

Case C-120/95

Nicolas Decker

v

Caisse de Maladie des Employés Privés

(Reference for a preliminary ruling  
from the Conseil Arbitral des Assurances Sociales)

(Free movement of goods — Articles 30 and 36 of the EC Treaty —  
Reimbursement of medical expenses incurred in another Member State —  
Prior authorisation of the competent institution — Purchase of spectacles)

Opinion of Advocate General Tesouro delivered on 16 September 1997 ..... I - 1834

Judgment of the Court, 28 April 1998 ..... I - 1871

Summary of the Judgment

1. *Social security for migrant workers — Powers of the Member States to organise their social security systems — Limits — Compliance with Community law — Treaty rules on free movement of goods*  
(EC Treaty, Art. 30)

2. *Social security for migrant workers — Sickness insurance — Benefits provided in another Member State — Article 22 of Regulation No 1408/71 — Scope — Reimbursement by the Member States, at the tariffs in force in the competent State, of the cost of medical products purchased in another Member State — Whether excluded*  
(Council Regulation No 1408/71, Art. 22)

3. *Free movement of goods — Quantitative restrictions — Measures having equivalent effect — National rules on reimbursement of medical expenses incurred in another Member State — Purchase of medical products — Spectacles — Requirement of prior authorisation by the social security institution of the State of insurance — Not permissible — Justification — Control of health expenditure — Protection of public health — None*  
(EC Treaty, Arts 30 and 36)

1. The fact that national rules fall within the sphere of social security cannot exclude the application of Article 30 of the Treaty.

While Community law does not detract from the powers of the Member States to organise their social security systems, they must nevertheless comply with Community law when exercising those powers.

2. Article 22 of Regulation No 1408/71 is intended to allow an insured person, authorised by the competent institution to go to another Member State to receive there treatment appropriate to his condition, to receive sickness benefits in kind, on account of the competent institution but in accordance with the provisions of the legislation of the State in which the services are provided, in particular where the need for the transfer

arises because of the state of health of the person concerned, without that person incurring additional expenditure. It is not intended to regulate and hence does not in any way prevent the reimbursement by Member States, at the tariffs in force in the competent State, of the cost of medical products purchased in another Member State, even without prior authorisation.

3. Articles 30 and 36 of the Treaty preclude national rules under which a social security institution of a Member State refuses to reimburse to an insured person on a flat-rate basis the cost of a pair of spectacles with corrective lenses purchased from an optician established in another Member State, on the ground that prior authorisation is required for the purchase of any medical product abroad.

Such rules must be categorised as a barrier to the free movement of goods, since they encourage insured persons to

purchase those products in the national territory rather than in other Member States, and are thus liable to curb their import.

They are not justified by the risk of seriously undermining the financial balance of the social security system, since reimbursement at a flat rate of the cost of spectacles and corrective lenses purchased in other Member States has no significant effect on the financing or balance of the

social security system, nor are they justified on grounds of public health in order to ensure the quality of medical products supplied to insured persons in other Member States, since, as the conditions for taking up and pursuing regulated professions have been the subject of Community directives, the purchase of a pair of spectacles, on a prescription from an ophthalmologist, from an optician established in another Member State provides guarantees equivalent to those afforded on the sale of a pair of spectacles by an optician established in the national territory.