

Complaint CHAP (2011) 01915 against the Kingdom of Sweden

Dear Mr. Demetris Vryonides,

I am sorry to tell you that Anders Nordenadler has been hospitalized because of an acute disease of unknown etiology - thus he is not in condition to deliver the necessary further information you needed in this case. For that reason he asked Bert Magnusson (chairman in the Swedish Neck Injury Association), and me (Bo Sonnsjö, vice chairman) to write this letter to you. You will also receive this communication by postal delivery.

The subject of interest: Ares(2011)1171607 - concerning complaint CHAP (2011) 01915 against the Kingdom of SWEDEN

Facts of importance:

1. Sweden has no legislation based on EU directive.

The Swedish Government's response to the EU Commission 30.09.2010 S2010/3209/HS page 1, last paragraph claims that "National legislation is missing in Sweden since the Government is awaiting the negotiation of directives on patient rights in cross border health care". The Social Insurance Agency (SIA), responsible authority, claims that SIA builds its handling on EU-court law – even though SIA is misinterpreting judicial decisions of the court.

SIA neither bother to follow the rules of cross border health care, nor is following the EU law. preventing damaged people to get proper diagnoses and treatments both in Sweden and EU but also deny seriously damaged and invalids sickness benefits they needed. Thus causing so many problems that the Government recently created a new authority, ISF (Inspection of Social Insurance) to be able to control SIA, which not only has been misinterpreting judicial decisions of the EU court.

17.10.2011 ISF confirmed at an meeting with Nackskadeförbundet not only that Sweden has no legislation based on EU directive, but also that SIA has misled both diseased and damaged people, the Swedish government and EU Commission as well.

Although the Swedish Government guarantees that there is no limiting Swedish legislation, SIA together with the Ministry of Social Affairs (the state supervisors) claims that it follows Articles 56 and 57 of the Treaty and "the national health insurance system", when their office at Visby frequently deny seriously damaged the cross border health care in the Member States - even if the Lisbon Treaty Charter of Rights Article 52 states that any restriction of EU rights must be prescribed by national law, and in addition also be necessary and proportionate.

2. Conflicting statements of the Government and SIA.

In the same letter the Swedish Government (page 2) summerizes the response to a question posed by the EU Commission. Quote: "As a summary, there is no requirement in Sweden that a treatment that is sought in another EU/EES-country should be

identical to the treatment that would be offered to patients in Sweden". End quote

SIA claims the opposite, and deny care reimbursement with "The treatment method used abroad must be identical, or in several aspects consistent with a treatment used in the Swedish national healthcare system".

Thus methods confirming and treating damages given in Member States are not accepted in Sweden authorities like SIA, Ministry of Social Affairs according to national rules. As a consequence damaged people will also lose in court, and have to pay for all the process costs - also those the insurance company have had.

The SIA denial notice is in straight contradiction to the Swedish Government's reply to the EU Commission, even though the Government has guaranteed that Sweden has no restrictive legislation of EU law, and that SIA should handle cases according to EU court of Justice, will damaged lose in Swedish courts.

The Ministry of Social Affairs has in a letter 5.10. 2011 legitimated SIA's actions, thus takes a stand against the State Government of Sweden on behalf of the SIA.

3. Limitations

Instead of referring to the legal agreement (laws) in the "Swedish health insurance system" SIA refers to the methods used "by routine" in the "Swedish national health care insurance system".

Insurance does therefore – not supported by Swedish law, have the following restrictions in the EU directive

- a. that the disease/condition could be treated in Sweden
- b. that the disease could be treated within the general healthcare system in Sweden
- c. that the method is identical or, in many respects should be consistent with the Swedish methods for equivalent care.

4. Is the Social Insurance Agency misleading the Government?

According to the national laws of Sweden there are no available remedies for ensuring legal protection and legal certainty regarding patient moveability and settlement regarding insurance for traffic accidents.

Although Swedish legislators in the parliament not requested or legislated restrictions on patients EU law, SIA rejects from motives alleged to be based in law.

Answers from the SIA Medical Advisors are only based on methods used in the Swedish general health care (ie County-operated Public Health) – thus excluding internationally accepted science and knowledge (used in both in the other Member-States or in the rest of the world – even in countries like Thailand, Singapore and India).

