

References

Council of State ruling on contentious matters

N° 24735

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Mr. Ducoux, President
Mr. Etrillard, Rapporteur
Mr. Genevois, Government Commissioner

Friday 30 April 1982
FRENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

Complete text

Request from the S.A.R.L.¹ Bois de Verrières Clinic for:

1° the overturning of the judgment of 26 March 1980 of the Paris administrative tribunal, which rejected its request against the judgment of 1 June 1978 by which the Hauts-de-Seine prefect rejected its medical assistance request for approval;

2° the overturning of this judgment;

Considering the Family and Social Assistance Code; the law of 31 December 1970; the Administrative Tribunals Code; the ruling of 31 July 1945 and the decree of 30 September 1953; the law of 30 December 1977;

On the mean informed by the incompetency of the social and sanitary action inspector:

Considering that according to article 244 of the decree of 17 April 1943, the prefect was competent, at the date of the contested judgment, to sign the conventions approving the private establishments as concerns medical assistance in the department's name;

Considering that, by an order of 1 January 1977, published in the Administrative Acts of the Hauts-de-Seine department of 15 March 1977, the Hauts-de-Seine prefect delegated to Mr. X..., sanitary and social action inspector, the power to sign in his name the decisions concerning social actions and assistance; that the decisions denying approval are detachable from the signature of conventions, included amongst those targeted in this judgment; that as such, the applicant company, which had asked the Hauts-de-Seine prefect on 9 May 1978 to sign with the department a convention approving it for medical assistance, cannot state that the decision of 1 June 1978, by which this request was denied and signed by Mr. X..., emanates from an incompetent authority;

On the internal legality of the Hauts-de-Seine prefect's decision of 1 June 1978:

Considering that the first article of the law of 31 December 1970 on hospital reform only recognizes the patient's right of freedom of choice for the care establishment "subject to existing

¹ Translator's note: this is the French acronym for a limited liability company.

provisions in the different social protection programs”; that pursuant to article 181 of the Family and Social Assistance Code, the medical assistance regime, which is included in the social protection regimes of this disposition, is based upon the linkage of municipalities to a specific hospital, which in theory is the closest hospital, and, as concerns special treatments, the linkage of municipalities to one or more hospital centres; that, even if article 43 of the decree of 2 September 1954 provides that hospital assistance can include “regular admission or urgent admission within the private care or treatment establishments, this provision does not concede to the private establishments the right to receive the beneficiaries of medical assistance under the same conditions of the establishments linked to the municipalities; thus, that the prefect can legally base his decision to refuse an approval request from a private establishment on the fact that the hospital assistance needs are satisfied by the hospitals and the establishments linked to the municipalities; that, as such, by rejecting the request from the applicant company on the basis of the argument that “the sanitary needs of the population of Antony and of the neighbouring municipalities are covered by the A. Béclère and Bicêtres hospitals, which cover a large range of disciplines”, the Hauts-de-Seine prefect based his decision on a motive which is not vitiated by an error of law;

Considering that it does not result from the facts of the case that the appreciation by the Hauts-de-Seine prefect of the needs of the municipality of Antony and the neighbouring municipalities is manifestly incorrect, nor that it is based on inaccurate material facts;

Considering that results from the above that the limited responsibility company Bois de Verrières Clinic is not justified in claiming that, by the contested judgment of 26 March 1980, the administrative tribunal of Paris wrongly rejected its request for the overturning of the decision of the Hauts-de-Seine prefect of 1 June 1978;

Denied.

Analysis

Abstracts: 04-02 SOCIAL ASSISTANCE – DIFFERENT FORMS OF SOCIAL ASSISTANCE

- Medical assistance – Freedom of choice for the beneficiary between a public hospital and a private care establishment – Absence.

61-02-01 PUBLIC HEALTH – PUBLIC HOSPITALISATION ESTABLISHMENTS – ORGANISATION – Medical assistance regimes – Linkage to the nearest hospital or to specialised centres – Consequences for private establishments.

61-04 PUBLIC HEALTH – PRIVATE ESTABLISHMENTS – Approval under social assistance – Refusal – Legality in view of the organisation principles of the medical assistance regime [art. L.181 of the Social Assistance Code].

54-07-02-04-01 PROCEDURE – POWERS OF THE JUDGE – CONTROL OF THE JUDGE FOR ABUSES OF POWER – RESTRICTED CONTROL – APPRECIATIONS SUBJECT TO RESTRICTED CONTROL – Social assistance – Refusal for the approval of a private care establishment.

Summary: 04-02, 61-02-01, 61-04 The first article of the law on hospitals of 31 December 1970 only recognizes the patient’s right of freedom of choice for the care establishment subject to existing provisions in the different social protection programs. The medical assistance regime, which is included in the social protection regimes of this disposition, is based upon the linkage of municipalities to a specific hospital, which in theory is the closest hospital, and, as concerns special treatments, the linkage of municipalities to one or more hospital centres. Even if article 43

of the decree of 2 September 1954 provides that hospital assistance can include regular admission or urgent admission within the private care or treatment establishments, this provision does not concede to the private establishments the right to receive the beneficiaries of medical assistance under the same conditions of the establishments linked to the municipalities.

61-04 Thus, a prefect can base his decision to reject an approval request for a private establishment on the fact that the hospital assistance needs are fulfilled by the hospitals and the establishments linked to the municipalities.

54-07-02-04-01 The judge for abuses of power exercises a restricted control on the margin of appreciation which the prefect benefits from in order to reject an approval request under medical assistance presented by a private care establishment.