Inizio modulo

InfoCuria

Giurisprudenza

Fine modulo

Pagina iniziale > **Formulario di ricerca** > **Elenco dei risultati** > Documenti

Avvia la stampa

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Inizio modulo

ECLI:EU:C:2020:745

JUDGMENT OF THE COURT (Fourth Chamber)

23 September 2020 (*)

(Reference for a preliminary ruling – Social security – Sickness insurance – Regulation (EC) No 883/2004 – Article 20 – Scheduled treatment –Prior authorisation – Mandatory grant – Conditions – Insured person prevented from applying for prior authorisation – Regulation (EC) No 987/2009 – Article 26 – Assumption of costs of scheduled treatment incurred by the insured person – Procedure for reimbursement – Directive 2011/24/EU – Cross-border healthcare – Article 8(1) – Healthcare that may be subject to prior authorisation – Principle of proportionality – Article 9(3) – Processing of applications for cross-border healthcare – Factors to be taken into account – Reasonable time – Freedom to provide services – Article 56 TFEU)

In Case C-777/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szombathely, Hungary), made by decision of 28 November 2018, received at the Court on 11 December 2018, in the proceedings

WO

v

Vas Megyei Kormányhivatal

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, S. Rodin, D. Šváby, K. Jürimäe and N. Piçarra (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Vas Megyei Kormányhivatal, by Gy. Szele, acting as Agent,

– the Hungarian Government, by M.Z. Fehér and M.M. Tátrai, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and H.S. Gijzen, acting as Agents,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by L. Havas, B.-R. Killmann, L. Malferrari and A. Szmytkowska, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 56 TFEU, of Article 20(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1), of Article 26(1) and (3) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1) and of Articles 8(1) and 9(3) of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ 2011 L 88, p. 45).

2 The request has been made in proceedings between WO and Vas Megyei Kormányhivatal (Government Delegation in the Vas county, Hungary) ('the government delegation') concerning the refusal by that delegation to reimburse WO for the costs of cross-border healthcare which he received in Germany.

I. Legal context

A. European Union law

1. *Regulation No 883/2004*

3 Under Article 1 of Regulation No 883/2004:

'For the purposes of this Regulation:

…

(l) “legislation” means, in respect of each Member State, laws, regulations and other statutory provisions and all other implementing measures relating to the social security branches covered by Article 3(1).

This term excludes contractual provisions other than those which serve to implement an insurance obligation arising from the laws and regulations referred to in the preceding subparagraph or which have been the subject of a decision by the public authorities which makes them obligatory or extends their scope, provided that the Member State concerned makes a declaration to that effect, notified to the President of the European Parliament and the President of the Council of the European Union. Such declaration shall be published in the *Official Journal of the European Union*;

(m) “competent authority” means, in respect of each Member State, the Minister, Ministers or other equivalent authority responsible for social security schemes throughout or in any part of the Member State in question;

…

(p) “institution” means, in respect of each Member State, the body or authority responsible for applying all or part of the legislation;

(q) “competent institution” means:

(i) the institution with which the person concerned is insured at the time of the application for benefit; or

(ii) the institution from which the person concerned is or would be entitled to benefits if he or a member or members of his family resided in the Member State in which the institution is situated;

(iii) the institution designated by the competent authority of the Member State concerned; …

…

(r) “institution of the place of residence” and “institution of the place of stay” mean respectively the institution which is competent to provide benefits in the place where the person concerned resides and the institution which is competent to provide benefits in the place where the person concerned is staying, in accordance with the legislation administered by that institution or, where no such institution exists, the institution designated by the competent authority of the Member State concerned;

…’

4 Pursuant to Article 3(1) of that regulation:

‘This Regulation shall apply to all legislation concerning the following branches of social security:

(a) sickness benefits;

…’

5 Article 19 of the regulation, entitled ‘Stay outside the competent Member State’, provides the following:

‘1. Unless otherwise provided for by paragraph 2, an insured person and the members of his/her family staying in a Member State other than the competent Member State shall be entitled to the benefits in kind which become necessary on medical grounds during their stay, taking into account the nature of the benefits and the expected length of the stay. These benefits shall be provided on behalf of the competent institution by the institution of the place of stay, in accordance with the provisions of the legislation it applies, as though the persons concerned were insured under the said legislation.

2. The Administrative Commission shall establish a list of benefits in kind which, in order to be provided during a stay in another Member State, require for practical reasons a prior agreement between the person concerned and the institution providing the care.’

6 Article 20 of that regulation, entitled ‘Travel with the purpose of receiving benefits in kind – authorisation to receive appropriate treatment outside the Member State of residence’, provides:

‘1. Unless otherwise provided for by this Regulation, an insured person travelling to another Member State with the purpose of receiving benefits in kind during the stay shall seek authorisation from the competent institution.

2. An insured person who is authorised by the competent institution to go to another Member State with the purpose of receiving the treatment appropriate to his condition shall receive the benefits in kind provided, on behalf of the competent institution, by the institution of the place of stay, in accordance with the provisions of the legislation it applies, as though he were insured under the said legislation. The authorisation shall be accorded where the treatment in question is among the benefits provided for by the legislation in the Member State where the person concerned resides and where he cannot be given such treatment within a time limit which is medically justifiable, taking into account his current state of health and the probable course of his illness.

…’

2. ***Regulation No 987/2009***

7 Recitals 16 and 17 of Regulation No 987/2009 state:

‘(16) In the specific context of Regulation [No 883/2004], it is necessary to clarify the conditions for meeting the costs of sickness benefits in kind as part of scheduled treatments, namely treatments for which an insured person goes to a Member State other than that in which he is insured or resident. The obligations of the insured person with regard to the application for prior authorisation should be specified, as should the institution’s obligations towards the patient with regard to the conditions of authorisation. The consequences for the chargeability of the costs of care received in another Member State on the basis of an authorisation should also be clarified.

(17) This Regulation, and especially the provisions concerning the stay outside the competent Member State and concerning scheduled treatment, should not prevent the application of more favourable national provisions, in particular with regard to the reimbursement of costs incurred in another Member State.’

8 Article 25 of that regulation, entitled ‘Stay in a Member State other than the competent Member State’ provides, in paragraphs 4 and 5 thereof:

‘4. If the insured person has actually borne the costs of all or part of the benefits in kind provided within the framework of Article 19 of [Regulation No 883/2004] and if the legislation applied by the institution of the place of stay enables reimbursement of those costs to an insured person, he may send an application for reimbursement to the institution of the place of stay. In that case, that institution shall reimburse directly to that person the amount of the costs corresponding to those benefits within the limits of and under the conditions of the reimbursement rates laid down in its legislation.

5. If the reimbursement of such costs has not been requested directly from the institution of the place of stay, the costs incurred shall be reimbursed to the person concerned by the competent institution in accordance with the reimbursement rates administered by the institution of the place of stay …

The institution of the place of stay shall provide the competent institution, upon request, with all necessary information about these rates or amounts.’

9 Article 26 of the regulation, headed ‘Scheduled treatment’, provides:

‘1. For the purposes of the application of Article 20(1) of [Regulation No 883/2004], the insured person shall present a document issued by the competent institution to the institution of the place of stay. For the purposes of this Article, the competent institution shall mean the institution which bears the cost of the scheduled treatment; …

2. If an insured person does not reside in the competent Member State, he shall request authorisation from the institution of the place of residence, which shall forward it to the competent institution without delay.

