

Preface

Healthcare has become a major element in the economic policies of the European States, and for EU citizens, too, the issue of personal health care is becoming increasingly important. Especially with a view to longer and healthier lives, EU citizens focus more and more on health in the context of their individual life paths and their personal environment. The free movement of persons within the European Union had originally been designed to be an incentive for workers to be more mobile and a solution to suit the needs of businesses. This freedom of movement for workers was gradually extended to citizens in general, until finally the Maastricht Treaty facilitated the creation of the EU citizenship status.

The possibility to travel freely and without hindrance within the European Union for personal reasons, for the purpose of study, or for educational or professional reasons, is a convenience that EU citizens have come to take for granted.

Patient mobility with the objective of providing healthcare in a Member State other than one's own was realised at a later stage. It was initiated in the first place in order to be able to grant unexpectedly required health services to visitors to a Member State other than their own during their stay there for personal or professional reasons, or in connection with family responsibilities, with the social security system of the State of affiliation/employment being responsible for the assumption of costs incurred.

In such cases, the delivery of planned health services is not the main purpose of the right of EU citizens to free movement. Cross-border health service delivery is the consequence of a social security policy in the EU that aims at preventing restrictions in cross-border mobility within Europe caused by the citizens' fear that cross-border movement might impair their access to social security.

Such conditions are still the most common ones. They are regulated through the coordination of the national systems of social security and are subject to the scope of application of the Coordination Regulations.

However, less complicated ways of communication and greater travel possibilities in Europe have made it easier to ensure patient mobility in line with the objective to provide high quality health services.

The intention to seek medical help in another Member State may be fuelled by an insufficiently developed national infrastructure, or by long waiting times forcing the patient to delay treatment. The patient's decision may also be influenced by his medical consumer behaviour. Like all other services in the EU, health services may ultimately be subjected to comparison. In this way, the European area might cultivate a method to find the best price-performance ratio based on the logic of the internal market. Even though this is, as yet, a very slow process, the development of such a competitive market will pose a great challenge to the Member States.

As a result of highly publicised judgments like *Kohl*³ or *Watts*⁴, the Member States have started to show concern about the consequences of such case law on cost containment measures in health care.

The topic was a sensitive one even more due to the fact that the European Court of Justice had, based on the twofold and combined criteria of EU citizenship and equal treatment, acknowledged the right of EU citizens to social services not based on contributions on EU territory, meaning that, in accordance with the logic of the ECJ, any regulations regarding the limitation or regulation of the access to medical care on national territory could be raised to question.

Directive 2011/24/EU of 9 March 2011 on the application of patients' rights in cross-border healthcare (Patient Directive) aims at solving sometimes conflicting interests and at reconciling the three fundamental elements of the European system, namely the regard for EU citizenship, patient mobility and cost containment in health care in the Member States.

The Member States are urged to implement Directive 2011/24 (and, apart from that, Implementation Directive 2012/52/EU of 20 December 2012 laying down measures to facilitate the recognition of medical prescriptions issued in another Member State) by 25 October 2013 at the latest. With a view to cross-border patient mobility, 2013 is therefore a year of significance for all national legal systems within the EU.

Within the framework of the cooperation between the Max Planck Institute for Social Law and Social Policy (MPI) in Munich and the Western Institute of Law and European Studies (IODE, UMR CNRS 6262) in Rennes, an international conference was hosted at the University of Rennes 1 in November 2012 that was jointly organised by the IODE and the MPI.

The book "Free Movement of Patients in the EU" has a different objective altogether.

Its aim is to provide jurists, as well as national and professional decision-makers in health care with a source of information regarding the significance of patient mobility in the European Union and the provisions applicable.

In order to promote wide dissemination even beyond the European borders, the book is largely composed in the three languages German, English and French. After all, patient mobility is increasingly evolving into a phenomenon with a worldwide

³ CJEU, 28 April 1998, C-198/96, ECR I-01931.

⁴ CJEU, 16 May 2006, C-372/04, ECR I-4325.

dimension, and it is being evaluated both by the OECD and the World Health Organization.

In showing the structure of a Europe in the context of its health care systems, the book combines the juridical approach with a practical one.

Even though the Europe of today essentially still treats health care as a national matter, the concept of health care is taking on a new shape owing to the establishment of regional health care cooperation schemes and the collaboration of actors at the political and practical level. Telemedicine, whose continual development across borders is beyond debate, occasionally has a supportive function for such forms of cooperation. This also fosters a new form of intergovernmental policy-making in health care in the European Economic Area or in the relations with Switzerland, resulting in changes in practice with a view to the provisions applicable and to the respective competencies.

The book is divided into three parts. The first part deals with the challenges of the freedom of movement to health care; the second part shows the reality of the free movement of persons with respect to health care; the third part sketches the development of future cross-border cooperation.

Acknowledgements

We extend our thanks for the material and financial support of the conference in Rennes and the publication of this volume to IODE, the Max Planck Institute, the Rennes Centre d'Excellence Jean Monnet, to EN3S, to EHESP, to Hans Böckler Stiftung, to Rennes 1 University, to the Region of Brittany, to Rennes Métropole, to DAAD and to the European Commission.

We are grateful for the translation services provided by Christina McAllister (German/English), Clara Leon (French/English) and Sandrine Mantz (German/French), as well as by translator Sven G. Kaufmann (French/German) who also offered his valuable assistance for the revision and correction of the proofs.

Sylvie Hennion, Otto Kaufmann
Rennes and Munich

Unionsbürgerschaft und Patientenfreizügigkeit
Citoyenneté Européenne et Libre Circulation des
Patients EU Citizenship and Free Movement of Patients
Hennion, S.; Kaufmann, O. (Hrsg.)
2014, XXII, 437 S. 22 Abb., Hardcover
ISBN: 978-3-642-41310-0