



Case 7474/2003

STS 7474/2003

Country: Spain

Region: Europe

Year: 2003

Court: Tribunal Supremo. Sala de lo Social (Supreme Court)

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

Human Rights: Right to health

Facts

In the summer of 2000, the appellant suffered an injury while walking in the subway. She went to the public Hospital Severo Ochoa in Leganés where she was erroneously diagnosed with a sprained ankle. She was treated and had three additional examinations but continued to feel pain even after various treatments. She then went to the private Hospital Ruber International where she was correctly diagnosed with a calcaneus fracture and underwent surgery and rehabilitation. In accordance with Spanish health law she claimed reimbursements for the costs of private health care, however, the lower court, which considered itself competent to hear the case, rejected the claim for reimbursement.

Mrs. Patricia appealed this decision on the ground that it conflicted with an earlier case in 1995. The complainant in that case was misdiagnosed with pingueculitis in the right eye by the public health system and only later was correctly diagnosed with retinal detachment by a private institution and required three surgical interventions. The lower court ruled in favor of the reimbursement of the first of the surgeries done.

Decision and Reasoning

The Court held against the appellant finding no right to reimbursement for using private medical services even when the public medical services provided the wrong diagnosis. Reimbursement for private medical services was justified when the need for healthcare was "urgent, immediate, and of vital character." The Court found that it was not clear that the "vital character" requirement was met "unless it is understood that every single process of an ailment healing is vital." The Court did note that "vital character" did differ from the immediate urgency requirement and therefore the two cases were distinguishable. The Court differentiated the current case from the 1995 case by noting that detached retina was of immediate urgency since "an ocular injury [is] of undoubtedly major repercussion on the physical integrity and management of one's life."

Procedurally, the Court held that there is no need to unify the jurisprudence and that this case should be heard in an Administrative Law court. The earlier case took place in 1995 before the new law of Administrative Jurisdiction came into force. In 2.b, the new law delineated medically urgent cases as within the social jurisdiction, as they are exceptional situations where an extension of care may be needed to protect the right to health, while the rest are allocated to administrative law. Likewise, in 2.e the new law assigns cases regarding reimbursement of expenses outside the national health system to administrative jurisdiction. This reimbursement is not a derivation of the right to health care in but rather as compensation for an abnormal action of the public health service.

Decision Excerpts

! apreciar dos diferencias sustanciales entre los litigios de las sentencias comparadas. Una primera se refiere a las dolencias padecidas en uno y otro caso. Con independencia de que en ambas el recurso a la asistencia sanitaria al margen del Sistema Nacional de Salud parece a primera vista justificado por razones de urgencia, lo cierto es que el cumplimiento del requisito del "carácter vital" de dicha asistencia no es nada claro respecto de la lesión de tobillo padecida en la sentencia recurrida, salvo que se entienda que son vitales todos los procesos de curación de enfermedades. Pero este resultado interpretativo, sobre el que no es imprescindible pronunciarse aquí, parece en principio difícil de alcanzar, teniendo en cuenta que en el enunciado del precepto reglamentario reproducido el carácter vital de la atención se exige como requisito distinto de la urgencia inmediata de la misma. Así las cosas, no hay mínimos hábiles para la comparación con el litigio de la sentencia de contraste, donde se resuelve sobre una lesión ocular, de indudable mayor repercusión en la integridad física o en el desenvolvimiento de la vida. (Page 3)

â€œ! [We appreciate] two substantial differences between the litigation of the compared decisions. The first difference refers to ailments suffered in both cases. Even though both cases of access to health care at the margin of the National System of Health, seem at first sight justified for reasons of urgency, the truth is that the fulfillment of the requirement of the â€œvital characterâ€• of such assistance is not clear at all in respect of the ankle injury suffered in the case of the decision appealed herein, unless it is understood that every single process of an ailment healing is vital. But the result of this interpretation, about which our opinion is not essential, seems hard to achieve in principle, taking into account that the statement of the Law quoted before, demands the vital character requirement of the medical attention as different to the immediate urgency one. Therefore, the terms are not similar enough to compare the litigation with the decision being compared, where the dispute is regarding an ocular injury, of undoubtedly major repercussion on the physical integrity and management of oneâ€™s life.â€• (Page 4)

â€œLa aplicaci3n de esta doctrina a nuestro caso conduce sin duda a considerar que, la reclamaci3n del reintegro de gastos sanitarios por error de diagn3stico solicitado en la sentencia recurrida debi3 haber sido planteada ante la jurisdicci3n contencioso-administrativa. La doctrina unificada contenida en la sentencia de esta Sala de 8 de noviembre de 1999, que declara nuestra competencia para estos supuestos de error de diagn3stico, y en la que se apoya la sentencia de contraste, debe ser abandonada. Pero no tanto porque contenga un error de interpretaci3n, sino porque fue dictada para una situaci3n normativa en la que no estaba vigente el art. 2.e. de la LJCA, ya que los hechos enjuiciados en la misma determinantes de gastos sanitarios fuera del Sistema Nacional de la Salud anteriores se produjeron entre febrero y abril de 1996.â€• (Page 4)

â€œThe application of this jurisprudence to the present case leads without a doubt to consider, that the claim for the reimbursement of health expenses caused by a wrong diagnosis, requested in the reviewed decision, should have been set before the Administrative Law jurisdiction. The unified doctrine of the decision of this very chamber, dated November 8 1999, states that our competence for wrongdoing in diagnosis, as in the present case, and on which the decision being used herein to contrast, must be abandoned. But not because it contains a wrongful analysis, but because it was dictated under a normative situation in which there was no applicability of article 2.e of the LCJA, since the facts disputed therein that determine the health expenses as outside the National System of Health, occurred between February and April 1996.â€• (Page 5)