In that event, the institution of the place of residence shall certify in a statement whether the conditions set out in the second sentence of Article 20(2) of [Regulation No 883/2004] are met in the Member State of residence.

The competent institution may refuse to grant the requested authorisation only if, in accordance with the assessment of the institution of the place of residence, the conditions set out in the second sentence of Article 20(2) of [Regulation No 883/2004] are not met in the Member State of residence of the insured person, or if the same treatment can be provided in the competent Member State itself, within a time limit which is medically justifiable, taking into account the current state of health and the probable course of illness of the person concerned.

The competent institution shall inform the institution of the place of residence of its decision.

In the absence of a reply within the deadlines set by its national legislation, the authorisation shall be considered to have been granted by the competent institution.

3. If an insured person who does not reside in the competent Member State is in need of urgent vitally necessary treatment, and the authorisation cannot be refused in accordance with the second sentence of Article 20(2) of [Regulation No 883/2004], the authorisation shall be granted by the institution of the place of residence on behalf of the competent institution, which shall be immediately informed by the institution of the place of residence.

The competent institution shall accept the findings and the treatment options of the doctors approved by the institution of the place of residence that issues the authorisation, concerning the need for urgent vitally necessary treatment.

…

6. Without prejudice to paragraph 7, Article 25(4) and (5) of [this regulation] shall apply *mutatis mutandis*.

7. If the insured person has actually borne all or part of the costs for the authorised medical treatment him or herself and the costs which the competent institution is obliged to reimburse to the institution of the place of stay or to the insured person according to paragraph 6 (actual cost) are lower than the costs which it would have had to assume for the same treatment in the competent Member State (notional cost), the competent institution shall reimburse, upon request, the cost of treatment incurred by the insured person up to the amount by which the notional cost exceeds the actual cost. The reimbursed sum may not, however, exceed the costs actually incurred by the insured person and may take account of the amount which the insured person would have had to pay if the treatment had been delivered in the competent Member State.'

3. ***Directive 2011/24***

10 Recitals 8 and 46 of Directive 2011/24 state:

'(8) Some issues relating to cross-border healthcare, in particular reimbursement of healthcare provided in a Member State other than that in which the recipient of the care is resident, have already been addressed by the Court … This Directive is intended to achieve a more general, and also effective, application of principles developed by the Court … on a case-by-case basis.

…

(46) In any event, if a Member State decides to establish a system of prior authorisation for assumption of costs of hospital or specialised care provided in another Member State in accordance with the provision of this Directive, the costs of such care provided in another Member State should also be reimbursed by the Member State of affiliation up to the level of costs that would have been assumed had the same healthcare been provided in the Member State of affiliation, without exceeding the actual costs of healthcare received. However, when the conditions set out in … Regulation [No 883/2004] are fulfilled, the authorisation should be granted and the benefits provided in accordance with Regulation [No 883/2004] unless otherwise requested by the patient. This should apply in particular in instances where the authorisation is granted after an administrative or judicial review of the request and the person concerned has received the treatment in another Member State. In that event, Articles 7 and 8 of this Directive should not apply. This is in line with the case-law of the Court … which has specified that patients who were refused prior authorisation on grounds that were subsequently held to be unfounded, are entitled to have the cost of the treatment obtained in another Member State reimbursed in full according to the provisions of the legislation in the Member State of treatment.'

11 Pursuant to Article 2(m) of that directive, it is to apply without prejudice to Regulations No 883/2004 and No 987/2009.

12 Article 7 of that directive, entitled 'General principles for reimbursement of costs [of cross-border healthcare]', provides:

‘1. Without prejudice to Regulation [No 883/2004] and subject to the provisions of Articles 8 and 9, the Member State of affiliation shall ensure the costs incurred by an insured person who receives cross-border healthcare are reimbursed, if the healthcare in question is among the benefits to which the insured person is entitled in the Member State of affiliation.

…

3. It is for the Member State of affiliation to determine … the healthcare for which an insured person is entitled to assumption of costs and the level of assumption of those costs, regardless of where the healthcare is provided.

4. The costs of cross-border healthcare shall be reimbursed or paid directly by the Member State of affiliation up to the level of costs that would have been assumed by the Member State of affiliation, had this healthcare been provided in its territory without exceeding the actual costs of healthcare received.

Where the full cost of cross-border healthcare exceeds the level of costs that would have been assumed had the healthcare been provided in its territory the Member State of affiliation may nevertheless decide to reimburse the full cost.

The Member State of affiliation may decide to reimburse other related costs, such as accommodation and travel costs … on the condition that there be sufficient documentation setting out these costs.

…

7. The Member State of affiliation may impose on an insured person seeking reimbursement of the costs of cross-border healthcare, including healthcare received through means of telemedicine, the same conditions, criteria of eligibility and regulatory and administrative formalities … as it would impose if this healthcare were provided in its territory. This may include an assessment by a health professional or healthcare administrator providing services for the statutory social security system or national health system of the Member State of affiliation, such as the general practitioner or primary care practitioner with whom the patient is registered, if this is necessary for determining the individual patient’s entitlement to healthcare. However, no conditions, criteria of eligibility and regulatory and administrative formalities imposed according to this paragraph may be discriminatory or constitute an obstacle to the free movement of patients, services or goods, unless it is objectively justified by planning requirements relating to the object of ensuring sufficient and permanent access to a balanced range of high-quality treatment in the Member State concerned or to the wish to control costs and avoid, as far as possible, any waste of financial, technical and human resources.

8. The Member State of affiliation shall not make the reimbursement of costs of cross-border healthcare subject to prior authorisation except in the cases set out in Article 8.

…’

13 Article 8 of that directive, entitled ‘Healthcare that may be subject to prior authorisation’ provides, in paragraphs 1 to 3:

‘1. The Member State of affiliation may provide for a system of prior authorisation for reimbursement of costs of cross-border healthcare, in accordance with this Article and Article 9.

The system of prior authorisation, including the criteria and the application of those criteria, and individual decisions of refusal to grant prior authorisation, shall be restricted to what is necessary and proportionate to the objective to be achieved, and may not constitute a means of arbitrary discrimination or an unjustified obstacle to the free movement of patients.

2. Healthcare that may be subject to prior authorisation shall be limited to healthcare which:

(a) is made subject to planning requirements relating to the object of ensuring sufficient and permanent access to a balanced range of high-quality treatment in the Member State concerned or to the wish to control costs and avoid, as far as possible, any waste of financial, technical and human resources and:

(i) involves overnight hospital accommodation of the patient in question for at least one night; or

(ii) requires use of highly specialised and cost-intensive medical infrastructure or medical equipment;

…

Member States shall notify the categories of healthcare referred to in point (a) to the Commission.

3. With regard to requests for prior authorisation made by an insured person with a view to receiving cross-border healthcare, the Member State of affiliation shall ascertain whether the conditions laid down in Regulation [No 883/2004] have been met. Where those conditions are met, the prior authorisation shall be granted pursuant to that Regulation unless the patient requests otherwise.'

14 Article 9(3) of Directive 2011/24 provides:

'Member States shall set out reasonable periods of time within which requests for cross-border healthcare must be dealt with and make them public in advance. When considering a request for cross-border healthcare, Member States shall take into account:

(a) the specific medical condition,

(b) the urgency and individual circumstances.'

