Planned Health Care Abroad in the EU and Croatia: Who Covers it and Under What Conditions?

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SUMMARY
Systems of social security coverage of health care are, essentially, national systems created to provide inhabitants and/or persons conducting a professional activity in a certain country with best possible health care. These systems are based on a notion that crucial criterion for granting someone access to health care should be that person's clinical need instead of his/her ability to pay. However, there are situations when persons subject to one national social security system travel to another country in order to access health care there. These cases, therefore, qualify to some extent the national/territorial nature of social security systems. The aim of this paper is to analyse the EU rules on social security coverage of planned foreign health care (obtained abroad) and Croatian general rules on the same issue and to determine whether there are discrepancies between them. For that purpose, a comparative analysis of European and Croatian primary legal sources was carried out. The conducted analysis shows that there are significant discrepancies between the Croatian and the EU legal framework. As a consequence, the paper emphasises the need for Croatia to adjust its rules to the European ones. Therefore, Croatia should amend its legislation in order to grant persons, covered by its social health insurance, possibilities to access health care abroad (in EU Member States) without prior authorisation in some instances. Furthermore, Croatia should incorporate into its legal framework a legal entitlement to obtain health care treatment abroad if the same or equally effective treatment cannot be provided in Croatia within a time which is medically justifiable. Finally, the paper points to certain problems regarding the European approach, which should be open to future debate.

Keywords: EU, social security, planned health care abroad, prior authorisation.

1. INTRODUCTION
Social coverage of health care is one of the great accomplishments of modern times. It is based on the notion that one's need to obtain health care should be the main criterion for accessing it, instead of his/her ability to pay. Around this basic notion, social security health care systems have been established throughout Europe, which (European Union) represents the focus of this paper.

In general, European social security (insurance) systems can be divided into two main categories: ‘professional or occupational social insurances’ and ‘peoples or universal social insurances’. Occupational social insurances determine their personal scope of application by referring to one’s conducting of a professional activity (employed, self-employed). Universal social insurances, on the other hand, apply to all inhabitants of a country in question (1). Of course, combinations are always possible, and nowadays even the occupational health care systems will often cover almost the entire country’s population (1).

The social health care systems are in their essence national, since they are organised on national level, subject to national legislation (2) and public supervision. This means that both payers of health care services and providers of health care services are determined by referring to the national setting. However, there are always possibilities that a patient who is subject to one national system (either on account of conducting a professional activity, or just on account of having residence there), obtains health treatment from a foreign provider who is not attached to the same social security system. These situations include instances where a person travels abroad for the specific purpose of obtaining health care there (planned health care abroad).

The latter possibilities are regulated in various countries. Within the European Union, there are common rules which cover instances of a person going abroad in order to obtain health care in Member States in which that person is not socially protected. In Croatia (a candidate state for accession to the EU), these situations are regulated via statutes and statutory instruments, as well as bilateral international agreements. The mentioned rules regulate circumstances under which it is possible for a person to obtain socially covered health care outside his/her state of social protection (hereinafter: competent state), to be paid by that state. Since Croatian is soon to become a Member State of the EU, it is important to see whether its national health care legislation fulfils all the requirements of the Union membership. This is, of course, also relevant for other countries aspiring for the EU membership.
2. GOAL
The aim of this paper is to analyse the EU rules on social security coverage of planned foreign health care (obtained abroad) and Croatian general rules on the same issue and to determine if there are discrepancies between them, as well as to see whether Croatia needs to carry out future adjustments to be fully in line with the EU legal framework.

3. METHODOLOGY
This paper will first analyse EU primary legal sources, meaning the relevant legislation and the judgements by the European Court of Justice. This will be followed by an analysis of the Croatian primary legal sources on the topic, focusing on the statutory instrument which represents a common frame of reference in Croatia, regarding planned health care abroad. Finally, comparative legal method will be employed to investigate possible points of contention between the systems in question.

4. RESULTS
4.1. EU LEGAL FRAMEWORK
In the EU, there are two main legal routes for obtaining planned socially covered health care abroad. The first of these routes is governed by European Regulations 883/2004 and 987/2009 (directly applicable in Member States) on coordination of social security systems. According to these rules, when a patient subject to social security legislation in Member State A travels to the Member State B for the purpose of obtaining a health treatment there (which will be covered by Member State A, according to the tariffs of Member State B), the competent state must be employed to investigate possible points of contention between the systems in question.

