



Dispensing vs. delivery of medicines

Judgment of the Supreme Court of 2 November 2021

Our CAPSULES of 23 June reported on the admission of a cassation appeal that granted the Supreme Court the opportunity to interpret the terms “dispensing” and “delivery” of medicines, which are hugely relevant to new business models and emerging platforms. The Judgment of 2 November 2021 resolves the appeal and offers interesting arguments as to this type of activity.

On “dispensation” and its separability from “delivery”

The owner of a pharmacy challenged a sanction that was imposed due to medicines being dispensed outside pharmacy premises through an employee. The owner’s line of defence compared this to home delivery services offered by certain apps and insurance companies to people with mobility problems.

To resolve the case, the Court points out that the act of dispensation includes several elements that, despite normally being conducted in a single act, may also be dissociated. Such elements are the “core of the act of dispensation” and other ancillary actions. The “core of the act of dispensation” revolves around the pharmacist knowledge of the medicine and includes interpretation of prescriptions or technical data sheets, and patient advice. The other ancillary services may involve physical delivery and sale of medicines. The Judgment distinguishes four types of delivery as part of dispensation: (i) “ordinary” dispensation, which occurs in person within pharmacy premises whenever the patient goes to the pharmacy and receives medicines by hand; (ii) “online sale” of medicines, where the core acts of sale and dispensation are carried out outside pharmacy premises (via web-

site); (iii) “home delivery”, which is permitted by certain regional rules in the case of patients with reduced mobility, where the pharmacist sends the medicine to the patient after conducting the core of the act of dispensation within pharmacy premises and; (iv) “dispensation within pharmacy premises and delivery to third parties”, where the pharmacist conducts the core of the act of dispensation within pharmacy premises and does not deliver the medicine directly to the patient, but to a third party contracted by the patient for this purpose.

In the case under analysis, all elements of dispensation took place outside pharmacy premises: the pharmacy employee received the relevant prescription, advised the patient, and sold and delivered the medicines at a parapharmacy and/or a bar. In view of this, the sanction was upheld without going into further detail. The case under analysis does not fall under any of the aforementioned types of dispensation.

However, the Court makes two interesting considerations. First, it acknowledges the possibility of dissociating delivery from the “core element” of dispensation. Second, it identifies a form of dispensation so called “dispensation in pharmacy premises and delivery to third parties” where, on the one hand, the medicine is delivered to a third party at the request of the patient and, on the other hand, it is made clear that the main act of dispensation occurs within pharmacy premises. Under this Judgment, it may be argued that sale, dispensation and physical delivery are not equal and that, whenever a third party intervenes on behalf of the patient and accepts an order from the patient, the pharmacist still conducts the core act of dispensation.