B. **Hungarian law**

15 Paragraph 27(6) of the 1997. évi LXXXIII. törvény a kötelező egészségbiztosítás ellátásairól (Law LXXXIII of 1997, on the provision of compulsory sickness insurance) ('the Law on sickness insurance') provides:

'In the context of cross-border healthcare, an insured person – not including persons with access to healthcare benefits under optional insurance – who has recourse to the healthcare benefits defined in Sections 1 to 3 of Chapter II shall enjoy the same rights as if he or she had received benefits from the healthcare services in Hungary in a similar situation.

The organisation providing sickness insurance shall reimburse the actual cost of the benefit, properly certified, although the amount of that reimbursement cannot exceed the price of the treatment given by a publicly funded healthcare provider in Hungary on the date of that treatment.

The insured person – not including persons with access to healthcare benefits under optional insurance – may receive the benefits listed in the government decree regarding medical treatments abroad only with prior authorisation.

If the insured person wishes to receive treatment in respect of which Hungarian law requires a prescription from his treating physician, he or she must also provide, for the purposes of reimbursement, a prescription for the treatment drawn up according to legislation.'

16 Paragraph 2(1) of the a külföldön történő gyógykezelések részletes szabályairól szóló 340/2013. (IX. 25.) Korm. Rendelet (Government Decree No 340 of 25 September 2013 establishing detailed rules regarding medical treatments abroad, 'the government decree') provides:

'A person who wishes to receive medical treatment abroad can receive that treatment

(a) pursuant to the EU legislation on the coordination of social security systems and the procedure for its implementation ("the EU legislation"),

(b) in the context of cross-border healthcare under Paragraph 5/B(s)(sb) of the [Law on sickness insurance] ("cross-border healthcare"), and

(c) on equitable grounds under Paragraph 28(1) and Paragraph 9 of the [Law on sickness insurance].'

17 Pursuant to Paragraph 3(1) of that decree:

'In relation to medical treatment abroad under Paragraph 2(1)(a) and (c) and, in the case of medical treatment abroad under Paragraph 2(1)(b), those benefits set out in Annex 1, a person seeking medical treatment abroad may not receive scheduled treatments covered by the Nemzeti Egészségbiztosítási Alapkezelő [(National Health Insurance Fund, Hungary) ("the NEAK")] until it has granted prior authorisation for that treatment.'

18 Paragraph 5(1) to (3) of that decree provides:

'1. When an application for healthcare abroad is made, the NEAK shall examine within eight days from the date on which that application is received whether it relates to a treatment recognised and covered by social security in Hungary.

2. If the treatment is recognised and covered by social security, the NEAK shall examine, within an additional deadline of 15 days, whether the patient can receive treatment within a time limit that is medically justifiable, as set out in the application, by a publicly funded healthcare provider. If need be, the NEAK shall consult an expert in order to verify the information provided in the application.

3. If a publicly funded healthcare provider can, within the time limit that is medically justifiable as set out in the application, treat in Hungary the person who wishes to receive healthcare abroad, the NEAK shall reject the application and suggest a publicly funded healthcare provider. The NEAK shall gather information beforehand on the capacity of the national publicly funded healthcare provider.'

19 Pursuant to Paragraph 7(1) of the government decree:

‘If a person seeking medical treatments abroad wishes to receive healthcare abroad from a health provider which does not come within the scope of the EU legislation, or for any other reason not provided for under the EU legislation, or seeks authorisation giving him or her the right to receive treatment without specifying the healthcare provider, that person must specify this in the application. The NEAK shall follow the procedure laid down in Paragraph 5(1) to (3), having regard to the urgency and individual circumstances. …’

20 It is apparent from Annex 1 to that decree that, on the date of the events in the main proceedings, the following were subject to authorisation:

– in relation to the hospital treatments set out in Annex 3 to the az egészségügyi szakellátás társadalombiztosítási finanszírozásának egyes kérdéseiről szóló 9/1993. (IV. 2.) NM rendelet (Decree NM 9/1993. (IV. 2.) on certain questions of the funding of specialised healthcare by the social security service, ‘the sector-based decree’), all treatments involving hospitalisation, or related single-use devices and implants, reimbursed per unit, listed in Annex 1 to the sector-based decree, and the active substances reimbursed per unit, listed in Annex 1/A to that decree;

– outpatient treatments and cure treatments listed in Annexes 9, 10 and 10/A to that decree;

– surgical procedures and operations listed in Annex 8 to that decree which are high-value and not widely available nationally, except for treatments connected with organ transplants.

II. **The dispute in the main proceedings and the questions referred for a preliminary ruling**

21 In 1987, WO, a Hungarian national, suffered a retinal detachment in his left eye and lost his vision in that eye.

22 In 2015, WO was diagnosed with glaucoma in his right eye. The treatments he received in several medical establishments in Hungary were not effective, as his visual field continued to decrease and his eye pressure remained high.

23 It is apparent from the case file before the Court that on 29 September 2016 WO contacted a doctor practising in Recklinghausen (Germany) and set up an appointment with that doctor for a medical examination on 17 October 2016. The doctor informed him that he should extend his stay until 18 October 2016, when, if necessary, eye surgery would be carried out.

24 In the meantime, WO’s intra-ocular pressure was assessed at 37 mmHG during a medical examination in Hungary on 15 October 2016, that is, considerably higher than 21mmHG, above which intra-ocular pressure is regarded as abnormal. Following the examination undergone by WO on 17 October 2016 in Germany, the doctor practising in that Member State considered that the eye surgery had to be carried out urgently in order to save WO’s sight. WO was operated on successfully on 18 October 2016.

25 The application for reimbursement of cross-border healthcare submitted by WO was rejected by the government delegation then, following an administrative review, by the Budapest Főváros Kormányhivatala (Government Delegation in the capital Budapest, Hungary). That delegation considered eye surgery to be a scheduled treatment in respect of which WO had not obtained prior authorisation on the basis of which he could be reimbursed. In support of its decision, those services relied on Articles 4, 19, 20 and 27 of Regulation No 883/2004, Articles 25 and 26 of Regulation No 987/2009, and Paragraphs 3(1) and 4(1) of the government decree.

26 WO brought an action before the referring court against the decision rejecting the reimbursement of that healthcare.

27 That court notes, in the first place, that in the judgment of 5 October 2010, *Elchinov* (C-173/09, '*Elchinov*', EU:C:2010:581, paragraph 51), the Court held that Article 49 EC (now Article 56 TFEU) and Article 22 of Regulation (EEC) No 1408/71 of the Council 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 (OJ 1971 L 149, p. 2), as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006 (OJ 2006 L 392, p. 1) ('Regulation No 1408/71'), preclude a rule of a Member State which is interpreted as excluding, in all cases, payment for hospital treatment given in another Member State without prior authorisation.

28 According to the referring court, given the similarity of the provisions of Regulation No 1408/71, interpreted by the Court in *Elchinov*, to those of Regulations No 883/2004 and No 987/2009 at issue in the present case, the solution found by the Court in that judgment may be applied to the present proceedings.

29 In the second place, the referring court has doubts as to whether the legislation at issue in the main proceedings is compatible with Articles 8(1) and 9(3) of Directive 2011/24, in so far as that legislation makes the reimbursement of healthcare received by the insured person in another Member State subject to an application for prior authorisation, irrespective of the specific circumstances due to the state of the patient's health, and thus constitutes an unjustified restriction on the freedom to provide services.

