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Press and Information

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Judgment of the Court of Justice in Case C-145/03

Heirs of Annette Keller v Instituto Nacional de la Seguridad Social (INSS) and Instituto Nacional de Gestión Sanitaria (Ingesa), formerly Instituto Nacional de Salud (Insalud)

THE COSTS OF MEDICAL TREATMENT OF A PERSON HOLDING FORMS E 111 AND E 112 WHO, FOR URGENT MEDICAL REASONS, HAS TO BE ADMITTED TO HOSPITAL IN A NON-MEMBER COUNTRY MUST BE BORNE, IN ACCORDANCE WITH ITS RULES, BY THE SOCIAL SECURITY INSTITUTION OF THE MEMBER STATE OF STAY ON BEHALF OF THE INSTITUTION OF THE MEMBER STATE OF AFFILIATION

Ms Annette Keller, of German nationality and resident in Spain, asked the competent Spanish institution (Insalud) for a Form E 111¹ for a period of one month, in order to travel to Germany.

During her stay in Germany, she was diagnosed as having a malignant tumour liable to cause death at any time. She asked Insalud to issue a Form E 112,² so as to be able to continue receiving treatment in Germany. The validity of that form was extended on several occasions.

After a thorough analysis of the possibilities of treatment, the German doctors decided to transfer Ms Keller to the Zurich University Clinic (Switzerland). That was the only clinic in which the operation Ms Keller needed could be performed with a real chance of success.

Ms Keller paid the costs of the treatment received in Zurich herself, and subsequently requested Insalud to reimburse those costs.

When her request was refused, she brought court proceedings. The national court asked the Court of Justice of the European Communities for an interpretation of the 1971 regulation on

¹ From E 111 gives an insured person whose state of health necessitates immediate treatment during a stay in another Member State the right to benefits in kind in that Member State.

² By Form E 112 an insured person obtains authorisation to go to another Member State in order to receive appropriate medical treatment there.

the application of social security schemes to migrant workers,³ concerning the possibility of reimbursement of the costs of hospital treatment received in a non-member country.

The Court of Justice recalls, first, that one of the objectives of the 1971 regulation is to facilitate the free movement of persons covered by social insurance who need medical treatment during a stay in another Member State, or who have been authorised to receive treatment in another Member State.

Forms E 111 and E 112 are intended to assure the institution of the Member State of stay and the doctors authorised by it that the patient is entitled to receive in that Member State – during the period specified in the form and under the same conditions as those applied to its own insured persons – treatment whose cost will be borne by the Member State of affiliation.

The Court then states that **the doctors in the Member State of stay are best placed to assess the treatment needed by the patient, and that the institution of the Member State of affiliation, during the period of validity of the form, places its confidence in the institution of the Member State and the doctors authorised by it, as providing the same guarantees of professional competence as doctors within the country.**

Consequently, **the institution of the Member State of affiliation is bound by the findings relating to the need for urgent vital treatment made by the doctors authorised by the institution of the Member State of stay, and by the decision of those doctors to transfer the patient to another State** to be given the urgent treatment which the doctors of the Member State of stay are unable to provide.

In this connection, it is of no importance that the State to which the doctors have decided to transfer the patient is not a member of the European Union.

The institution of the Member State of affiliation cannot require the person concerned to return to the Member State of residence to undergo a medical examination there, nor can it have him examined in the Member State of stay, nor subject the medical findings and decisions to its approval.

As to responsibility for the costs of medical treatment given in the non-member country following a medical decision to transfer the patient, the Court recalls that the principle which applies is that the cost of that treatment given is borne by the institution of the Member State of stay, in accordance with the legislation it administers, and the institution of the Member State of affiliation is subsequently to reimburse the institution of the Member State of stay.

In the present case, **since the costs of the treatment given to Ms Keller in Switzerland were not assumed at the time by the German sickness fund, and it is established that Ms Keller was entitled to such an assumption of costs and that the treatment in question is among the benefits provided for by Spanish social security legislation, the Court holds that it is for the Spanish social security institution to reimburse the cost of that treatment directly to the heirs of Ms Keller.**

³ Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community.

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Languages available: EN FR DE ES IT NL PL GR

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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