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Legislative and Jurisprudential Analysis Regarding the Satisfaction of Romanian Patients Regarding the Performance of the National Health System

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ABSTRACT: Health spending in Romania is the lowest in the EU, both per capita and as a percentage of GDP, and lack of financial resources and demographic challenges endanger the sustainability of the health system. Because a key factor of patient satisfaction is the responsiveness of the national healthcare system and the strategic changes' implementation, this article aims to analyse how the standard of protection created at the level of the European Union by means of the Directive on cross-border healthcare is implemented and complied with in national legislation. A modern healthcare system must be centred on patient needs, to have dynamic and integrated structures, adaptable to the various and changing healthcare needs of society in general and of individuals in particular. For these reasons, by presenting the Petru case, the article examines the degree of harmonization of national policies in view of reforming the national health system, contributing to social cohesion and social justice, as well as to eliminate any restrictions to the fundamental freedoms of European citizens.

KEYWORDS: patient satisfaction, European law, national legislation, health system, patient mobility, cross-border healthcare, fundamental rights

Introduction

In 2019, health spending across EU countries stood on average at 8.3% of GDP, ranging from over 11% in Germany and France to less than 6% in Luxembourg and Romania. On a per capita basis, there is a threefold difference between the EU countries in Western and Northern Europe that spend the most on health (Germany, Austria, Sweden and the Netherlands) and those in Central and Eastern Europe that spend the least (Romania, Bulgaria, Latvia and Croatia).

As health expenditures in Romania are the lowest in the EU, both per capita (1.029 EUR, the EU average being 2.884 EUR) and as a percentage of GDP (5.7% compared to 8.3% in the EU), underfunding of the system and demographic challenges threaten the sustainability of the health system.

In 2017, 4.7 % of Romanians reported unmet needs for medical care because of cost, distance or waiting time, compared to an average of 1.7 % in the EU (OECD, 2019). The availability of services is unequal across the country. The skewed distribution of health care facilities means that access to both primary and specialist services is poorer in rural areas. Access imbalances disproportionately affect certain disadvantaged socioeconomic groups - people without income who are not registered for social benefits, pensioners, agricultural workers, and the Roma population (Council of the European Union 2019).

Regarding the health system capacity to adapt effectively to changing environments, sudden shocks or crises, lack of financial resources and demographic challenges jeopardize health system sustainability.

Patient satisfaction is an important indicator of the evaluation of a health system. The literature (Xesfingi and Vozikis 2016) shows that a key factor of patient satisfaction is the receptivity of national healthcare system for the implementation of strategic changes.

To ensure access to high-quality healthcare and the more efficient use of public resources (strategic objectives of the European Union), the European Commission [COM

(2012)] has recommended reforming health systems to ensure their cost-effectiveness and sustainability, as well as evaluating their performance.

The Court of Justice of the European Union has developed over time a rich jurisprudence that has been refined with each reference for a preliminary ruling to the Court by the courts of the Member States.

The Court had the role to pave the way for the realization of the right granted to any person (Marin 2014, 122-126) under Article 35 of the Charter of Fundamental Rights of the European Union to have access to preventive healthcare and to receive medical care.

Theory

Due to the very rich jurisprudence in this field, the right of Union citizens to use cross-border healthcare as unconstrained as possible, which is generally known by the notion of "patient mobility", have been clearly outlined.

As healthcare had been excluded from Directive on services in the internal market (2006/123/EC), in the European legal context it was imperative that these issues be addressed on the basis of a legal instrument, by means of which the principles established by the Court of Justice, in each case, to be applied generally and effectively.

In the absence of the legal force of a European regulation, the free movement of patients would have created a competition between the health systems of Member States to attract more patients, thus raising the likelihood that, by the free access to cross-border services, a drop in the price of medical services throughout the European Union take place, to the detriment of the quality of healthcare services.

Directive on cross-border healthcare (2011/24/EU) codifies and clarifies the jurisprudence of the Court of Justice of the European Union with regard to the rights of patients to be reimbursed for healthcare received in another Member State. The Directive does not deal solely with the rights to reimbursement, but also introduces a number of significant flanking measures to support patients in using these rights in practice. As a result, there is now a minimum set of requirements which applies to all healthcare provided to patients in the EU, requirements that relate to both transparency and information for patients, as well as the safety and quality of care.

Results and Discussions

In the field of the provision of cross-border healthcare services a certain overlap of EU law with national law is reached, so that in many cases European law (Botină, Dobre, Munteanu 2015, 57-61) is essentially limited to indicating a compulsory aim, namely achieving the free movement of citizens patients and their equal treatment, irrespective of nationality, in relation to national authorities, while maintaining the powers of Member States.

