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European mobile students from the social security coordination's perspective

The university is a European institution.[1] The first universities came to existence from the eleventh century[2] and subsequently have spread all over Europe and the entire world. Already these early universities attracted a high number of foreign students and – although the migration patterns and the motivations behind have changed to a certain extent – student migration is a living and flourishing phenomenon of the modern European higher education.[3]

I. Introduction

In the European Union, special attention is paid to enabling students to study abroad. The Erasmus programme is celebrating its thirtieth anniversary this year and according to the latest data,[4] more than 3.3 million students[5] got the chance to benefit from an Erasmus

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1 See RIDDER-SYMOENS, HILDE DE (ed.): *A history of the university in Europe. Universities in the Middle Ages.* Cambridge University Press, Cambridge, 1992.

2 Although Bologna claims to have the oldest university established in 1088, there is no full agreement concerning which the first university was and when it was actually founded. RÜEGG, WALTER: *Mythology and historiography of the beginnings*, in: RIDDER-SYMOENS 1992. pp. 4-14.

3 According to the Eurostat, *„around 1.45 million people undertaking tertiary level studies in EU Member States in 2013 came from abroad: in other words, they were studying in a country other than that where they completed their secondary education. As is the case for all students, not just those from abroad, the vast majority of these students were studying for Bachelor's degrees (45 %) or Master's degrees (41 %), while around 1 in 10 (10 %) were studying for Doctoral degrees and 1 in 20 (5 %) followed short-cycle tertiary courses."* http://ec.europa.eu/eurostat/statistics-explained/index.php/Learning_mobility_statistics (download: 2 January 2017)

4 http://ec.europa.eu/dgs/education_culture/repository/education/library/statistics/erasmus-plus-facts-figures_en.pdf (download: 2 January 2017)

5 The Erasmus+ programme envisages around 2 million mobile students and overall mobility opportunities for more than 4 million people (including students, academic staff, volunteers, trainees etc.) between 2014 and 2020. http://ec.europa.eu/programmes/erasmus-plus/about_en#tab-1-3 (download: 2 January 2017)

scholarship during this period. If we add that there are other opportunities open for students willing to study abroad, this group – which equals the population of a smaller Member State – clearly cannot be neglected, but its needs and interests must be dealt with. This paper focuses on one single aspect of the mobile European students' situation, namely their social security status.

The idea came from a practical problem which occurred in Romania. Reportedly, in Romania, those students who decide to complete a phase of their higher education abroad are automatically considered to be residing abroad and as a consequence lose their healthcare entitlements in Romania. This practice of the Romanian healthcare authorities proved to be rather controversial in the light of the European social security coordination legislation, thus the present paper addresses the question how European mobile students can gain access to healthcare in another Member State.

II. Defining European mobile students

Under the term *European mobile students*, I mean European citizens participating (already involved or in the process of getting involved) in academic training (tertiary level studies) and travelling abroad for educational purposes. Herewith I am only dealing with students moving around within the European Union, thus excluding from the scope of this paper those who come from or go to study in a third country.[6]

Border-crossing students undoubtedly form a *heterogenous group* travelling for different reasons, heading towards different goals. Nevertheless, for the sake of this analysis, a distinction must be made between two – in my opinion, major – categories of these students.

On the one hand, a significant share of European mobile students goes to another Member State *for a relatively short period*, often in the framework of an Erasmus exchange or a scholarship programme of some kind and are away from their Member State of origin for no longer than 12 months. Besides, due to different economic, political, societal circumstances, working and living conditions, quality of education and discrepancy between the sums of school fees, students are more and more intrigued to study abroad not only temporarily.

Thus, on the other hand, those students must be distinguished who choose *to complete a whole phase of their training* (e.g. their bachelor or master training) in another Member State, which usually takes numerous years.

