Action brought on 25 November 2008 — Commission of the European Communities v French Republic

(Case C-512/08)

(2009/C 44/48)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: G. Rozet and E. Traversa, Agents)

Defendant: French Republic

Form of order sought

— declare that:

  — by making, pursuant to Article R-332-4 of the Social Security Code, the reimbursement for medical services available at a general practitioner's surgery requiring the use of the extensive material supplies in part II of Article R-712-2 of the Public Health Code, subject to the grant of prior authorisation;

  — by failing to provide, in Article R-332-4, or in any other provision of French law, for the possibility of granting a patient — insured under the French social security system — additional reimbursement in the circumstances set out in paragraph 53 of the judgment of 12 July 2001 in Case C-368/98 *Vanbraekel and Others*,

  the French Republic has failed to fulfil its obligations under Article 49 of the EC Treaty;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The Commission raises two complaints in support of its action.

By its first complaint, the Commission contests the requirement — imposed by the defendant — of obtaining prior authorisation in order to receive reimbursement of expenses for certain non-hospital treatment provided in another Member State. While that requirement can be justified where it concerns medical services provided in a hospital, on account of the need to ensure both adequate and permanent access to a balanced range of high-quality hospital treatment, and a control of the costs which that involves, such a requirement seems disproportionate as regards non-hospital services. Several factors are capable of limiting the possible financial impact of abolishing the prior authorisation, such as the option, for the Member States, to determine the scope of the medical cover to which the insured are entitled, or the national conditions for the granting of benefits, provided that they are not discriminatory and do not constitute an obstacle to the free movement of persons.

By its second complaint, the Commission further objects to the absence, in French law, of a provision allowing the patient — insured under the French social security system — to be granted additional reimbursement in the circumstances set out in paragraph 53 of the judgment of 12 July 2001 in *Vanbraekel and Others*, that is to say, a reimbursement covering the difference in relation to the amount to which that patient would have been entitled if the hospital treatment had been provided in his own Member State. Consequently, those patients, insured under the French social security system, do not benefit fully from the rights which they are granted under Article 49 EC, as interpreted by the Court of Justice.

Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen (Belgium) lodged on 26 November 2008 — Criminal proceedings against Vítor Manuel dos Santos Palhota, Mário de Moura Gonçalves, Fernando Luís das Neves Palhota, Termiso Lda

(Case C-515/08)

(2009/C 44/49)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties to the main proceedings

Criminal proceedings against Vítor Manuel dos Santos Palhota, Mário de Moura Gonçalves, Fernando Luís das Neves Palhota, Termiso Lda

Question referred

Do the provisions of Article 8 of the Law of 5 March 2002 and Articles 3, 4 and 5 of the Royal Decree of 29 March 2002 (implementation decree) infringe Article 49 and Article 50 of the EC Treaty, in that they impose on foreign employers who wish to post workers the prior obligation of sending a declaration of posting to the Social Laws Inspection Service (Dienst Toezicht op de Sociale Wetten) and also of keeping documents which are comparable with the Belgian individual accounts or pay slips, as a result of which access to the Belgian services market is prevented or at least hampered?