The concept and production form "Swedish Public Health (ie County-operated Public Health) are repeatedly (without explanation) used – even though that they are not rooted in Swedish law. - Thus lacking necessary legal status in contrast the concept the "Swedish Public Health System", that has legal status.

These two linguistic terms – confusingly similar concepts – do have fundamental differences in legal status.

Only the "Swedish Public Health Insurance System" has the legal status, while the authority SIA is fooling both damaged people, the Swedish government and the EU Commission with the term "Swedish Public Health System" as a basis for denial.

5. The Ministry of Social Affairs has not issued any exception lists for treatments and medications.

From paragraphs 86 and 87 appears in the EU Case C-157/99 Smith and Peerbooms that there should be an exception list for medicines and treatments.

Such exceptions should be legalized through legislation paragraph 85, but these offered exemptions has Swedish legislation not exercised. Instead has the whole European healthcare market been accepted – which has been confirmed by the Ministry of Social Affairs.

Quote "The Ministry of Social Affairs is not aware of any such exemption and has not issued any exemption lists." end quote.

Nevertheless, the Ministry of Social Affairs is claiming that quote "SIA points out that treatment with injections of orthokin is not covered by the Swedish health care proposals" End quote.

That quote is contradictory to what the supervisor for Healthcare Law – the Ministry of Social Affairs argues – that they neither know, nor has performed any limitations of that law. Who can trust such an authority?

It is clear that the Social Insurance Agency's assessment of entitlement to compensation for foreign medical care is NOT BASED on Sweden's health care proposals, but on the product mode "the Swedish national health system" (ie County-operated Public Health).

6. From Patient Mobility Directive

Swedish Government and the trade authority, the Ministry of Social Affairs certifies that Sweden lacks restrictive laws on medicine, treatments and organization.

Nevertheless, SIA based their rejection argument on quote: "According to how the Swedish healthcare is organized and financed" end quote.

The EU patient mobility directive has the opposite intent according to article 1.2 "This Directive shall apply to the provision of health care to patients regardless of how health care is organized, provided and financed".

From Directive Article 4.1, 4.1 a-b it is shown that it is the host country laws that apply (ie cross-border public authority under the Swedish Social Insurance Agency model is contrary to the directive.)

Of the Directive recital 39 and recital 34 states: that patients may choose another

treatment method than the methods available in Sweden if they believe it is better quality in another Member State.

In a letter to EU Commission (page 3) welcomes the Government of Sweden the patient mobility directive, and makes the promise to legislate it in its spirit as soon as possible:

Quote: "Sweden welcomes the freedom of choice in health care, and is a strong advocate of freedom of choice to be valid throughout the EU." end quote

Sweden has no restrictive legislation to EU law, and the Swedish Government welcomes choice throughout Europe for the patients.

7. Some reasons why Nackskadeförbundet wanted to inform the EU Commission about how serious damaged people neither are treated, nor helped by the Swedish government and the authorities because of not following existing agreements between the EU Member States.

According to a large number of denials from the Social Insurance Agency to have the possibility and freedom to choose health care in other member states it is obvious that there is an insufficient legal protection of the individuals within the legal system.

When SIA, the Ministry of Social affairs and the board for settlements of traffic injuries are sending the same message to judges in Swedish courts – that methods used in EU to treat whiplash injuries has nothing to do with internationally accepted science and evidence, the consequence is that damaged people will both lose against the insurance industry, and too often not be able to return to a normal life.

Another bad and confusing secondary effect of the hindering is that serious damaged people not are able to be treated in other Member States is that the Swedish authority has given the concession to the insurance industry to appoint a board for settlement of traffic injuries cases, at the same time as the insurance companies are parties in the settlement proceedings.

Swedish traffic insurance companies have together organized and financed a common activity, Trafikskadenämnden, which is working as a cartel of the traffic insurance companies - used as a secret court (Trafikskadenämnden) with striking similarities to what the novel by Frantz Kafka, "The Trial" is depicting - how a damaged person not is allowed to come there to inform or try to put false information right. Not even to send a solicitor there. When an insured in one company shall have his/her insurance amount approved the actual insurer is not allowed to participate – instead representatives from two other companies are attending – something that must be some sort of cartel formation.