30 In the third place, the referring court is uncertain whether circumstances such as those in the main proceedings, where the insured person travelled to another Member State in order to undergo a medical examination by a healthcare provider established in that Member State and where he was operated on by that provider the day following that examination, come within the definition of 'scheduled treatment', governed by Article 20(1) of Regulation No 883/2004 and Article 26 of Regulation No 987/2009 and require prior authorisation.

31 In those circumstances,the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szombathely, Hungary) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does national legislation, such as that at issue in the main proceedings, which, as regards the reimbursement of the costs of cross-border healthcare, precludes the healthcare provided in another Member State without prior authorisation from being subsequently authorised, even when there is a genuine risk that the patient's state of health may irreversibly deteriorate while waiting for that prior authorisation, amount to a restriction contrary to Article 56 [TFEU]?

(2) Does a Member State's authorisation system which, as regards the reimbursement of the costs of cross-border healthcare, precludes subsequent authorisation, even when there is a genuine risk that the patient's state of health will irreversibly deteriorate while waiting for prior authorisation, comply with the principles of necessity and proportionality set out in Article 8(1) of Directive [2011/24] and with the principle of the free movement of patients?

(3) Does national legislation which, regardless of the state of health of the patient submitting the request, establishes a procedural time limit of 31 days within which the competent authority may

grant prior authorisation and of 23 days within which it may refuse authorisation, comply with the requirement to set a reasonable procedural period taking into account specific medical conditions, urgency and individual circumstances, laid down in Article 9(3) of Directive [2011/24]? The authority may assess, in respect of the request, whether the provision of healthcare is covered by social security and, if so, whether it may be delivered, within a time limit that is medically justifiable, by a publicly funded healthcare provider, whereas if it is not covered by social security, the authority assesses the quality, safety and cost effectiveness of the healthcare delivered by the provider indicated by the patient.

(4) Must Article 20(1) of Regulation [No 883/2004] be interpreted as meaning that the reimbursement of cross-border healthcare costs may only be requested if the patient has applied for prior authorisation to the competent authority? Or does [that provision] not in itself in such a case preclude applying for subsequent authorisation for reimbursement of the costs?

(5) Does the situation where a patient travels to another Member State having obtained a specific appointment for a medical examination and a provisional appointment for possible surgery or medical intervention on the day following the examination and, given the state of the patient's health, the surgery or intervention is actually performed, come within the scope of Article 20(1) of Regulation [No 883/2004]? If so, is it possible, under [that provision], to apply for subsequent authorisation for reimbursement of the costs?

(6) Is the situation where a patient travels to another Member State having obtained a specific appointment for a medical examination and a provisional appointment for possible surgery or medical intervention on the day following the examination and, given the state of the patient's health, the surgery or intervention is actually performed, covered by the concept of scheduled treatment within the meaning of Article 26 of Regulation [No 987/2009]? If so, is it possible, under [that provision], to apply for subsequent authorisation for reimbursement of the costs? In the case of an urgent vitally necessary treatment, referred to in Article 26(3) [of that regulation], does the regulation also require prior authorisation in terms of Article 26(1) of Regulation [No 987/2009]?'

III. **Consideration of the questions referred**

A. **Preliminary observations**

32 By its questions, the referring court seeks guidance on the interpretation of Article 56 TFEU, establishing the freedom to provide services, and of various provisions of secondary EU legislation, namely Article 20 of Regulation No 883/2004, Article 26 of Regulation No 987/2009 and Articles 8(1) and 9(3) of Directive 2011/24.

33 In that regard, it must be borne in mind that the applicability of Article 20 of Regulation No 883/2004 and Article 26 of Regulation No 987/2009 to a specific situation does not mean that that situation may not also come within the scope of Article 56 TFEU and that the person concerned may simultaneously have the right, under that article, to have access to healthcare in another Member State under rules on the assumption of costs and reimbursement which are different from those laid down by Article 20 of Regulation No 883/2004 and Article 26 of Regulation No 987/2009 (see, to that effect, judgments of 12 July 2001, *Vanbraekel and Others*, C-368/98, EU:C:2001:400, paragraphs 36 to 53, and of 16 May 2006, *Watts*, C-372/04, EU:C:2006:325, paragraphs 46 to 48).

34 The questions referred for a preliminary ruling should be considered against that legal background.

B. **The fourth, fifth and sixth questions**

35 By its fourth, fifth and six questions, which it is appropriate to examine together, as a first step, the referring court asks, in essence, whether Article 20 of Regulation No 883/2004 or Article 26 of Regulation No 987/2009, laying down the procedure for implementing the former, must be interpreted as meaning that healthcare received in a Member State other than the insured person's Member State of residence, on that person's own initiative, taken once it has been established that all the treatments received in several medical establishments in his or her Member State of residence are ineffective, comes within the definition of 'scheduled treatment' and, if so, whether those provisions must be interpreted as meaning that the insured person can apply for the reimbursement, by the competent institution, of the costs he or she has incurred for the scheduled treatment received during his or her stay in the other Member State, even if that person has not applied for prior authorisation for that purpose from that institution, at the very least when individual circumstances, relating in particular to his or her state of health and probable course of the illness, are capable of justifying the absence of such authorisation and, as a result, permitting the reimbursement requested.

36 In that regard, it should be borne in mind from the outset that Regulation No 883/2004 applies, pursuant to the combined provisions of the first subparagraph of Article 1(l) and Article 3(1) of that regulation, to the laws, regulations and other statutory provisions and all other measures implementing national law relating to the branches of social security referred to in the latter provision, except for the contractual provisions other than those set out in the second subparagraph of Article 1(l) of that regulation (see, by analogy, judgment of 15 March 1984, *Tiel-Utrecht Schadeverzekering*, 313/82, EU:C:1984:107, paragraph 16).

37 It follows that, for the case in the main proceedings to come within the scope of Regulations No 883/2004 and No 987/2009, it is necessary for the healthcare in question in the main proceedings to have been dispensed to WO by the private provider in the Member State to which he travelled in order to receive it in accordance with the social security legislation of that Member State, which it is for the referring court to verify. If this is not the case, the fourth, fifth and sixth questions raised by the referring court should be examined only in the light of Article 56 TFEU and Directive 2011/24.

1. ***The definition of 'scheduled treatment' and the conditions of the assumption of costs of such treatment***

38 Regarding whether cross-border healthcare such as that in question in the main proceedings comes within the definition of 'scheduled treatment', within the meaning of the combined provisions of Article 20 of Regulation No 883/2004 and Article 26 of Regulation No 987/2009, it must be noted that, although that concept is not set out verbatim in the first of those provisions, it is apparent from the second of those provisions, entitled 'Scheduled treatment' read in the light of recital 16 of Regulation No 987/2009, that the definition covers healthcare which an insured person receives in a Member State other than that in which he or she is insured or resident, which consists of benefits in kind, mentioned in Article 20(1) of Regulation No 883/2004, to which, moreover, Article 26 of Regulation No 987/2009 refers expressly.

39 It should be noted that 'scheduled treatment', for the purposes of those provisions, is distinct from that referred to in Article 19 of Regulation No 883/2004 and Article 25 of Regulation No 987/2009, which is unexpected treatment received by the insured person in the Member State to which that person has travelled for reasons relating to tourism or education, for example, and which becomes necessary on medical grounds with a view to preventing that person from being forced to

return, before the end of the planned duration of the stay, to the competent Member State to obtain the necessary treatment (see, by analogy, judgment of 15 June 2010, *Commission* v *Spain*, C-211/08, EU:C:2010:340, paragraphs 59 to 61).