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[6] Global student migration also holds a great potential for research though, since in 2015 globally *„five million students were studying outside their home countries, more than double the 2.1 million who did so in 2000 and more than triple the number in 1990. This astounding growth has occurred in the context of an increasingly globalised world in which economies are closely tied to others within their region and beyond."* http://monitor.icef.com/2015/11/the-state-of-international-student-mobility-in-2015/ (download: 2 January 2017) See also https://www.oecd.org/education/skills-beyond-school/EDIF%202013--N%C2%B014%20(eng)-Final.pdf (download: 2 January 2017)

Whereas in the first case the stay abroad is usually clearly temporary and the place of residence remains in the Member State of origin, to which the student does not cease to be linked closely; in the second case, the level of integration in the host Member State can be considerably higher, which might reduce the likelihood of returning to the Member State of origin and increase the chances of shifting the place of residence. This difference can potentially lead to different social security rules applied to the two categories of mobile students. However, before going into the details of what rules apply to which categories, let me briefly summarise the objective of the European social security coordination regulations.

III. Social security coordination within the European Union

The significant discrepancies between the Member States' national social security systems pose a great threat to persons willing to use their *right to free movement,* such as mobile students. Thus, as regards the promotion of free movement, the European Union has legal permission to adopt coordination *measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, they shall make arrangements to secure for employed and self-employed migrant workers and their dependants: (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries and (b) payment of benefits to persons resident in the territories of Member States.*[7] This part of the Treaty's provision has remained basically unchanged since the formulation of the Treaty of Rome in 1957[8] and serves as the legal basis for the social security Coordination Regulations thenceforth.

It was rather clear already for the Founding States that the desired flow of workers within the internal market could not be ensured without social security legislation measures, since people cannot be expected to move at the expense of losing their social rights.[9] As the European Commission articulated in the late 1990s, *Community legislation on social security*

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[7] Article 48 of the Treaty on the Functioning of the European Union (TFEU), originally Article 51 in the Treaty of Rome.

[8] However, the history of social security coordination within Europe goes far beyond the date of birth of the European Communities. It is remarkable that the very first bilateral agreement on the protection of social security rights of migrants was signed by France and Italy in 1904 and served as a sample later on. Roberts argues that *"(t)he need for coordination can be traced back [...] to 1648 when the Treaty of Westphalia brought the Thirty Years War to an end."* ROBERTS, SIMON: *A short history of social security coordination*, in: JORENS, YVES (ed.): 50 years of Social Security Coordination: Past – Present – Future. Publications Office of the European Union, Luxembourg, 2010. p. 8.

[9] See among others, PENNINGS, FRANS: *European Social Security Law*. Intersentia, Antwerp, 2010. p. 3 and WATSON, PHILIPPA: Social Security Law of the European Communities. Mansell Publishing, London, 1980. p. 35.

is a sine qua non for exercising the right to free movement of persons.[10] The Coordination Regulations seek to prevent a person from being penalised, facing disadvantages or losing social security rights due to moving across borders.[11]

The relevance of the issue at stake is shown by the fact that the first set of Coordination Regulations, Regulation (EEC) No 3/58[12] and 4/58,[13] were among the first legal instruments ever adopted by the Community.[14] Recently, the third generation of social security Coordination Regulations, i.e. Regulation (EC) Nos 883/2004[15] and 987/2009,[16] entered into force.

As to the free movement of students, VAN DER MEI argues that *"(e)ver since the 1985 landmark ruling in Gravier17 we know that the right to study in other member states is a right that nationals of the member states enjoy as European citizens. It is a right equal in constitutional rank as the right to work in other member states."*[18] Thus, it comes as no surprise that the personal scope of the Coordination Regulations – which originally covered solely the migrant workers and their family members – was extended bit by bit, eventually also to mobile students.[19] Today, Regulation 883/2004 and 987/2009 are applicable to both all the EU citizens[20] (including European mobile students) and nationals of third countries.[21]

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[10] European Commission: Proposal for a Council Regulation (EC) on coordination of social security systems. COM (1998) 779 final, 21. 12. 1998.

