impartially within a reasonable time and refusals to grant authorisation must also be capable of being challenged in judicial or quasi-judicial proceedings (Smits and Peerbooms, paragraph 90, and Mäller-Fauré and van Riet, paragraph 85).

By contrast, where the legislation of the host Member State does not provide for the reimbursement in full of the cost of hospital treatment in that State, in order to place the patient in the position he would have been in had the national health service with which he was registered been able to provide him free of charge, within a medically acceptable period, with treatment equivalent to that which he received in the host Member State, the competent institution must in addition reimburse him the difference between the cost, objectively quantified, of that equivalent treatment up to the total amount invoiced for the treatment received in the host Member State and the amount reimbursed by the institution of that State pursuant to the legislation of that State, where the first amount is greater than the second.

Since its purpose is thus not to settle the question of ancillary costs, such as the cost of travel and any accommodation other than in the hospital itself, incurred by a patient authorised by the competent institution to go to another Member State to receive there treatment appropriate to his state of health, Article 22 of Regulation No 1408/71 does not make provision for, but also does not prohibit, the reimbursement of such costs. In those circumstances, it is necessary to consider whether an obligation to reimburse such costs might arise under Article 49 EC.