ECJ Rulings on Health Care Services and Their Effects on the Freedom of Cross-Border Patient Mobility in the EU

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Abstract
Patient mobility and cross-border medical care are significant issues of the actual discussion about the future development of the health care systems of the Member States of the European Union. New rights for patients were defined by the European Court of Justice in its sequence of judgements (e.g. Kohll, Müller-Fauré, Watts) referring to Regulation (EEC) 1408/71 on the social security of migrant workers. The Court’s rulings also provoked considerable effects in national governments, insurance institutions, care providers and medical professionals.

In its communication of April 2005 the European Commission proposed a new health and consumer protection strategy, of which the scope of facilitating utilisation of cross-border health care is a striking aspect. Discussions are based on the existence of two categories of health care systems within the EU: social insurance systems and national health systems both varying in organisation, financing and benefits.

As regards individual rights before going abroad the patients in certain cases have to be aware of the need of prior authorisation by the competent authority. In terms of the Court’s reasoning the question will be how the freedom to choose one’s doctor and hospital can be realised without endangering the system’s financial balance and what restrictions are necessary to provide a balanced medical and hospital service accessible to all, which is indispensable for the maintenance of an essential treatment facility or medical service on national territory.

The Court’s most important rulings on these issues are introduced. In the light of these rulings and the increasing mobility of patients, especially retired persons, the paper reflects financial and institutional effects on the national health care systems within the EU.

Keywords
(Cross-border) Patient mobility; Health Care Services; Social Security Systems; Health Care System; Social Rights; Freedom to Provide Services; European Court of Justice; Principle of Solidarity; Principle of Territoriality.

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Introduction

Patient mobility has not always been an example of a special kind of migration. What allows us to think of a special type of migration is the increase in “health tourism” since about 1995. The fall of the iron curtain in 1989 resulted not only in more mobility of persons within Europe as a whole, especially within the EU, but also in increased economic competition within the European Community especially in the health sector – a process which was accelerated by the enlargement of the European Union. At the same time we are witnessing the extension of the meaning of what we call the law of social security. Both sides of the coin, the social and the economic aspects of the social security system, especially in the health sector, are of great importance for the welfare of the citizens. The economic competition between the different social security systems has greatly increased, e.g. the health insurance companies – not to mention migration of the medical personnel (doctors, nurses, care nurses). In this situation the knowledge about conditions for the health migration of the citizens of the EU has an important influence on the scope of social rights as well as on all kinds of health providers and insurance companies. In this sense our interest focuses on the Courts’ jurisprudence on the social legal provisions of the EU which has a decisive influence on the behaviour of persons and institutions.

The basis of recent activities of the European Community in the field of cross-border patient mobility of the European Union is the European Social Agenda for the period 2005 to 2010.1 There are some more documents of the European Commission that have to be taken into consideration: first of all the programme of Community action in the field of public health (2003–2008),2 which forms an essential part of the European Community’s health strategy, focussing on the following objectives and general measures:

- improving information and knowledge with a view to promoting public health and health systems,
- boosting the ability to respond rapidly and coherently to health threats,
- addressing health determinants.

Regarding patient mobility, the European Commission has no direct mandate to intervene short of a full-scale ruling by the European Court of Justice. In order to level existing national differences of opinions in these matters, a strategy of consensus finding was established. The Commission thus instigated a “high level process of exchange of opinion” and finally published a communication “Follow-up in the high-level reflection process on patient mobility and health care developments in