40 Pursuant to Article 20(1) of Regulation No 883/2004, an insured person travelling to another Member State with the purpose of receiving scheduled treatments, under the conditions provided for in that regulation, must apply for authorisation from the competent institution.

41 The first sentence of Article 20(2) of that regulation, for its part, gives the insured person under the law of a Member State and with the authorisation applied for in accordance with Article 20(1) of that regulation the right to the scheduled treatment provided, on behalf of the competent institution, by the institution of the place where the insured person is staying, in accordance with the provisions of the legislation of the Member State in which the treatment is given as if the person concerned were registered with that institution (see, by analogy, as regards Article 22(1)(c)(i) of Regulation No 1408/71, replaced by Article 20 of Regulation No 883/2004, *Elchinov*, paragraph 39 and the case-law cited).

42 The second sentence of Article 20(2) of Regulation No 883/2004 lays down two conditions which, if both are satisfied, render mandatory the grant by the competent institution of the prior authorisation applied for on the basis of Article 20(1) of that regulation (see, by analogy, as regards the second subparagraph of Article 22(2) of Regulation No 1408/71, *Elchinov*, paragraph 53 and the case-law cited).

43 To satisfy the first condition, the treatment in question must be among the benefits provided for by the legislation of the Member State on whose territory the insured person resides. The second condition is met only if the scheduled treatment that the person plans to receive in a Member State other than the Member State of residence cannot be given in the Member State of residence within a time limit which is medically justifiable, taking into account his current state of health and the probable course of his illness.

44 It follows from the foregoing that the healthcare received in a Member State other than the State in which the insured person resides, on his own initiative, on the ground that, according to that person, that treatment or treatment with the same efficacy was unavailable in his Member State of residence within a time limit which is medically justifiable, comes within the definition of ‘scheduled treatment’ within the meaning of Article 20 of Regulation No 883/2004, read in conjunction with Article 26 of Regulation No 987/2009. In those circumstances, the receipt of such treatment is, in accordance with Article 20(1) of the first regulation, subject to the granting of an authorisation by the Member State of residence.

2. ***The right to reimbursement of the costs of scheduled treatment without prior authorisation***

45 Regarding whether Article 20 of Regulation No 883/2004 or Article 26 of Regulation No 987/2009 must be interpreted as meaning that, without prior authorisation pursuant to those provisions, the costs incurred by the insured person for the scheduled treatment received in a Member State other than the State in which he or she resides can be reimbursed to that person, by the competent institution, at the very least when individual circumstances, relating, in particular, to his or her state of health and the probable course of the illness, are capable of justifying the absence of that authorisation, it should be noted at the outset that Article 26 of Regulation No 987/2009, in so far as it restricts itself to laying down the rules relating to the authorisation procedure and assumption of the cost of the scheduled treatment received by the insured person, does not govern the conditions for granting that authorisation The question must therefore be answered by reference

to Article 20 of Regulation No 883/2004, read in the light of the freedom to provide services enshrined in Article 56 TFEU.

46 It must be borne in mind that the Court has already identified two situations in which an insured person, even without a properly issued authorisation before the provision of scheduled treatment begins in the Member State of stay, is entitled to be reimbursed directly by the competent institution in an amount equivalent to that which would ordinarily have been reimbursed by that institution if the insured person had been granted such authorisation.

47 In the first situation, the insured person is entitled to be reimbursed when, having made an application for authorisation, that application has been refused by the competent institution and it is subsequently established, either by the competent institution itself or by a court decision, that that refusal was unjustified (see, by analogy, as regards Article 22(1)(c) of Regulation No 1408/71, judgment of 12 July 2001, *Vanbraekel and Others*, C-368/98, EU:C:2001:400, paragraph 34).

48 In the second situation, an insured person is entitled to be reimbursed directly by the competent institution in an amount equivalent to that which it would ordinarily have reimbursed if the insured person had been granted such authorisation when, for reasons relating to his or her state of health or to the need to receive urgent treatment in a hospital, that person was prevented from applying for such authorisation or was not able to wait for the decision of the competent institution on the application for authorisation submitted. The Court has held in that respect that legislation which excludes, in all cases, reimbursement in respect of hospital treatment given in another Member State without authorisation, deprives the insured person of reimbursement in respect of such treatment, even though all other conditions for reimbursement are met. Such legislation, which cannot be justified by requirements of public interest and, in any event, does not satisfy the requirement of proportionality, therefore constitutes an unjustified restriction of the freedom to provide services (see, by analogy, as regards Article 49 EC and Regulation No 1408/71, *Elchinov*, paragraphs 45 to 47, 51 and 75).

49 In the present case, since it is not disputed that WO did not apply for prior authorisation pursuant to Article 20(1) of Regulation No 883/2004 for the scheduled treatment he received in Germany and that the refusal of the competent institution to reimburse the related costs is based solely on the fact that he did not apply for authorisation before the treatment was provided, it must be determined whether he is nevertheless entitled, in accordance with the case-law in *Elchinov*, to the reimbursement, by the competent institution, of the costs he incurred for that treatment. To that end, it is for the competent institution, under review of the national court, to examine whether the two conditions set out in that case-law are met.

50 First, it must be assessed whether, having regard to the individual circumstances relating to his state of health or to the need to receive urgent treatment in a hospital, the insured person was prevented from applying for authorisation for the assumption of the costs of such treatment in another Member State or, even if he did apply for such authorisation before treatment began, he was not able to wait for the decision of the competent institution on that application (see, by analogy, *Elchinov*, paragraphs 45 to 47 and 75 to 77, and order of 11 July 2013, *Luca*, C-430/12, not published, EU:C:2013:467, paragraphs 28 and 33).

51 Second, it is necessary to verify whether the conditions for the assumption of costs by the competent institution of the scheduled treatment in question, pursuant to the second sentence of Article 20(2) of Regulation No 883/2004, as recalled in paragraph 43 of the present judgment are met (see, by analogy, *Elchinov*, paragraph 45, and order of 11 July 2013, *Luca*, C-430/12, not published, EU:C:2013:467, paragraph 23).

52 In the present case, if the referring court establishes that those two conditions are met, the applicant in the main proceedings will be entitled to be reimbursed directly by the competent institution for the amount referred to in paragraph 46 of the present judgment.

53 Without prejudice to the assessment that the referring court will make in that regard, having regard to all the circumstances specific to the dispute in the main proceedings, it should be noted, regarding the first condition, that 20 days passed between 29 September 2016, when WO contacted the doctor practising in Germany for the purposes of an examination and possible treatment, and the date of the eye surgery performed successfully in that Member State on 18 October 2016 due to his medical condition, the day after the specific appointment he had made for a medical examination.

54 Admittedly, it is not apparent from the order for reference that, during that period, WO was in a situation that prevented him from applying for authorisation pursuant to Article 20(1) of Regulation No 883/2004 from the competent institution for the scheduled treatment he would be given in Germany. Nevertheless, the examination carried out in Hungary on 15 October 2016, the result of which confirmed the urgency of the eye surgery that WO in fact underwent in Germany on 18 October 2016, might serve to indicate that, even if he had not been prevented from applying for prior authorisation, he could not have waited for the decision of the competent institution on that application.

