

'Fifty years of case-law' from La Voix du Luxembourg (2 December 2002)

Caption: Article published in December 2002 in the daily newspaper La Voix du Luxembourg to mark the 50th anniversary of the Court of Justice of the European Communities (CJEC).

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These judgments that are part of our daily lives

Fifty years of case-law

Refusal to reimburse an insured person for the cost of dental treatment on the ground that it was provided in another Member State constitutes a breach of Community law. That decision, of prime importance to the daily life of citizens of the Community, was handed down by the Court of Justice of the European Communities (CJEC) in 1998. It is just one of many judgments which often affect highly practical areas of European citizens' lives.

Raymond Kohll, a Luxembourg national, wanted his daughter, a minor, to receive treatment from an orthodontist established in Trier, Germany.

His request for authorisation was rejected by the Luxembourg *Union des Caisses de Maladie* (Union of Sickness Funds, UCM) on 27 April 1994, on the ground that the treatment was not urgent and that it could be provided in Luxembourg.

Mr Kohll appealed against that decision to the *Conseil Arbitral des Assurances Sociales* (Social Insurance Arbitration Council). His appeal was dismissed by decision of 6 October 1994.

Dissatisfied with that result, the girl's father decided to take the matter further. He brought an appeal before the *Conseil Supérieur des Assurances Sociales* (Higher Social Insurance Council), but Luxembourg law was against him. Article 20 of the Luxembourg Insurance Code stipulates that 'with the exception of emergency treatment received in the event of illness or accident abroad, insured persons may be treated abroad [...] only after obtaining the prior authorisation of the competent social security institution.' Undeterred, Mr Kohll appealed against the judgment of the *Conseil Supérieur des Assurances Sociales*, arguing that the national rules were not consistent with Articles 59 and 60 (now Articles 49 and 50) of the Treaty establishing the European Community: '... restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended'. The Luxembourg *Cour de Cassation* (Court of Cassation), considering that that argument raised a question concerning the interpretation of Community law, referred the question to the European Court of Justice for a preliminary ruling.

The Court of Justice found in favour of Raymond Kohll. Today, every citizen of Europe may benefit from the principle established by that judgment, namely the right to receive and to be reimbursed for the cost of dental treatment provided in another Member State. That right has been widely supported in recent years by further decisions on the need for prior authorisation.

The judgment is part of the body of European case-law and constitutes an example of the primacy of the principles of Community law over national law and an example of the preliminary ruling procedure. That procedure is employed in particular when a difficulty arises over the interpretation of Community law.

In that event, the national court may issue an order for reference and ask the Court of Justice to give a ruling on the interpretation of the Community law in question. This means that the national court stays the proceedings in the case before it, pending receipt of the CJEC's interpretation. The Court of Justice does not rule on the proceedings before the national court but merely gives its opinion. It is for the national court to decide the case.

The opportunities afforded by recourse to this procedure have frequently enabled Member States to amend some of their practices so as to bring them into line with Community law.

Mariella de Crouy-Chanel

The first formal hearing of the Court of Justice of the European Communities was held in Luxembourg at the Villa Vauban in 1952. The 50th anniversary of that event will be celebrated in the Grand Duchy on Wednesday. The history of the Court clearly shows how that institution has helped to establish a judicial area that is of direct concern to the citizens of Europe as beneficiaries

of Community law.