APPLICATION/REQUÊTE N° 19898/92

B C v/SWITZERLAND

B C c/SUISSE

DECISION of 30 August 1993 on the admissibility of the application

DÉCISION du 30 août 1993 sur la recevabilité de la requête

Article 8, paragraph 1 of the Convention *The positive obligations which may be derived from the right to respect for private life do not compel the legislator (Switzerland) to require reimbursement of the cost of medical treatment provided by doctors not participating in an insurance scheme*

Article 9, paragraph 1 of the Convention *An act which does not directly express a belief is not a "pratice" protected by this provision, even though it is motivated or influenced by it In this case choice of a doctor does not constitute manifestation of a belief*

Competence *ratione materiae* *The Convention does not guarantee as such a right to free choice of a doctor*

(TRANSLATION)

THE FACTS

The applicant is a Swiss national born in 1944 He is an engineer and lives in Sierre.

The facts of the case, as submitted by the applicant, may be summarised as follows

On 27 March 1980 the Valais Medical Association, on the one hand, and the Valais Federation of Sickness Insurance Funds (FVCM) and the Valais Federation of Friendly Societies, on the other, concluded an agreement designed in particular to lay down scales for the medical fees chargeable by doctors in the canton of Valais who had signed the agreement.

The applicant is insured by the Swiss Friendly Society Helvétia (SSSMH), *inter alia* in respect of expenditure on pharmaceutical products and additional expenditure in the event of treatment in hospital. The SSSMH is a member of the FVCM.

In 1987 and 1988 the applicant was treated by Dr. T.

On 28 February 1989 the SSSMH informed him that it would refuse to reimburse that doctor's fees as he had not acceded to the agreement of 27 March 1980 It confirmed its refusal by a decision of 13 March 1989

The applicant appealed against the SSSMH's decision to the Sion Cantonal Insurance Tribunal, arguing that it was *ultra vires*

In a decision of 18 February 1992 the Cantonal Insurance Tribunal dismissed the applicant's appeal

It pointed out that, according to the case law of the Federal Insurance Tribunal, sickness insurance funds were not obliged to reimburse the fees of doctors not participating in the scheme The free choice of doctor instituted by the Law of 13 June 1911 on sickness and accident insurance was not absolute but conditional, being restricted to doctors participating in the scheme

The Cantonal Insurance Tribunal also noted that the applicant had been informed that Dr T had decided not to accede to the Valais agreement on medical fees, but had not taken account of this warning The Tribunal considered that there was no question of casting doubt on the professional competence of Dr T It pointed out that the canton of Valais had a large number of doctors participating in the scheme, and concluded that the applicant had to bear the financial consequences of his decision

The applicant appealed to the Federal Insurance Tribunal

In a decision dated 14 July 1992 the Federal Insurance Tribunal dismissed the appeal It referred to the established case law in this field, to the effect that it was open to sickness insurance funds to decide not to reimburse the cost of treatment provided by doctors not participating in an insurance scheme

COMPLAINTS

The applicant alleges a violation of Articles 8 and 9 of the Convention

1 He complains of the decision taken by his sickness insurance fund refusing to reimburse the cost of treatment by his doctor on the ground that the latter had not acceded to the agreement of 27 March 1980 He maintains in that connection that the refusal of reimbursement deprived him of the right to consult the doctor who had his trust and constituted an interference with his private life in breach of Article 8 of the Convention

2 The applicant also complains of a violation of Article 9 of the Convention He alleges that in attempting to induce him not to consult the doctor in question any longer the Swiss authorities intended to dissuade him from exercising his freedom of thought and the freedom to manifest his beliefs

THE LAW

1. The applicant complains of the decision refusing to reimburse the cost of treatment by his doctor. He considers that this decision limited his right to the free choice of medical assistance and infringed his right to respect for his private life, as set forth in Article 8 of the Convention.

Article 8 of the Convention is worded as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission notes in the first place that the right to the free choice of medical assistance is not as such included among the rights and freedoms guaranteed by the Convention (No. 7289/75 and No 7349/76, Dec 14 7 77, D R 9 p. 57).

However, even supposing that the right in question could be derived from Article 8 of the Convention, the Commission considers that while a refusal to reimburse the cost of treatment carried out by a doctor not participating in an insurance scheme may be an important factor in the choice of a doctor, it does not do away with the right to the free choice of medical assistance. It notes that the applicant claims, not that the State must avoid intervening, but rather that it should take steps to modify the existing system The question therefore arises whether effective respect for the applicant's private life created a positive obligation for the Swiss authorities in this area.

The Commission recalls that the notion of "respect" enshrined in Article 8 is not clear-cut. This is the case especially where the positive obligations implicit in that concept are concerned, as in the instant case, and its requirements will vary considerably from case to case according to the practices followed and the situations obtaining in the Contracting States In determining whether or not such an obligation exists, regard must be had to the fair balance that has to be struck between the general interest and the interests of the individual (see, among other authorities, Eur. Court H.R., B. v. France judgment of 25 March 1992, Series A no 232-C, p. 47, para. 44).

The Commission observes that, in requiring their policy-holders to be treated only by doctors participating in the scheme, the parties to the agreement in issue were pursuing the objective of protecting insured persons from the risk of overcharging by doctors. It considers that this public interest concern justified restricting the right of those insured to the free choice of medical assistance.

It notes in that connection that most of the member States have adopted similar legal rules in this area If account is taken of the wide margin of appreciation which is to be left to member States in these matters and the need to protect the interests of others in order to attain the desired balance, the positive obligations derived from Article 8 cannot be held to go so far as to compel the Swiss parliament to require reimbursement of the cost of medical treatment provided by doctors not participating in an insurance scheme

The Commission therefore considers that the right of sickness insurance funds under the relevant legislation to refuse to reimburse the cost of medical treatment provided by doctors not participating in an insurance scheme does not constitute a failure by the public authorities to respect the applicant's private life

It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 27 para 2 of the Convention

2 The applicant further complains, on the basis of the same facts, of an infringement of his right to freedom of thought, as guaranteed by Article 9 of the Convention

Article 9 para 1 of the Convention provides

> Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance '

However, according to the Commission's case-law, when the actions of individuals do not actually express the belief concerned they cannot be considered to be protected by Article 9 para 1, even when they are motivated or influenced by it (see Arrowsmith v the United Kingdom, Comm Report 12 10 78, para 71, D R 19 pp 5, 20)

The Commission considers that in this case the applicant did not, in choosing his doctor, express his beliefs within the meaning of Article 9 para 1, but rather manifested his esteem for his doctor's skill and the importance he attached to the Hippocratic oath

It follows that the remainder of the application is likewise manifestly ill-founded and must be rejected pursuant to Article 27 para 2 of the Convention

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE