



Access to medicinal products and patients' fundamental rights

Judgment of the Court of Justice of the European Union (Grand Chamber) of 22 November 2022

Background

A Russian citizen suffering from a rare form of leukaemia was receiving medical care in the Netherlands. The treatment consisted in the administration of medical cannabis for pain relief. The use of medical cannabis is not allowed in Russia.

After applying for asylum in the Netherlands and being rejected several times, he was ordered to return to Russia in 2020. He appealed to the Court of First Instance in The Hague. In his appeal, he requested that he be granted a residence permit or at least that his expulsion be postponed, arguing that the cannabis treatment was so essential to him that he would not be able to lead a dignified life if it were discontinued. The Court of First Instance in The Hague agreed to refer the case to the Court of Justice (CJEU) for a ruling on whether EU law precludes the issuing of an expulsion decision or removal order against a third-country national in such circumstances.

The CJEU ruling

The CJEU, drawing on its own case-law and that of the European Court of Human Rights, held that EU law precludes Member States from expelling from their territory, in certain cases, third-country nationals who are suffering from a serious illness despite being illegally resident. According to the CJEU, expulsion in these circumstances is unlawful if there are serious and well-founded reasons to believe that it would expose the citizen to a real risk of a serious, rapid and irreversible increase of the pain caused by the illness. According to

the ruling, this may be the case if the patient does not have access to adequate care in the destination country.

In particular, the CJEU states that, in such cases, an expulsion or return decision would be contrary to Article 3 of the European Convention on Human Rights (ECHR) and Article 4 of the Charter of Fundamental Rights of the EU (Charter), which prohibit torture, inhuman or degrading treatment or punishment. The Court also states that the threshold of severity should not be interpreted strictly, but should take account of the fact that an increase in the pain or aggravation of an illness may be gradual and that a certain period of time may be necessary before it becomes significant or permanent.

Key ideas

Beyond the CJEU's interpretation of EU law on immigration, this judgment is yet another case where access to treatment or a medicine is linked to patients' fundamental rights. The judgment recognises that an administrative decision - in this case, the expulsion or return of a patient to another country, which prevents the continuation of medical treatment - may affect the fundamental rights of the patient if it prevents access to a medicinal product and thereby aggravates the patient's illness.

In Spain, there is already case law indicating that preventing access to duly prescribed treatments may violate patients' fundamental rights such as the right to equality (art. 14 of the Spanish Constitution) or the right to life and physical integrity (art. 15 of the Spanish Constitution).