The fact that the settlement board has its office in the same premises as the Swedish insurance industries association is also a fact that can be taken into account.

It is well known that the Commission has already initiated a case against Sweden in this respect that has resulted in a reasoned opinion in the administrative parts of the

proceedings (see 2004/4779 K (2005)3959, dated 12/10/2005), after which the Swedish Government at that time indicated that they would undertake to find a solution acceptable for the Commission.

However, after the installment of the new Government nothing has happened so far as the members in Nackskadeförbundet has been able to detect any differences. There is also knowledge about that the Commission reached an administrative solution with Finland, which previously had a similar system as the Swedish contested one.

In this respect we would like to ask you, both what was the outcome of the Finnish case, or what Nackskadeförbundet can expect to happen in the Swedish case?

In this letter has been clarified:

1. that Swedish law is the basis for Swedish health insurance System (which must not be misunderstood to be the same as the health care system)
2. that the government and the Ministry of Social Affairs certifies that the restrictive Swedish legislation is missing in the cross-border health care.
3. that the government refers to that the Social Insurance Agency shall comply with the EU court's rash in the handling of patients cases.
4. that SIA uses the production method "Swedish public health care (ie private funded care)" in their judgements.
5. that SIA excludes the other direction from Swedish health care (ie Privat funded care) in their judgements.
6. That the Social Insurance Agency's cornerstone for rejecting "how the Swedish health care is organized and financed" turns away by patient mobility directive Article 1. (See also Case C-372/04 Watts, paragraph 89 and 90)
7. that the European Commission (your letter 05.10.2011) has apparently been misled by SIA-made restriction to production form "Swedish public health system" (which does not have legal status in the law, not to be confused with the "Swedish health insurance system (that has roots in law)
8. that when SIA (including the European Commission. Your letter 05.10.2011) presumes (guess) that the form "Swedish public health care system (ie County-operated public health care)" is the same as "Swedish law" – the assumption is contrary to Case C-173/09 Elchinov, see last paragraph.
9. the reason why Nackskadeförbundet wanted that the European Commission should interfere with how people with serious accidents are treated by Swedish health care, authorities and the insurance industry - denied methods used in cross-border health care - to get correct diagnoses and treatments for their life-threatening damages.

SUMMARY

This wording has brought up the known facts that Sweden has no limitation in social insurance laws, and that the Swedish Social Insurance Agency is misleading both authorities, care seekers, as well as the Swedish government and the European Commission by presenting production methods by referring to "the Swedish national health system" (ie. County-operated public health) instead of the Swedish legislation.

REQUEST

Nackskadeförbundet (the Neck Injury Association in Sweden) is requesting that the European Commission provides how the Social Insurance Agency in Sweden should implement the EU Directive on patients' right to healthcare in another EU Member State in full.

Since there are no restrictions on Swedes rights to get crossborder healthcare in Europa The Swedish Neck Injury Association would like the EU-commission to consider wether overseas care can be denied on the basis of an employee of the SIA.

The Neck Injury Association also wants a follow-up meeting preferably at the EU office in Stockholm for further discussion about how you assess these matters.

Please confirm at once that you have received this epost-letter.

Östra Ämtervik 14.11.2011

Yours sincerely

Bo Sonnsjö

**Bert Magnusson Bo Sonnsjö
Chairman vice Chairman
 MD, PhD
Neck Injury Association in Sweden**

Judgements:

Kohll and Decker (1998); Ferlini (2000); Geraets-Smits and Peerbooms (2001); Vanbraekel (2001); Inizan (2003); Inizan (2003); Müller Fauré and van Riet (2003); Leichtle (2004); Watts (2006); Stamatelaki (2007); Elchinov (2010).

P.S. A number of typical cases with "Whiplash" damages has already been presented to Nicolas.PRADALIE@ec.europa.eu and Gerhard.HEGENDOERFER@ec.europa.eu as information how people are treated by Swedish health care, Swedish authorities, and the insurance industry. Many more cases are available if the EU commission need such further information. D.S.