The authorisation must be granted when the treatment is among health care benefits provided for by the legislation in the Member State where the patient resides and where the patient cannot be given such (same or equally effective) treatment there within a time-limit which is medically justifiable, taking into account his/her current state of health and the probable course of his/her illness. Only health care providers attached to the state of treatment social security system can be accessed, if one wants to be covered by his/her competent state. The payment of the treatment is carried out between the competent state and the state of treatment social security institutions, meaning the patient only has to cover the cost of the potential copayment required by the state of treatment legislation for its patients (3, 4, 10).

The second route is governed by the provisions of EU primary law (Treaty on the Functioning of the European Union, hereinafter: TFEU, art 56) which guarantee freedom to provide and receive cross-border services (see, for instance: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13). According to these rules, as interpreted by the European Court of Justice, a patient is entitled to foreign planned health care abroad according to competent state tariffs (paid by the competent state), and, in some instances, even without obtaining prior authorisation from the competent state health insurer. Any health care provider lawfully practising medicine in the state of treatment can be accessed. The patient pays for the treatment on the spot, and can claim reimbursement from the competent state’s social security system when he/she returns there. Patients are also entitled to coverage of travel and accommodation (accommodation other than in the hospital itself) costs in case the competent state covers them for health care treatments acquired within its territory (5, 6, 7, 10, 11).


The relevant EU legal framework can be summed up as follows:

4.2. CROATIAN LEGAL FRAMEWORK
Issues of persons covered by Croatian social security health care system obtaining health care abroad are regulated by various rules. The main legal source is the relevant statutory instrument, Ordinance on Entitlements, Conditions, and Way of Exercising Health Care Abroad (Official Gazette 50/09 to 31/11), adopted by the Health Insurance Institute of Croatia (hereinafter: HIIC) with the consent of the minister in charge of health care. The Ordinance is applied in accordance with the higher law, that is, the relevant acts and international agreements (15). International agree-
ments with some EU Member States regulating the issue have been concluded (for instance, with Italy, 20), but not all of them (for instance, not with Spain).

To a person insured with HIIC, entitlement to health care abroad may be authorised by HIIC to treat congenital defects, to carry out organ transplants, and to treat malignant diseases if necessary treatments cannot be provided by health care providers affiliated with (contracted by) HIIC in Croatia, and those treatments can be provided abroad. Treatments recognised by medical science, although not provided in Croatia, are covered. Covered treatments include diagnostic and therapeutic procedures, surgical procedures, organ transplants, hospital and ambulatory (out-patient) treatments, examinations and blood and tissue diagnostic tests (15).

As an exception, authorisation to obtain treatments abroad which are not related to the mentioned diseases may be granted, if necessary treatments cannot be provided by health care providers affiliated with (contracted by) HIIC in Croatia, and they can be provided abroad. Therefore, treatments not available in Croatia are covered, and can be provided by providers not affiliated with the state of treatment social security system (the treatments obtained from the non-affiliated providers will not be covered under bilateral agreements) (15, 16).

Apart from treatments and appliances, persons who obtain authorisation are entitled to reimbursement of public transportation and medical transportation costs, on basis of other Croatian rules regulating those entitlements, and hospital accommodation as part of the hospital treatment. HIIC may authorise a companion to obtain the coverage of accommodation as part of the hospital treatment. HIIC may authorise a companion to obtain the coverage of accommodation (in some cases escort) (15).

The EU rules, essentially, favour those patients who are able to travel abroad to obtain health care and pay on the spot. Only patients who are substantially well-off, meaning they have the resources to pay upfront and claim reimbursement afterwards as well as to risk potential litigation in case of refusal of reimbursement by the relevant social security authorities, will profit from the described possibilities (15). Therefore, Croatia must provide for the possibilities to access health care in EU Member States without prior HIIC authorisation. These amendments should enter into force with Croatia’s accession to the EU, for patients insured with HIIC, who obtain planned health care in an EU Member State.