55 In the light of the foregoing, the answer to the fourth, fifth and sixth questions is that the combined provisions of Article 20 of Regulation No 883/2004 and Article 26 of Regulation No 987/2009, read in the light of Article 56 TFEU, must be interpreted as meaning that:

– healthcare received in a Member State other than the Member State in which the insured person resides, on his or her own initiative, on the ground that, according to that person, that treatment or treatment with the same efficacy was unavailable within a time limit which is medically justifiable, comes within the definition of ‘scheduled treatment’ within the meaning of those provisions, so that the receipt of such treatment is, in accordance with the conditions laid down in Regulation No 883/2004, in principle subject to the granting of an authorisation by the competent institution of the Member State of residence;

– an insured person who has received scheduled treatment in a Member State other than his or her Member State of residence, without having applied for authorisation from the competent institution, pursuant to Article 20(1) of that regulation, is entitled to reimbursement, under the conditions laid down in that regulation, of the cost of that treatment, if

– first, between the date on which the appointment for the purposes of a medical examination and possible treatment in another Member State was made and the date on which that treatment was given to the insured person in that Member State, to which he or she had to travel, that person was, for reasons relating to his or her state of health or to the need to receive urgent treatment there, in a situation which prevented him or her from applying for such authorisation from the competent institution or was not able to wait for the decision of that institution on such application, and

– second, the other conditions for the assumption of the costs of the benefits in kind, pursuant to the second sentence of Article 20(2) of that regulation are also met.

It is for the referring court to carry out the necessary verifications in that respect.

C. **The first and second questions**

56 By its first and second questions, which it is appropriate to examine together, as a second step, the referring court asks, in essence, whether Article 56 TFEU and Article 8(1) of Directive 2011/24 must be interpreted as precluding national legislation that makes the reimbursement of costs of healthcare received by an insured person in another Member State subject, in all cases, to prior authorisation, even when there is, while waiting for such authorisation to be granted, a genuine risk that that person's state of health will irreversibly deteriorate.

57 The Court's answer to those two questions will be relevant to the main proceedings only in the event that WO is not entitled to obtain the reimbursement of the costs of the treatment which he received in Germany on the basis of Article 20 of Regulation No 883/2004, read in the light of Article 56 TFEU, if the conditions set out in paragraph 55 of the present judgment are not met.

1. ***Prior authorisation in the light of Article 56 TFEU***

58 It must be borne in mind that, according to the Court's case-law, national legislation that makes the assumption or reimbursement of costs incurred by an insured person in a Member State other than the Member State of affiliation subject to prior authorisation, while the assumption or reimbursement of costs incurred by that person in that Member State is not subject to that authorisation, constitutes a restriction of the freedom to provide services, enshrined in Article 56 TFEU (see, to that effect, judgments of 28 April 1998, *Kohll*, C-158/96, EU:C:1998:171, paragraph 35, and of 27 October 2011, *Commission* v *Portugal*, C-255/09, EU:C:2011:695, paragraph 60).

59 The Court has acknowledged that the objectives capable of justifying such restriction of the freedom to provide services include preventing the possible risk of seriously undermining the financial balance of a social security system, maintaining a balanced medical and hospital service open to all, maintaining treatment capacity or medical competence on national territory, and making it possible to create a plan seeking, first, to ensure that there is sufficient and permanent access to a balanced range of high-quality hospital treatment in the Member State concerned and, second, to ensure cost control and to prevent, as far as possible, any wastage of financial, technical and human resources (see, by analogy, *Elchinov*, paragraphs 42 and 43 and the case-law cited).

60 The Court has, however, established, in that context, a distinction between medical services provided by practitioners in their surgeries or at the patient's home and hospital care or healthcare involving the use of highly specialised and cost-intensive medical equipment ('major non-hospital care') (see, to that effect, judgments of 28 April 1998, *Decker*, C-120/95, EU:C:1998:167, paragraphs 39 to 45; of 28 April 1998, *Kohll*, C-158/96, EU:C:1998:171, paragraphs 41 to 52; of 12 July 2001, *Smits and Peerbooms*, C-157/99, EU:C:2001:404, paragraph 76; and of 5 October 2010, *Commission* v *France*, C-512/08, EU:C:2010:579, paragraphs 33 to 36).

61 More specifically, the Court has held, concerning hospital care and major non-hospital care which take place within an infrastructure with, undoubtedly, certain very distinct characteristics, that Article 56 TFEU does not preclude, in principle, a patient's entitlement to receive such treatment in another Member State, funded by the system under which he or she is insured, being subject to prior authorisation (see, to that effect, judgment of 5 October 2010, *Commission* v *France*, C-512/08, EU:C:2010:579, paragraphs 33 to 36, and *Elchinov*, paragraphs 40 to 43 and the case-law cited).

62 However, the Court has pointed out that it is necessary that the conditions established for such authorisation to be granted are justified in the light of requirements such as those mentioned in paragraph 59 of the present judgment, that they do not exceed what is objectively necessary for that

purpose and that the same result cannot be achieved by less restrictive rules. Such a system must, in addition, be based on objective, non-discriminatory criteria, which are known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion, so that it is not used arbitrarily (see, to that effect, *Elchinov*, paragraph 44 and the case-law cited).

63 It is also apparent from the Court's case-law that insured persons travelling without prior authorisation to a Member State other than the Member State of affiliation to receive treatment there can claim reimbursement of the cost of the treatment given to them only within the limits of the cover provided by the health insurance scheme in the Member State of affiliation (see, by analogy, *Elchinov*, paragraph 80 and the case-law cited). Likewise, the conditions under which health benefits are granted, provided that they are neither discriminatory nor an obstacle to the freedom of movement of persons, remain enforceable where treatment is provided in a Member State other than the Member State of affiliation. That is particularly so in the case of the requirement that a general practitioner should be consulted prior to consulting a specialist (judgment of 13 May 2003, *Müller-Fauré and van Riet*, C-385/99, EU:C:2003:270, paragraphs 98 and 106).

64 The Court has also specified that nothing precludes a Member State from fixing the amounts of the reimbursement which patients who have received care in another Member State can claim, provided that those amounts are based on objective, non-discriminatory and transparent criteria (see, to that effect, judgment of 13 May 2003, *Müller-Fauré and van Riet*, C-385/99, EU:C:2003:270, paragraph 107).

2. ***Prior authorisation in the light of Directive 2011/24***

65 Directive 2011/24, as is apparent inter alia from recital 8, codified the Court's case-law on certain issues relating to healthcare provided in a Member State other than the State in which the recipient of care is resident, in particular the reimbursement of that healthcare, in order to achieve a more general and more effective application of the principles developed by the Court on a case-by-case basis.

66 Pursuant to Article 2(m) of Directive 2011/24, that directive is to apply without prejudice to Regulations No 883/2004 and No 987/2009. Thus, Article 8(3) of the directive provides that 'with regard to requests for prior authorisation made by an insured person with a view to receiving cross-border healthcare, the Member State of affiliation shall ascertain whether the conditions laid down in Regulation [No 883/2004] have been met' and specifies that 'where those conditions are met, the prior authorisation shall be granted pursuant to that Regulation unless the patient requests otherwise'. Recital 46 of the directive specifies that when the conditions set out in Regulation No 883/2004 are met, authorisation should be granted and benefits provided in accordance with that regulation unless otherwise requested by the patient. The same applies where the authorisation is granted after an administrative or judicial review of the request and the person concerned has, in the meantime, received the treatment in another Member State.

67 Article 7, entitled 'General principles for reimbursement of costs', in Chapter III of Directive 2011/24, governing the reimbursement of costs of cross-border healthcare, establishes in paragraph 1 the principle that 'without prejudice to Regulation [No 883/2004] and subject to the provisions of Articles 8 and 9, the Member State of affiliation shall ensure the costs incurred by an insured person who receives cross-border healthcare are reimbursed, if the healthcare in question is among the benefits to which the insured person is entitled in the Member State of affiliation'.

68 Next, the first subparagraph of Article 7(4) of Directive 2011/24 provides that the costs of cross-border healthcare are to be reimbursed or paid directly by the Member State of affiliation up to the level of costs that would have been assumed by the Member State of affiliation, had this healthcare been provided in its territory without exceeding the actual costs of healthcare received.

69 Moreover, it is apparent from Article 7(7) of the directive that the Member State of affiliation may impose on an insured person seeking reimbursement of the costs of cross-border healthcare the same conditions, criteria of eligibility and regulatory and administrative formalities, whether set at a local, regional or national level, as it would impose if this healthcare were provided in its territory, including an assessment by a health professional, provided that those conditions, criteria of eligibility and regulatory and administrative formalities are discriminatory or constitute an obstacle to the free movement of patients, services or goods, unless they are objectively justified by planning requirements.

70 Lastly, it is apparent from Article 7(8) of Directive 2011/24 that the Member State of affiliation must not make the reimbursement of costs of cross-border healthcare subject to prior authorisation except in the cases set out in Article 8 of that directive.

71 As for Article 8 of Directive 2011/24, relating to 'healthcare that may be subject to prior authorisation', although Article 8(1) provides that the Member State of affiliation may provide for a system of prior authorisation for reimbursement of costs of cross-border healthcare, in accordance with that article and Article 9 of that directive, Article 8(1) specifies that that system, including the criteria and the application of those criteria, and individual decisions of refusal to grant prior authorisation, is to be restricted to what is necessary and proportionate to the objective to be achieved, and may not constitute a means of arbitrary discrimination or an unjustified obstacle to the free movement of patients.

72 The first subparagraph of Article 8(2) of Directive 2011/24, setting out the limited list of healthcare that may be subject to prior authorisation, sets out, in point (a), healthcare which 'is made subject to planning requirements relating to the object of ensuring sufficient and permanent access to a balanced range of high-quality treatment in the Member State concerned or to the wish to control costs and avoid, as far as possible, any waste of financial, technical and human resources' and (i) 'involves overnight hospital accommodation of the patient in question for at least one night' or (ii) 'requires use of highly specialised and cost-intensive medical infrastructure or medical equipment'.

3. *The application to the present case of the case-law relating to Article 56 TFEU and Directive 2011/24*

(a) *Whether there is a restriction on the freedom to provide services*

73 It is apparent from the information available to the Court that, first, at the time of the events in the main proceedings, under national legislation, Paragraph 27(6) of the Law on sickness insurance in particular, read in conjunction with the relevant provisions of the government decree and the sector-based decree, the assumption of costs and reimbursement, by the competent institutions, of hospital care and single day outpatient treatments, when they were provided in another Member State, were subject to prior authorisation. By contrast, the receipt of benefits in kind available under the Hungarian social security system to which WO was affiliated was not subject to such authorisation.

74 Second, WO's application for reimbursement of the costs of the healthcare which he received in Germany was refused in its entirety by the competent institution, as no prior authorisation had been granted. That refusal, subject to the verifications which it is for the referring court to carry out, related to the costs of both the eye surgery performed on 18 October 2016 and the medical consultation which took place on 17 October 2016. However, it is not apparent from the order for reference that the reimbursement, to the person affiliated with the Hungarian compulsory health insurance system, of the costs relating to a medical consultation in Hungary was subject to such authorisation.

75 It is apparent from the case-law cited in paragraph 58 of the present judgment that a system of prior authorisation such as the system thus established under the national legislation at issue in the main proceedings constitutes a restriction of the freedom to provide services.

(b) ***Justification for the system of prior authorisation***

76 The referring court is doubtful whether the restriction involved in the system of prior authorisation established under the national legislation is proportionate, in so far as the reimbursement of the costs of cross-border healthcare is subject, in all cases, to the granting of prior authorisation, including where an insured person – having regard to his or her medical condition, requiring urgent vitally necessary treatment, and to the cumbersome nature of the applicable procedure – has not applied for authorisation from the competent institution before treatment began. In addition, that court states that, since the legislation does not provide for applications for retrospective authorisation, it is not possible to verify, when a request for reimbursement of the cost of cross-border healthcare is made, whether the conditions necessary for that reimbursement are met.

77 The Hungarian Government, for its part, explains that the system of prior authorisation for the assumption and full reimbursement of the costs of cross-border healthcare established by Hungarian legislation is intended to enable the national social security system to cope with the exceptional challenges, in terms of planning, that arise in an ageing society. That government submits that, if it were possible to request subsequent authorisation, patients would no longer have an incentive to apply for prior authorisation and it would benefit those who are better informed and have the means to receive treatment abroad, resulting in the exhaustion of the financial resources of the national social security system. That system, to which several million individuals are affiliated, would be weakened in the long term, both in financial terms and in terms of human resources.

(1) *Whether the justification relied on is permissible*

78 The justification put forward by the Hungarian Government relates, in essence, to the need to enable planning that pursues the objectives of (i) ensuring sufficient and permanent access to a balanced range of high-quality hospital treatment in the Member State concerned and (ii) ensuring cost control and avoiding, as far as possible, any waste of financial, technical and human resources. As is apparent from paragraphs 59 and 72 above, such objectives are, in principle, capable of justifying, in the light of the Court's case-law relating to Article 56 TFEU and point (a) of the first subparagraph of Article 8(2) of Directive 2011/24, the establishment of a system of prior authorisation scheme for the reimbursement of the cost of healthcare received in another Member State.

79 However, as is apparent from paragraphs 60, 61 and 72 of the present judgment, that requirement can be relied on, in accordance with the Court's case-law relating to Article 56 TFEU and point (a) of the first subparagraph of Article 8(2) of Directive 2011/24, only in certain

situations, listed exhaustively in that case-law and in sub-points (i) and (ii) of the latter provision, which do not include a medical consultation. It follows that the restriction of the freedom to provide services contained in the prior authorisation in the Member State of residence of such consultation in another Member State cannot be justified by reference to the objectives set out in the previous paragraph and does not comply with the conditions provided for in point (a)(i) and (ii) of the first subparagraph of Article 8(2) of Directive 2011/24.

80 As for the eye surgery performed on WO during his stay in Germany, it is for the referring court to satisfy itself that it constitutes hospital care or major non-hospital care within the meaning of the Court's case-law recalled in paragraph 60 above and of point (a)(i) and (ii) of the first subparagraph of Article 8(2) of Directive 2011/24. It is only in such a situation that the requirement relied on by the Hungarian Government would be admissible.

(2) *Proportionality of the system of prior authorisation*

81 If the treatment concerned constitutes hospital care or major non-hospital care, it is next appropriate to verify whether the system of prior authorisation established by the national legislation at issue in the main proceedings for the reimbursement of the cost of such treatment, received in another Member State, complies with the principles of necessity and proportionality, in accordance with the case-law referred to in paragraph 62 above and with Article 8(1) of Directive 2011/24.

