EUROPEAN REGULATIONS ON SOCIAL SECURITY, COORDINATION INSTRUMENTS FOR COORDINATION OF THE HEALTH CARE REIMBURSEMENT IN THE UE

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The national systems of social security are very different from a state to other, the provisions of the European Union in the field of social security being in a continuous evolution.

The jurisprudence of the European Court of Justice had a very important role with regard to the guarantee of the exercise of the right of free movement and staying of citizens on the territory of the European Union, influencing the legislation of the European Union regarding the social security. This way, the Court officially decided that insuring the public health protection [1] is an imperative objective of the Member States of the European Union which is among the imperative reasons of general interest that can justify restrictions of the free movement provided in treaties.

In the situation of movement of the citizen of the Member State EU/EEA on the territory of other state, their legal situation changes. Therefore, when they move on the territory of other state, there is the possibility to face different issues related on their social security rights or certain situations, such as: in case of getting ill, to authorities of which state they have to address, who shall pay the hospitalization expenses abroad, where the social security contributions have to be paid and which are the terms that have to be complied with.

Although each Member State has the freedom to decide who shall be insured based on its personal national legislation, which benefits are being granted and under what circumstances, how the respective benefits are being calculated and which are the contributions that have to be paid, the national legislations of the state on the social security can not give answers to these questions only by the interpretation of their personal legislative provisions because the respective persons would risk being insured twice or not at all, or would risk loosing certain social security rights.

In such a situation, the need to enforce certain European provisions is justified, provisions enforceable to all the Member States of the European Union which guarantee the protection of the social security rights of all the citizens of the Member States of the European Union.

The provisions of the European Union in the field of coordination of the social security are applied to the national legislation regarding: sickness benefits, maternity and equivalent paternity benefits, benefits in respect of accidents at work and occupational diseases, invalidity benefits, old-age benefits, survivor’s benefits, death grants, unemployment benefits, family benefits, pre-retirement benefits.

Sickening benefits, namely medical care, medicines, hospitalization, certain benefits for people dependent of medical care as well as direct payments aimed to repay their cost will be in accordance with European Regulations, that is Regulation EC no. 883/2004 on coordination of social security systems and it's implementing Regulation no. 987/2009.

In order for the persons insured in the Romanian health insurance system to benefit from medical treatment within the Member State EU/EEA, they have to respect the conditions imposed by the European Regulations. As a result, they can receive medical treatment in Member States of EU/EEA using form S2, the extent of cumulatively compliance with certain conditions expressly provided in the regulations.

The prior consent of the competent national authority, in the case an insured person in the Romanian national health system benefits from medical treatment in another EU Member State, is a condition for the coverage of the expenses representing medical treatment rendered to that person on the territory of that EU state either at the level of the tariffs of the host state, or at the level of the Romanian tariffs.

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certain benefits for persons needing medical care, and also direct payments having the purpose to reimburse their costs.

As a general rule, these are always granted in compliance with the legislation of the state in which the person has his residence or staying place, as he would be insured in the respective state.

Although, the face that these benefits are granted in compliance with the legislation of residence or staying state, this does not mean that it is the case that the respective person should be subject of such benefits in all the competent states, without any restriction or limitation.

In the situation in which a Romanian citizen wants to benefit of healthcare treatment in a Member State EU/EEA, this shall be able to benefit the proper treatment, under the condition that he/she is insured in the system of social health insurance in Romania and to obtain the approval from the competent institution, respectively the Health Insurance House where he/she is recorded as insured person.

In such context, it is to be mentioned that in Romania the insured persons can now benefit of healthcare treatment in the EU area using the form S2 (the former form E 112) - Document of access the rights to the scheduled healthcare treatment [4] -, pursuant to the provisions of the above mentioned European regulations.

For the situation of sending to healthcare treatment of an insured person within the social security system of Romania, the European regulations provide the obligation of fulfilling two cumulative conditions:

1. The respective healthcare treatment has to be among the medical services provided in the basic services packages that the insured persons of the social health insurance system of Romania benefit of.

2. This treatment can not be provided to the patient during the timeframe normally needed to obtain the respective treatment in Romania, taking into consideration the health condition of the applicant and the probable evolution of the disease.

With regard to the first condition, the national legislation [5] expressly regulate which are the medical services included in the basic services package which are granted to the persons insured in the social health social insurance system of Romania. It contains medical services, healthcare services, medicinal products, sanitary materials, medical devices and other services to which the insured persons are entitled to and are paid from the sole national fund of social health insurance.

Distinctively from the situations above, that is providing medical treatment in case of temporary stay or for the cases in which the prior approval for medical treatment in another Member State has been granted, taking into consideration the case law of the European Court of Justice, the Order of the President of National Health Insurance House no. 729/2009 approved the Methodological Norms on the reimbursement and recovery of expenditure representing the medical assistance granted based on international documents with provisions in the field of health to which Romania is party, with further modifications and integrations, which also provide two types of reimbursements:

• case of reimbursement of services became necessary on the territory of other Member State EU /EEA;

• case of reimbursement of medical benefits requested by the Romanian insured person in other Member State EU/EEA, without a prior authorization of the health insurance house where he is recorded as insured person.