The main principles proclaimed by Directive 2011/24/EU have their legal source, as shown above, in a long series of cases in which the Court has identified the limits-imposed Member States by Union law on restricting patients' right to use medical services in the European internal market.

The Petru case was a first in the case law of the Court because it was the first time when was addressed a question regarding cross-border healthcare based on the poor medical conditions affecting the State of residence, in this case Romania.

In order to rule in the case of Mrs Petru, the Court had to consider on the one hand, if a deficiency or shortcoming of the material conditions within a healthcare institution, in certain circumstances, can amount to a situation where you cannot timely perform a certain medical benefit, which is still included among the benefits covered by the social security system.

Secondly it had to be examined whether the mentioned shortcomings and deficiencies in the hospital facilities in Romania, which correspond to a systemic situation due to different circumstances (natural, technological, economic, political or social) can be the equivalent to a situation where the medical benefit cannot be provided in a timely manner.

The Court of Justice of the European Union is the one that assesses the scope of the EU legal framework established by Article 49 EC for the exercise of the competences of the Member States. It is also incumbent on the Court, assigned by the founding treaties, that by the interpretation given to a provision of European law, to clarify and specify its meaning and scope, such as to be understood and applied from the time of its entry into force.

Starting from the main applicable legal and legislative aspects in the case of Mrs Petru, the Court has given an interpretation based on the freedom to provide services (Brașoveanu 2011, 86-102), but which takes into account the very different and heterogeneous circumstances characterizing the healthcare sector in Europe.

In fact, Mrs. Elena Petru, who was suffering from serious vascular diseases, needed in 2009 an urgent surgery that was to be performed at the Institute of Cardiovascular Diseases in Timisoara.

Given the seriousness of the necessary surgery, as well as poor material conditions provided at the hospital in her State of residence, Mrs. Petru requested an authorization to perform the surgery in Germany. Because not received the prior authorization (form E112), Mrs Petru addressed a clinic in Germany, where the surgery was performed. Immediately after the treatment carried out in another EU member state, Mrs. Petru filed a civil suit at the Sibiu Court, through which she requested the reimbursement of the expenses incurred in Germany. By the preliminary address to the Court (Case C-268/13), the Tribunal of Sibiu asked whether if a generalized deficiency of basic sanitary conditions in the country of residence should be considered a situation where it is necessary to provide the treatment in another Member State.

In its judgment of October 9, 2014 ([ECLI:EU:2014:2271]), the Court stated that in order to assess whether a treatment that presents the same degree of effectiveness can be obtained in a timely manner in the Member State of residence, the competent institution is obliged to consider all circumstances which characterize each specific case. Among the circumstances which the competent institution is required to take into consideration may be included, in a particular case, the lack of medicines and medical supplies of primary necessity because, as in the absence of specific equipment or specialized competences, their absence may, obviously, make it impossible to grant identical treatment or having the same degree of efficacy in a timely manner in the Member State of residence.

Conclusions

The Petru case was a first in the case law of the Court because it was the first time when was addressed a question regarding cross-border healthcare based on the poor medical conditions affecting the State of residence.

In our view, the Petru case is symptomatic and relevant for the illustration of the realities of the Romanian health system.

It may be noted that at present, citizens, especially those from vulnerable groups, do not have basic information on their rights and obligations as patients. The lack of this information is due, on the one hand, to the lack of activity in the healthcare system in terms of communicating the minimum information on these rights and obligations, but also to a certain social inertia which has not hitherto led the interest of the Romanian patient in this matter. Basically, citizens find out his rights and obligations in relation to the health system only when they have a problem in this area and get to use one or several services of the health system.

Transparency is an essential feature of an effective healthcare system, access to information also empowering citizens to participate effectively in political decisions taken at European, national and international levels.

The quality of the health services provided to patients it is often diminished by the lack of the financial and material resources needed, with the consequence of the failure to involve the full potential of the medical body. The question is to what extent the State fulfils its obligations to ensure the health and therefore quality of life of the population.

According to the latest Euro Health Consumer Index (EHCI 2018) report, Romania cannot reach the average performance parameters of the other European Union countries unless sufficient funds are allocated for public health.

Romania does have severe problems with the management of its entire public sector. In healthcare, discrimination of minority groups such as Roma population (3½ - 4% of the population) affects the poor Outcomes, which in the EHCI 2018 is unfortunately punished harder than in previous editions. Also, Romania together with Albania and Bulgaria are suffering from an antiquated healthcare structure, with a high and costly ratio of in-patient care over out-patient care.

For civil society it is necessary to monitor whether the state develops appropriate policies to promote access to health, so that individuals have access to information about the development and implementation of public health policies, without their fundamental rights being violated (Rotaru 2014, 262-263).

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