82 The Court has previously held that national legislation excluding, in all cases, payment for hospital treatment given in another Member State without prior authorisation deprives the insured person who, for reasons relating to his or her state of health or to the need to receive urgent treatment in a hospital, was prevented from applying for such authorisation or was not able to wait for the answer from the competent institution that that institution would cover such treatment, even though all other conditions for such cover are met (*Elchinov*, paragraph 45).

83 The Court held that, in circumstances such as those described in the previous paragraph, reimbursement in respect of such treatment is not likely to compromise the achievement of the objectives of hospital planning, or seriously undermine the financial balance of the social security system, as such reimbursement does not affect the maintenance of a balanced hospital service accessible to all, or that of treatment capacity and medical competence on national territory (*Elchinov*, paragraph 46).

84 The Court's findings relating to the right to the assumption of the costs, without prior authorisation, of hospital treatment in another Member State pursuant to Article 49 EC and Article 22 of Regulation No 1408/71, can be transposed to the context of Article 56 TFEU and Directive 2011/24 relating to the right to reimbursement, without prior authorisation, for hospital or major non-hospital care in another Member State.

85 It follows that national legislation which excludes the reimbursement, by the competent institution, of the costs relating to hospital or major non-hospital care received in another Member State, without prior authorisation, including in specific circumstances where the insured person was prevented from applying for such authorisation or was not able to wait for the decision of the competent institution on the application for authorisation submitted, for reasons relating to his or her state of health or to the need to receive urgent treatment, even though all other conditions for such costs to be assumed are met, does not satisfy the requirement of proportionality referred to in paragraphs 62 and 71 above. Therefore, that legislation contains a disproportionate restriction of the

freedom to provide services enshrined in Article 56 TFEU and fails to have regard to Article 8(1) of Directive 2011/24.

86 In the light of the foregoing, the answer to the first and second questions is as follows:

– Article 56 TFEU and point (a) of the first subparagraph of Article 8(2) of Directive 2011/24 must be interpreted as precluding national legislation which, in the absence of prior authorisation, excludes reimbursement, within the limits of the cover provided by the health insurance scheme in the Member State of affiliation, of the costs of a medical consultation incurred in another Member State.

– Article 56 TFEU and Article 8(1) of Directive 2011/24 must be interpreted as precluding national legislation – in a case where the insured person was prevented from applying for such authorisation or was not able to wait for the decision of the competent institution on the application for authorisation, for reasons relating to his or her state of health or to the need to receive urgent hospital or major non-hospital care, even though all other conditions for such costs to be assumed are met – which, in the absence of prior authorisation, excludes reimbursement, within the limits of the cover provided by the health insurance scheme in the Member State of affiliation, of the costs of that care given to that person in another Member State.

D. **The third question**

87 By its third question, which it is appropriate to examine as a third step, the referring court asks, in essence, whether Article 9(3) of Directive 2011/24, requiring Member States to set out reasonable periods of time for processing requests for cross-border healthcare, must be interpreted as precluding national legislation which, irrespective of the medical condition of the patient who has applied for prior authorisation for the assumption of the costs of cross-border healthcare, provides for a time limit of 31 days to grant such authorisation and 23 days to refuse it.

88 In that regard, it should be noted that Article 9(3) of Directive 2011/24 requires Member States to set out reasonable periods of time within which requests for cross-border healthcare must be dealt with and to take into account, when considering those requests, in accordance with subparagraphs (a) and (b) of that provision, of ‘the specific medical condition’ and ‘the urgency and individual circumstances’, respectively.

89 While the referring court indicates that the time limit for dealing with requests for prior authorisation of the assumption of costs of cross-border healthcare is set by Hungarian legislation irrespective of the medical condition of the patient who has applied for such authorisation, it is apparent from the written submissions of the Hungarian Government and the Commission that Paragraph 7(1) of the government decree, which transposed Article 9(3) of Directive 2011/24 into the Hungarian legal system, allows the competent institution to take into account the individual circumstances and the urgency of the case in question during the authorisation procedure provided for in Article 5 of that decree.

90 Moreover, it is not apparent from any document in the Court's case file that, when dealing with applications for prior authorisation in respect of cross-border healthcare, the competent institutions do not take into account the individual circumstances and the urgency of a specific case.

91 The answer to the third question is therefore that Article 9(3) of Directive 2011/24 must be interpreted as not precluding national legislation which provides for a time limit of 31 days to grant prior authorisation of the assumption of costs of cross-border healthcare and 23 days to refuse it,

while allowing the competent institution to take into account the individual circumstances and the urgency of the case in question.

Costs

92 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. **The combined provisions of Article 20 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and Article 26 of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation No 883/2004, relating to scheduled treatment, read in the light of Article 56 TFEU, must be interpreted as meaning that:**

– **healthcare received in a Member State other than the Member State in which the insured person resides, on his or her own initiative, on the ground that, according to that person, that treatment or treatment with the same efficacy was unavailable within a time limit which is medically justifiable, comes within the definition of 'scheduled treatment' within the meaning of those provisions, so that the receipt of such treatment is, in accordance with the conditions laid down in Regulation No 883/2004, in principle subject to the granting of an authorisation by the competent institution of the Member State of residence;**

– **an insured person who has received scheduled treatment in a Member State other than his or her Member State of residence, without having applied for authorisation from the competent institution, pursuant to Article 20(1) of that regulation, is entitled to reimbursement, under the conditions laid down in that regulation, of the cost of that treatment, if**

– **first, between the date on which the appointment for the purposes of a medical examination and possible treatment in another Member State was made and the date on which that treatment was given to the insured person in that Member State, to which he or she had to travel, that person was, for reasons relating to his or her state of health or to the need to receive urgent treatment there, in a situation which prevented him or her from applying for such authorisation from the competent institution or was not able to wait for the decision of that institution on such application, and**

– **second, the other conditions for the assumption of the costs of the benefits in kind, pursuant to the second sentence of Article 20(2) of that regulation are also met.**

It is for the referring court to carry out the necessary verifications in that respect.

2. **Article 56 TFEU and point (a) of the first subparagraph of Article 8(2) of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare must be interpreted as precluding national legislation which, in the absence of prior authorisation, excludes reimbursement, within the limits of the cover provided by the health insurance scheme in the Member State of affiliation, of the costs of a medical consultation incurred in another Member State.**

Article 56 TFEU and Article 8(1) of Directive 2011/24 must be interpreted as precluding national legislation – in a case where the insured person was prevented from applying for such authorisation or was not able to wait for the decision of the competent institution on the application for authorisation, for reasons relating to his or her state of health or to the need to receive urgent hospital care or

healthcare involving the use of highly specialised and cost-intensive medical equipment, even though all other conditions for such costs to be assumed are met – which, in the absence of prior authorisation, excludes reimbursement, within the limits of the cover provided by the health insurance scheme in the Member State of affiliation, of the costs of that care given to that person in another Member State.

3. **Article 9(3) of Directive 2011/24 must be interpreted as not precluding national legislation which provides for a time limit of 31 days to grant prior authorisation of the assumption of costs of cross-border healthcare and 23 days to refuse it, while allowing the competent institution to take into account the individual circumstances and the urgency of the case in question.**

[Signatures]

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* Language of the case: Hungarian.

Fine modulo