With regard to the first type of reimbursement, the above mentioned document regulates that under the conditions in which a Romanian insured person being on the territory of a Member State of the European Union is granted medical assistance became necessary during his temporary staying, without he/she present the European card of social health insurance or it is not recognized by the sanitary unit from the staying place, the Romanian insured person pays the value of the medical services provided, than, subsequently, based on a request made toward the House of Health Insurances, accompanied by justifying documents, he shall be reimbursed the costs of these services in conformity to the procedure established for the utilization of the European Form E 126, provided by the European regulations.

With regard to the second type, under the conditions in which a person insured in the social health insurance system of Romania goes into a Member State of the European Union for the purpose to receive healthcare treatment, without the prior authorization of the House of Health Insurance where he / she is recorded as insured person, he/she shall pay the value of the medical services received, and upon the written request of the insured person, accompanied by justifying documents, the house of health insurance reimburses the value of the medical services received on the level of the tariffs of Romania.

In case of movement of a person insured in the national social health insurance system to other Member State EU in order to receive a healthcare treatment, pursuant to European regulations, the costs of such treatment shall be covered by the health insurance house where the insured person is recorded, under the conditions in which he/she has received a prior authorization from this institution. Therefore, the insured person shall benefit of the benefits granted by the “host” state, and the settlement of the amounts which represent medical treatments is done between the competent authorities.

But the problem appears in the situation in which an insured person in the health social insurance system of Romania goes to a Member State of the European Union for the purpose to receive a healthcare treatment, without the prior authorization of the health insurance house, where he/she is recorded as insured person. Generally, this lack of a prior authorization from the health insurance house is justified by the insured persons under the aspect of the emergency character of the medical services requested as for the degree of the illness gravity.

In such circumstance the health insurance house shall not be able to refuse the reimbursement of the medical services, even without a prior authorization, but only in the situation in which the requested treatment belongs to the basic medical services package provided by the national legislation.

The situation is different for the case in which the requested treatment is not in the medical services package from the social health insurance system of
Romania and there is no prior authorization of the competent institution. In this situation, the house of health insurance where the applicant is recorded shall reimburse only the value of the hospitalization medical services on the level of the tariff of Romania, pursuant to the legal provisions in force on the date of their payment and based on the type of the medical services received.

In such context, it is to be mentioned that the jurisprudence of the European Court of Justice [6] has decided that the insured persons who have no approval from their national competent institution can anyway address to their social health insurance fund to request the reimbursement of the cost of the healthcare treatment in non hospital environment done in other Member State, based on the level of reimbursement applied in the insuring state.

So, the level of reimbursement of the cost of the insurance treatments applied in the insuring Member States of EU/EEA is not similar. The level of the tariffs practiced by each Member State of EU is different from one state to the other and it is established based on the domestic legislation of each state.

In Romania, the level of the reimbursement tariffs for the treatments [7], done on the territory of other state, in case of scheduled treatments without the prior authorization of the competent institution, is not the same with the one practiced also by the other Member States of EU/EEA.

Although, at first, we could say that between the patients benefiting of reimbursement on the level of the tariffs of Romania and the patients benefiting of reimbursement on the level of the Member States of EU/EEA would be certain differences in the meaning that the persons insured in the social health insurance system of Romania would benefit of smaller amounts for the reimbursement of the healthcare treatment, as for the other citizens of the Member States of EU, in the current situation the principle of equal treatment and no discrimination [8] is not infringed, because currently, there is no community acquis [9] in such purpose. This way, every state is free to determine its personal tariffs for the reimbursement of the healthcare treatment for its patients according to the domestic legislation, under the compliance with the provisions of the European treaties, providing medical assistance to the citizens of the Member States not being a system based on demand and offer.

Toward such considerations, on March 9, 2011, the Directive on the rights of patients within trans-border healthcare [10] became effective, which has an implementation term till 25th of October 2013.

This way, with regard to the reimbursement of the expenditure of the trans-border healthcare, as a general rule, it has been established that the Member State of affiliation provides the reimbursement of the expenditure done by an insured person benefiting of trans-border healthcare, if the respective healthcare can be found among the benefits to which the person insured in the Member state of affiliation is entitled to.

For the situation in which the healthcare is not subject of prior authorization and it is granted on the territory of a member state which pursuant to the provisions of the European regulations is responsible for the reimbursement of costs, the healthcare costs are paid by this member state in compliance with the terms, conditions, criteria of eligibility that the state has established, under the conditions that these are compatible to the treaty.

This way, the provisions of the directive establish the obligation of reimbursing the costs of trans-border healthcare which has to limit to the healthcare the person is entitled to in compliance with the legislation of the Member State of affiliation.

**Conclusions:**

The provisions of the European regulations establish the obligation of complying with the right to free movement of persons within the domestic market, the principle of non discrimination, the principle of necessity and proportionality of any restrictions with regard to the free movement.

In this situation, Romania, as Member State of EU has the obligation to comply with these principles and to grant healthcare treatment to all the patients, including to citizens from the Member States of EU who have requested and obtained the performance of a healthcare treatment in Romania.

The Romanian insured citizens have also the right to benefit of healthcare treatment on the territory of a Member State in the same conditions as the citizens of the "host" state, the expenses being covered at the tariffs level of the "host" state or by case at the level of the Romanian tariffs.

The compliance with the legislative provisions laying down regulations which align to the provisions of the treaties where Romania is party represents one of the basic conditions for the Romanian citizens requesting to be granted treatments on the territory of other Member State of the European Union.

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