[11] JORENS, YVES, SCHUYTER, BARBARA DE AND SALAMON, CINDY: *Towards a rationalisation of the EC Co-ordination Regulations concerning Social Security?* Academia Press, Ghent, 2007. p. 11.

[12] Regulation No 3 of the Council concerning social security for migrant workers. OJ 30 of 16 December 1958.

[13] Regulation No 4 of the Council laying down detailed rules for implementing and supplementing the provisions of Regulation No 3 concerning social security for migrant workers. OJ 30 of 16 December 1958.

[14] On the first generation of social security Coordination Regulations see CORNELISSEN, ROB: *50 years of social security coordination. European Journal of Social Security*, 2009/1-2. pp. 11-13.

[15] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems. OJ L 166 of 30 April 2004 (hereinafter also referred to as Basic Regulation or BR).

[16] Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems. OJ L 284 of 30 October 2009 (hereinafter also referred to as Implementing Regulation or IR).

[17] C- 293/83 Françoise *Gravier* v City of Liège. ECLI:EU:C:1985:69.

[18] VAN DER MEI, ANNE PIETER: *Coordination of student financial aid systems: Free movement of students or free movement of workers?* in: PENNINGS, FRANS and VONK, GIJSBERT (eds.): Research Handbook on European Social Security Law. Edward Elgar Publishing, Cheltenham, 2015. p. 487.

[19] Council Regulation (EC) No 307/1999 of 8 February 1999 amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 with a view to extending them to cover students. OJ L 038 of 12 February 1999.

[20] Article 2 BR.

[21] The personal scope of the current regulations was extended to third country nationals by Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality. OJ L 344 of 29 December 2010. The Regulations

Therefore, the next section is dedicated to the determination of applicable law in case of mobile students under the Coordination Regulations.

IV. Applicable legislation to students

When a person uses his/her right to free movement, potentially more than one Member States are involved. The legal collision can lead to either a positive[22] or a negative conflict[23] of laws, both of which are undesirable under European law. Under the Coordination Regulations, in each case the first thing that has to be defined is which country is competent for the social security benefits in question. The competent Member State is where a person is covered by the social security system including the healthcare system and which is responsible for the financing of the sickness benefits even if obtained in another Member State.

Conflicting rules have the potential to impede free movement, thus have to be prevented.[24] One of the main principles of the Coordination Regulations is that in every given situation only a single legislation can be applied, which means that there is always one, but strictly not more than one country the legislation of which must be applied.[25] The Coordination Regulations define a set of rules which are designed to avoid the complications occurring when different legislations collide and to designate the applicable legislation.[26]

The Basic Regulation provides that to persons, not carrying out a professional activity or working as civil servants, not receiving unemployment benefits or serving in the armed forces in one of the Member States, the legislation of the Member State of residence applies.[27] This implies that economically non-active persons, such as students engaged in academic training, are typically subject to the legislation of the country where they live (*lex loci domicilii*). It is of utmost importance which country is the competent Member State and in order to determine this, the place of residence of the student shall be identified. However, this issue is sometimes far from being as simple as it might seem at first. In case of mobile students, the question manifests itself: *when a student goes abroad to study,*

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are applicable only if two conditions are fulfilled, namely these persons are legally resident in the territory of the European Union, and they are in a situation which is not confined in all respects within a single Member State. Article 1 of Regulation 1231/2010.

[22] It results in the application of the legislation of multiple Member States at a time and potentially leads to double taxation and overlapping of benefits.

[23] The national laws involved mutually exclude each other, thus the person concerned is not covered by either legislation at a time leading to the possibility to escape social security obligations, but also to lack of benefits.

[24] JORENS et al. 2007. p. 17.

[25] Article 11 (1) BR.

[26] Title II BR.

[27] Article 11 (3) (e) BR.

must he/she be considered as still residing in the Member State of origin or does he/she become a resident of the Member State of his/her studies?

To answer this question, the coordination rules on residence shall be scrutinised. The following definition is given in the Basic Regulation: residence is the place where a person *habitually resides*.[28] However, no other criterion was originally added, so it was the Court of Justice of the EU (CJEU) that described the circumstances which shall be taken into account when determining the Member State of residence, in particular the migrant person's family situation; the reasons which have led him/her to move; the length and continuity of the residence; the fact that he/she is in stable employment; and his/her intention as it appears from all the circumstances. These criteria were then incorporated into the Implementing Regulation, which now provides for a kind of two-limb test.

It stipulates that if the Member States involved (in case of mobile students, these are the Member State of origin and the Member State of the place of studies) cannot agree on the determination of the Member State of residence, they must establish *the centre of interests of the person* concerned, based on an overall assessment of all available information relating to relevant facts, especially (1) the duration and continuity of presence on the territory of the Member States concerned[29] and (2) the person's situation.[30] If this assessment does not result in an agreement, (3) the person's intention, as it appears from such facts and circumstances, especially the reasons that led the person to move, shall be considered to be decisive for establishing that person's actual place of residence.[31] These elements of the residence-test are detailed below.

(1) Concerning the *length of the stay* abroad, it shall be highlighted that Union law does not make a distinction between *temporary stay and residence* according to their lengths. As the CJEU has said, all the circumstances have to be evaluated carefully on a case-by-case basis. So according to my understanding, a two years' stay of a master training may be considered a temporary stay if it is clear from the circumstances that the student maintained substantive links with his/her country of origin and intends to return to this state, whereas a four-week long summer school may already be considered residence if the student intends to habitually reside in that Member State and shows signs of integration such as opening a bank account, buying a flat, or enrolling in a language course. In fact, the CJEU stated in its judgement in *Swaddling*[32] that *the length of residence in the Member State cannot be regarded as an intrinsic element of the concept of residence.*[33]

The CJEU's recent judgement reaffirmed this interpretation.[34] Mr I, an Irish resident who performed a professional activity in Ireland and the United Kingdom, was holidaying

[28] Article 1 (j) BR.

[29] Article 11 (1) (a) IR.

[30] Article 11 (1) (b) IR.

[31] Article 11 (2) IR.

[32] C-90/97 Robin *Swaddling* v Adjudication Officer. ECLI:EU:C:1999:96.

[33] C-90/97 *Swaddling*, para. 30.

[34] C-255/13 I v Health Service Executive. ECLI:EU:C:2014:1291.

in Germany when he was admitted as an emergency patient to the university hospital in Düsseldorf. He was soon diagnosed with a rare, bilateral infarct to his brain stem, which resulted in severe quadriplegia and loss of motor function. Later he was found to have a genetic mutation affecting the composition of his blood and was diagnosed with cancer. Ever since he had been admitted to hospital, he remained gravely ill, wheelchair-bound and his health status required constant monitoring and treatment. As the Irish High Court pointed out, he was compelled to live in Germany due to his medical condition and the necessity of continuous treatment. During the legal proceedings, Mr I assured that he was willing to return to Ireland and was not attempting to integrate into German society. As a matter of illustration, he stressed that he kept contact with his family living in Ireland, that he had not opened a bank account or did not own any properties in Germany and that he did not speak German. In its decision, the CJEU declared that the simple fact that such a person has remained in a Member State, even continuously over a long period, does not necessarily mean that he resides in that State within the meaning of Regulation 883/2004 and for the purpose of determining a person's habitual centre of interests, *all relevant factors must be taken into account*, among which no hierarchy exists. Consequently, although Mr I had lived in Germany for a long time (more than 11 years), this situation did not reflect a personal choice on his part. Hence, he must be regarded as staying in Germany, not residing there.

(2) With regard to *the person's situation*, a broad scale of various circumstances must be taken into account: the nature and the specific characteristics of any activity pursued, in particular the place where such activity is habitually pursued, the stability of the activity, and the duration of any work contract; his/her family status and family ties, for example, the student's parents and siblings remaining in the country or origin or following him/her to the country of studies; the exercise of any non-remunerated activity, academic training does fall into this category; in the case of students, the source of their income, for instance, whether they receive financial support from the country of origin, either from their parents or from a scholarship fund or become beneficiaries of a scholarship in the country of studies; his/her housing situation, in particular how permanent it is, for instance it is a short-term rental on the open housing market or a long-term rental in a university home; the Member State in which the person is deemed to reside for taxation purposes.

(3) The *intention of the person* concerned must be assessed as it appears from all the circumstances, meaning that it must be supported by factual evidence. The mere declaration that a person considers or wants to have his/her residence in a specific place is not sufficient. The question of intention occurs when the institutions involved cannot establish the place of residence based on the assessment of the circumstances detailed earlier, thus the intention of the person acts as a *tie breaker*.

This is not the only situation in which the Regulations order the national institutions to make a legal decision based on the intention of the person concerned – a similar logic is used when making a distinction between planned and unplanned care and the intention of the person concerned is the decisive factor.[35] Although it is true that in most situations

[35] GREGA STRBAN (cd.), GABRIELLA BERKI, DOLORES CARRASCOSA BERMEJO and FILIP VAN OVERMEIREN: *Access to healthcare in cross-border situations*. Written in the framework of the FreSsco Project. 2016. pp. 35-39.

the factual circumstances reveal more or less clearly what the person's intention might be, this is not always so, and when doubts arise it is highly complicated to investigate and prove a mental condition such as intention behind a certain action. Mr. I's case was a good illustration of this.

It can be deduced from the arguments of the CJEU and the provisions of the Regulations that a student who spends several years abroad cannot be automatically considered residing there. Instead, his/her situation shall be evaluated carefully in order to determine where his/her centre of interest can be found and – based on this fact – which Member State is competent with regard to the healthcare services. So how does this assessment work in practice? Let us presume that there is a Romanian student who goes to study medicine in Hungary. His parents live in Romania. He rents a small apartment in Hungary. His studies are financed by his parents. He returns to his parents almost every weekend.

First, the length and the continuity of stay have to be investigated alongside with the features of his personal situation. What constitutes a link with Romania, as a Member State of origin, is that he frequently travels home, which also indicates strong family ties and his entire income comes from this country. In case of students, this is a particularly important factor. On Hungary's side the long-term non-remunerated activity and the stable housing situation must be taken into account. Nevertheless, it seems rather clear that in this situation the centre of interest remains in Romania despite the long-term stay in Hungary, thus the Romanian healthcare authority does not cease to be responsible for the healthcare of this student.

However, this situation can easily be turned around if some circumstances change. For instance, if the student stops visiting his parents often or starts to earn money or to receive financing in the Member State of studies. Then the first phase of the evaluation might not lead to a satisfactory solution or would bring an outcome opposite to what could be seen above. If the assessment of the length and continuity on one hand and the personal situation on the other hand cannot settle the case, the intention of the student must be inspected. In this case, factual evidences of the intention shall be examined. For instance, the willingness to return to Romania can be supported by taking up a traineeship position during the summer break in Romania.

If this test points to the conclusion that the student's centre of interest was transferred to Hungary, then the residence has shifted and Hungary, the Member State of studies becomes the competent Member State. In this case, it is up to the Hungarian national legislation to define how the student can gain access to healthcare in that country.

In the next two sections, these two reverse possibilities are detailed further.

V. Students staying abroad only temporarily

If a student does not transfer his/her residence to the Member State of studies, he/she can be considered only to be staying there temporarily for the period of the studies. European law

offers two possibilities in this case: he/she can rely either on the Coordination Regulations or on the Patient Mobility Directive.[36]

V.1. Coordination Regulations

Under the Regulations, in principle, the insured persons who stay in a Member State other than the competent Member State are entitled to sickness benefits in kind which *become necessary on medical grounds during their temporary stay.*[37]

In this case, the healthcare is provided by the Member State where the patient can be found at the moment of the need for healthcare, the Member State of temporary stay. The healthcare is provided on behalf of the competent state, meaning that this state determines the conditions of entitlement and bears the medical costs. Moreover, the patient is *fully integrated* into the healthcare scheme of the Member State providing the treatment, meaning that the healthcare is provided in accordance with the legislation of this country and that the patient must be treated equally as the patients insured in this country, as though he/she was insured there as well.[38]

There are issues though which are somewhat problematic in practice, such as the person holding the authority of deciding about the necessity of the healthcare on the one hand and the material scope of necessary care on the other have been subject to discussions.

A first question that arises is whose task it is to decide which benefits fall under the scope of necessary care. It should be pointed out that the necessity of the healthcare provision is evaluated on a case-by-case basis by the healthcare provider and that it must be determined in the light of *the nature of the benefits and the expected length of the stay.*[39] The healthcare practitioner who is in the physical proximity of the patient is in the optimal position to examine the person concerned, to estimate his/her health status and needs, and to decide whether the treatment is necessary. Therefore, the physician is in charge of taking the decision to provide the treatment as *necessary on medical grounds* or not. In accordance with the Regulation, this patient-specific assessment must be based on two concrete criteria: the medical status of the patient and the planned duration of his/her stay in the territory of the Member State concerned.[40] It is indeed a good solution to leave this decision to the healthcare professional who is able to provide the necessary treatment

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[36] Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare. OJ L 88 of 4 April 2011 (hereinafter also referred to as Patient Mobility Directive or PMD).

[37] Article 19 (1) BR.

[38] Article 19 (1) BR. See also Jorens et al. 2007. p. 34.

[39] Article 19 (1) BR.

[40] European Commission, DG Employment, Social Affairs and Inclusion (2011): Explanatory notes on modernised social security coordination – Necessary care. 2011. p. 3.

on the spot, but at the same time it requires that each healthcare professional all over the European Union is to be aware of these rules. It is questionable whether this is the case.[41]

The second question is related to the content of the healthcare, namely which benefits are covered by the concept of *care necessary on medical grounds*. Necessary care is – however often mixed up – a broader concept than *immediate or emergency care*, because it does not necessarily require the condition of immediate urgency of healthcare provision. At the same time, certain treatments principally cannot be considered necessary within the meaning of the Regulation, because they do not serve the basic goal of necessary care.[42] While defining this category, its aim has to be kept in mind: *to enable the insured person to continue his/her stay under safe medical conditions, taking account of the planned length of the stay*[43]and *to prevent an insured person from being forced to return, before the end of the planned duration of stay, to the competent Member State to obtain necessary care.*[44] Thus, the idea is to make available all benefits in kind which serve the purpose of avoiding the undesired interruption of the patient's stay abroad, but not to exceed this level of healthcare by providing benefits which can be obtained also at the patient's Member State of residence upon his/her arrival back home.[45]

Since mobile students often stay in the Member State of studies for longer periods, months or even years, the category of necessary care might be relatively wide in their case. For instance, if a patient struggles with his/her tonsils, a removal surgery will presumably be deemed unnecessary if the person is on a one-week holiday and he/she will be advised to see his/her doctor after his/her return to the competent Member State. However, if a mobile student faces such symptoms and is not returning to his/her Member State of origin for another four months, the operation can be accepted to be necessary and provided for him/her in the Member State of studies.

There are two important requirements to keep in mind if an insured person intends to use the coordination route. Firstly, he/she must be able to present a *proof of entitlement* to the sickness benefits in kind issued by the competent institution for the healthcare provider in the Member State of stay.[46] Currently, the European Health Insurance Card is used for

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[41] In my opinion, each Member State has the obligation – as a way of carrying out the Regulations – to train its healthcare professionals in this sense and to ensure that healthcare professionals practicing in its territory are able and willing to provide foreign patients with healthcare in accordance with the EU legislation.
The Implementing Regulation confirms this opinion by stipulating that the competent authorities shall ensure that their institutions are aware of and apply all the Community provisions, legislative or otherwise, including the decisions of the Administrative Commission, in the areas covered by and within the terms of the Basic Regulation and the Implementing Regulation. Article 89 (3) IR.

[42] An example can be aesthetic surgery.

[43] Decision No 194 of the Administrative Commission of 17 December 2003 concerning the uniform application of Article 22(1)(a)(i) of Council Regulation (EEC) No 1408/71 in the Member State of stay, 1. OJ L 104 of 8 April 2004.

[44] Article 25 (A) (3) IR.

[45] For instance, the majority of dental treatments fall under this category, so dental care is rarely provided as necessary care.

[46] Article 25 (A) (1) IR.

this purpose.[47] Secondly, the healthcare must be obtained *from a public healthcare provider.* Only in this case are the costs of necessary care reimbursed,[48] meaning that under the Regulation's regime, reimbursement cannot be claimed for medical treatment provided by private healthcare providers functioning beyond the scope of the public healthcare system. This restriction can very well be seen as a budget control tool: Member States intend to avoid being obliged to reimburse the definitely higher private charges. By doing so, they do reduce patients' freedom of choice.

V.2. Patient Mobility Directive

Since 2013,[49] healthcare can be obtained abroad also on the basis of the so-called Patient Mobility Directive. By adopting this piece of legislation, a *parallel system* was created, offering the patient the *possibility to choose.*[50] There are remarkable differences between the two patient-paths though. On the coordination route of patient mobility, medical costs are only reimbursed if the healthcare is obtained at a contracted healthcare provider.[51] On the route of the Directive, however, this restriction does not exist; Member States are obliged to reimburse the costs for treatments obtained either at contracted or at non-contracted providers.[52] Therefore, if necessary care is provided by a non-contracted provider, the Directive ensures a *higher level of protection for patients.*

However, the financial provisions of the Directive are much less advantageous. According to the coordination rules, the healthcare costs incurred abroad are fully covered in principle. The Directive's financing mechanism is based on the idea that the reimbursement of cross-border healthcare costs may not affect the financial balance of the competent Member State. Patients can thus claim reimbursement up to the level of domestic tariffs in that country. If the actual costs exceed this amount, the Member States cannot be obliged to bear the difference, which therefore remains the expense of the patient. Additionally, whereas the Regulations primarily require the institutions involved to settle the claim for reimbursement between each other without the patient needing to advance the costs of the treatment, under

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[47] On the EHIC, see among others BERKI GABRIELLA: *Quo vadis EHIC? Az Európai Egészségbiztosítási Kártya múltja, jelene és jövője.* Med. Et Jur. 2014/2. 4-7. p

[48] In most of the cases this implies that the provider has a contract with the responsible institution of the Member State of stay.

[49] The Directive had to be transposed by the Member States by 25 October 2013. Article 21 (1) PMD.

[50] On this double-system, see among others BERKI GABRIELLA: *Rendelet vs. esetjog: Vajon nyer rajta a beteg?* in Zadravecz Zsófia (szerk.): Tavaszi Szél 2011 Konferenciakötet, Budapest, 2011. 27-33. p

[51] Member States have the freedom, of course, to reimburse costs of treatments provided by non-contracted or private providers, but they are not obliged to do so.

[52] Administrative Commission for the Coordination of Social Security Services: Guidance note of the Commission services on the relationship between Regulations (EC) Nos 883/2004 and 987/2009 on the coordination of social security systems and Directive 2011/24/EU on the application of patients' rights in cross border healthcare. AC 246/12, 21 May 2012, p. 4.

the Directive, the patient is invited by the healthcare provider to pay the invoice upfront, after which he/she can claim posterior reimbursement from the competent Member State.

From the patients' point of view, both financial characteristics are more beneficial under the Regulations, and the less favourable financial scheme of the Directive has the potential to prevent patients from using their rights conferred on them by the Directive.

In most of the cases, it is more beneficial for mobile students to use their EHIC abroad in accordance with the rules of the Regulations, but it might offer additional protection that in case the healthcare provision falls outside the scope of the Regulations when obtained from a private provider, at least part of the healthcare costs is covered by the Directive.

VI. Students residing abroad

In the rarer case, when mobile students move and transfer their residence, the competence with regard to healthcare is transferred from the Member State of origin to the Member State of studies, which now becomes the Member State of residence, thus the competent Member State. With this, a new question appears: how a student can be affiliated to the national healthcare scheme of this – newly competent – Member State.

It has to be underlined that when it comes to social security, including healthcare, the Member States have *most of the legislative power* in this domain.[53] This implies that *in the absence of harmonisation at Community level, it is for the legislation of each Member State to determine, first, the conditions concerning the right or duty to be insured with a social security scheme and, second, the conditions for entitlement to benefits.*[54] Consequently, the national legislation of the Member State concerned can answer the question above.

Nevertheless, despite the discrepancies, a few common points can be recognised: *"personal affiliation of students to the Member States' healthcare systems is usually linked to attending educational courses, registration with a school or university or paying school fees. Their affiliation to the healthcare scheme is generally subsidised by the state and subject to age limits."*[55]

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[53] Article 153 (1) (c) TFEU.

[54] See Coonan, C-110/79, EU:C:1980:112, 12; Paraschi, C-349/87, EU:C:1991:372, 15; Stöber and Piosa Pereira, Joined Cases C-4/95 and C-5/95, EU:C:1997:44, 36; Decker EU:C:1998:167, 22; Kohll EU:C:1998:171, 18; Geraets-Smits and Peerbooms EU:C:2001:404, 44, 45, 85; Müller-Fauré and Van Riet EU:C:2003:270, 100; Inizan EU:C:2003:578, 17; Watts EU:C:2006:325, 92; Stamatelaki EU:C:2007:231, 23; Commission v Spain EU:C:2010:340, 53; Elchinov EU:C:2010:581, 40, 57; Commission v France, C-512/08, EU:C:2010:579, 29; Commission v Luxemburg EU:C:2011:34, 32.

[55] Strban et al. 2016. p. 19.

VII. Conclusion

I myself did benefit enormously from studying and researching opportunities abroad during my academic training. This is one of the reasons why I firmly believe that European student mobility holds a huge potential and students should be supported in any possible ways to try themselves under foreign circumstances before entering the labour market. This support must include the abolition of obstacles which might hold students back. Problems associated with access to healthcare abroad are one of them. The legal framework is given on European level to ensure cross-border access to healthcare. A coherent and universal application of these rules would mean a big step forward.

BERKI GABRIELLA

EURÓPAI HALLGATÓI MOBILITÁS A SZOCIÁLIS BIZTONSÁGI KOORDINÁCIÓ NÉZŐPONTJÁBÓL

(Összefoglalás)

Jelen tanulmány azt vizsgálja, hogy az Európai Unióban a szabad mozgás jogával élő vagy élni kívánó felsőoktatási hallgatók hogyan tudnak egészségügyi ellátásokat igény bevenni külföldi tanulmányaik során. Kiindulási pontként a román egészségügyi hatóság ellentmondásos gyakorlata szolgált, amely alapján minden, külföldön tanuló hallgatót, aki nem Erasmus-ösztöndíjjal ment másik tagállamba, megfosztottak román egészségügyi jogosultságától mondván, külföldön telepedett le, tehát az az ország felel az egészségügyi ellátásaiért.

A tanulmány rámutat arra, hogy a valóság ennél jóval összetettebb és a hallgatók jogosultsági kérdései kapcsán valóban döntő szerepe van annak, hogy hol található érdekeltségeik középpontja. Ennek megállapítására a Koordinációs Rendeletek tartalmaznak szabályokat.

Ezen túl a tanulmány bemutatja, milyen szabályok érvényesek azon diákok egészségügyi ellátásaira, akik csupán ideiglenesen tartózkodnak külföldön, és azokra is, akik valóban áttelepednek egy másik államba.