Second, it is important to note that Croatian legal framework does not contain a provision whereby a person would be entitled to health care abroad within a time which is medically justifiable. This means that a patient cannot claim

\[\begin{array}{|c|c|c|c|c|c|}
\hline
\text{Routes} & \text{Authorisation} & \text{Tariffs} & \text{Payment Method} & \text{Provider} & \text{Travel and Accommodation Costs} \\
\hline
\text{Agreements} & \text{always} & \text{foreign tariffs} & \text{settled between social insurers (foreign patient treated in the state of treatment the same as domestic patient) – paid by Croatia} & \text{only providers affiliated with the state of treatment social security system} & \text{travel costs and hospital accommodation covered (in some cases escort)} \\
\hline
\text{No Agreements} & \text{always} & \text{real cost minus Croatian copayment (if no complementary insurance)} & \text{settled with the provider by HIIC} & \text{providers chosen by HIIC} & \text{travel costs and hospital accommodation covered (in some cases escort)} \\
\hline
\end{array}\]

Table 2 – Summary on Social Coverage of Planned Treatments in Croatia

5. DISCUSSION

As demonstrated above, there are important differences between the EU legal rules on social coverage of foreign obtained planned health care treatments, and the Croatian rules regulating the same area. The crucial ones need to be analysed in more detail.

First, Croatian rules do not offer any possibilities of covering foreign health treatments which have not been previously authorised by HIIC, while EU rules contain provisions whereby previous authorisation is not mandatory in cases of urgency (when there is no time to wait for authorisation). Furthermore, under EU law it is possible to obtain non-hospital health care, which does not require use of major medical equipment, without prior authorisation (7, 11, 12).

The EU rules, essentially, favour those patients who are able to travel abroad to obtain health care and pay on the spot. Only patients who are substantially well-off, meaning they have the resources to pay upfront and claim reimbursement afterwards as well as to risk potential litigation in case of refusal of reimbursement by the relevant social security authorities, will profit from the described possibilities offered by the EU law. However, this critique does not mean that Croatia should not adapt its legislation to the EU framework, since the latter takes precedence over national (Member States’) legislation (18). Therefore, Croatia must provide for the possibilities to access health care in EU Member States without prior HIIC authorisation. These amendments should enter into force with Croatia’s accession to the EU, for patients insured with HIIC, who obtain planned health care in an EU Member State.
an entitlement to health care within reasonable time, or without undue delay under Croatian legal system, in order to bypass waiting lists set up to control costs of the health care system by determining medical priorities.

According to the EU law, the social security systems’ needs for priority setting are secondary to individual patient’s needs which must be investigated separately from the whole context of available resources (7, 10). Therefore, a patient who is in pain, and in need of medical treatment to relieve that pain and to improve his/her medical condition, will be entitled to health care abroad, if the same or equally effective treatment cannot be provided in the competent state within a time which is medically justifiable (without undue delay), taking into account the patient’s medical condition, the degree of pain, the nature of the patient’s disability which might make it impossible or extremely difficult for him/her to carry out a professional activity, as well as his/her medical history (7).

What is important to emphasise, however, is that giving one individual’s needs a priority, means favouring that patient over other patients whose needs to obtain health care treatment may be more urgent than the needs of the patient asking for authorisation to go abroad (19). Therefore, patient’s absolute needs have precedence over relative needs (needs compared to the needs of other persons, for instance of persons who are placed on the higher position on the waiting list than the patient wishing to obtain health care abroad). However, as stated above, Croatia has no choice but to incorporate relevant EU law provisions into domestic legal order, and must not maintain national legal rules which are contrary to those provisions.

6. CONCLUSION

Social security coverage of health care treatments obtained abroad is a very sensitive legal area. It overrides, to a certain extent, the national character of social security systems, and places numerous questions regarding financial and ethical choices to be made by national authorities and legal experts at the forefront.

The EU law approach favours individual patients claiming access to foreign health care. This approach, however, is not without problems, not just from the point of view of national authorities, but also of certain categories of patients who are not in a position to benefit from the entitlements provided by EU law.

On the other hand, Croatian approach is more reserved towards individual patient’s entitlements, and provides for a strong prior control (via mandatory prior authorisation in every situation) in relation to planned health care abroad. This control, however, will have to be loosened up once Croatia joins the EU. Let us hope that both EU and Croatia will try to find solutions which will best reconcile the issues and interests at stake.

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