



Requiring that health services be provided in a specific geographic location may be contrary to European regulations

Judgment of the Court of Justice of the European Union (CJEU), of 22 October 2015, Case C-552/13

Background

In the Basque Country, public health services are provided on the basis of a system of a regional organisation divided into healthcare districts. Under that system, patients are served by a particular hospital -the "hospital of reference"- located in the corresponding healthcare district.

In order to improve the quality of service, the competent authorities set up a mechanism for cooperation with private healthcare providers and hospitals to outsource certain public medical care support services. This cooperation was formalized in public service management contracts awarded following an open call for tenders.

Tender specifications

In that context, a public procurement procedure was initiated to award two contracts for the management of specific medical care services: one for patients having the public hospital of Basurto as hospital of reference, and another for those patients having the public hospital of Galdakao as hospital of reference. The technical specifications of both contracts indicated that one of the basic requirements for all tendering healthcare centres was that they should be located in the municipality of Bilbao, in order to ensure the proximity and accessibility of the establishment and in the interests of patients, their families and medical personnel.

Unjustified obstacle to competition

A private hospital located in the municipality of Erandio, which satisfied all of the technical specifications laid down in the invitation to tender (except for the location), challenged both tender procedures. It argued that requiring the healthcare centre to be located in Bilbao was contrary to the principles of equal treatment, freedom of access to public procurement procedures and free competition.

The court responsible for settling the dispute asked the CJEU for a preliminary ruling on the question of whether the requirement that health services outsourced via a public contract be provided *only* in a particular municipality is compatible with EU Law. The Court found that the requirement of a specific geographic location had the effect of automatically excluding all healthcare centres not situated in Bilbao, and that said requirement did not ensure equal and non-discriminatory access to the contracts by all possible tenderers who could also ensure the proximity and accessibility of the private support establishment, therefore concluding that it was contrary to EU Law.