



## Reimbursement of cross-border healthcare costs without the prior authorization of the Member State of Affiliation

*Judgement of the European Court of Justice of 23 September 2020, WO v Vas Megyei Kormányhivatal, Case C-777/18*

Rules on cross-border healthcare allow patients to receive healthcare in a Member State other than the one of Affiliation (ie where the patient is insured or resident). In such cases, the patient shall bear the costs of the services and, if the legislation applied by the institution of the Member State of Affiliation enables reimbursement of those costs, he/she may send an application for reimbursement.

### EU regulatory landscape

At EU level, the main rules on this matter are the Regulations on the coordination of social security systems (Regulations 883/2004 and 987/2009) and Directive 2011/24/EU on patients' rights in cross-border healthcare.

Regulations 883/2004 and 987/2009 state that, as a general rule, reimbursement of cross-border healthcare costs shall require the prior authorization of the Member State of Affiliation. Such authorization shall be granted where the treatment in question is among the benefits provided for by the legislation in the Member State of Affiliation and where the patient cannot be given such treatment in the Member State of Affiliation within a time limit which is medically justifiable, taking into account his/her current state of health and the probable course of the illness.

Directive 2011/24/EU provides that the system of prior authorization for reimbursement of cross-border healthcare costs shall be restricted to what is necessary and proportionate to the

objective to be achieved and shall not constitute a means of arbitrary discrimination or an unjustified obstacle to the free movement of patients. A system of prior authorization shall then be limited, as per the Directive, to healthcare which (i) is subject to planning requirements or cost control measures of the Member State of Affiliation, and (ii) involves overnight hospital accommodation for at least one night or requires the use of highly specialised and cost-intensive medical infrastructure or equipment.

### Background of the case

In 1987 a Hungarian citizen suffered a retinal detachment in his left eye and lost his vision in that eye. In 2015, the very same citizen was diagnosed with glaucoma in the right eye. Afterwards, he received several treatments in Hungary which were not effective, as his visual field continued to decrease and his eye pressure remained high. The patient then contacted a doctor practicing in Germany who considered that the eye surgery had to be carried out urgently in order to save the patient's sight. The patient was successfully operated in Germany in 2016.

After the operation, the patient applied for reimbursement in Hungary. The application was rejected because the Hungarian authorities considered eye surgery to be a scheduled treatment in respect of which the patient had not obtained the prior authorisation on the basis of which he could be reimbursed.



The patient brought an action before a Hungarian Court against the decision rejecting the reimbursement. The Hungarian Court decided to stay the proceeding and referred the case to the European Court of Justice (CJEU) for preliminary ruling.

### CJEU's Judgement

The CJEU's Judgment reaches the following conclusions:

1. A Member State of Affiliation may deny reimbursement of cross-border healthcare costs if: (i) its national legislation requires a prior authorization for the reimbursement and such authorization has not been granted; (ii) this prior authorization system is justified for planning or cost control requirements, and (iii) the healthcare costs to be reimbursed refer to healthcare that involves overnight hospital accommodation for at least one night or requires the use of highly specialised and cost-intensive medical infrastructure or equipment.
2. A patient may have the right to reimbursement of cross-border healthcare costs even without the prior authorization of the Member State of Affiliation when individual circumstances relating to the state of health of the patient and the probable course of his/her illness are capable of justifying the absence of that authorisation. Reimbursement in such cases, the Court adds, is not likely to compromise the achievement of the objectives of hospital planning or seriously undermine the financial balance of the social security system of the Member State of Affiliation.

3. Denying reimbursement in the circumstances outlined in (2) above would be: unjustified and disproportionate, and also contrary to the freedom to provide services principle if reimbursement for the same services (but rendered in the Member State of Affiliation rather than abroad) was not subject to authorization.
4. National legislation that denies reimbursement of cross-border healthcare costs if no prior authorisation has been granted, even when there is a genuine risk that the patient's state of health may irreversibly deteriorate while waiting for that prior authorisation, is contrary to the Directive 2011/24/EU and the freedom to provide services principle.

In this particular case, the CJEU states that there are signs that the individual circumstances outlined in (2) above actually arise; but that this is for the Hungarian Court to verify.

### How cross-border healthcare is regulated in Spain?

Directive 2011/24/EU was incorporated in Spain by Royal Decree 81/2014 which regulates a system of prior authorization. Authorizations are granted by the authorities of the Autonomous Regions which have 45 days from the submission of the reimbursement application to issue its resolution. In the absence of a resolution within this deadline, the authorization shall be considered to have been granted.