



## The practical implementation of the principle of equality in the field of pharmaceutical coverage

*Judgment of the Superior Court of Justice of the Basque Country (Bilbao) of 2 of December of 2014*

### Background

The case that we refer to was originated when a patient suffering from a severe dry eye syndrome associated to Lyell's Disease appealed against the resolution that denied her the visa and the financing of certain eye drops that are generally excluded from the pharmaceutical coverage because the Directorate General considers that this is a product indicated for the treatment of a minor syndrome.

The resolution of the Directorate General, perfectly covered by article 85 of Law 29/2006 on Guarantees and Rational use of Medicinal Products and Medical Devices, provided an exception, by virtue of which the eye drops in question were financed if used for the relief of ocular dryness in patients affected by Sjögren's syndrome. As the patient did not suffer from this syndrome, her visa was denied although her ocular dryness was equally severe.

The patient appealed arguing that denying her the financing, when her situation was as severe as that of patients suffering from Sjögren's syndrome, infringed the principle of equality that is constitutionally protected.

The Court admits that when refusing her the visa the regulations in force were applied. Many courts would have settled here, would have expressed their regrets regarding the unfair situation, and would have passed a sentence, but in this occasion the judges decide to analyze the case going beyond the literal wording of the law.

### The principle of equality

The judgment accepts that under the current situation measures are required to contain public expenditure but at the same time it highlights that in order to protect the general interest of health preservation, which is enshrined in the Constitution, the individual dimension of each person must be taken into account.

On this basis, the Court cannot simply accept that the patient suffering from a severe dry eyes syndrome associated to Lyell's Disease has no right to receive reimbursement by the national health system for the medicine due to the simple fact that an administrative resolution restricts its financing to cases of Sjögren's syndrome.

According to the judges, the Court would be making a mere mimetic implementation of the regulation, and it would be renouncing its capacity to interpret and apply regulations within the legal parameters. The judgment accepts that certain medicinal products are excluded from reimbursement by the national health system, but it does not accept that differences can be made between situations in which the symptomatology is similar, and the treatment is identical because otherwise the equality principle would be infringed.

This judgment might be criticized in some aspects, but it contains a good message to be taken into account: when deciding what medicinal products should be financed it must not be forgotten that the rights conferred by the Constitution go above all.