



Media relations
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Press Release

regarding judgment C-5603/2017 of 14 September 2018

Minimum case numbers for surgeons ruled lawful

The Federal Administrative Court has upheld the decision by the Government Council of the Canton of Zurich to stipulate minimum case numbers for certain surgical procedures. These numbers are intended to serve quality assurance purposes and may be introduced with effect from 1 January 2019.

When it published its list of hospitals as at 1 January 2019, the Canton of Zurich stipulated additional quality assurance requirements, introducing in particular minimum case numbers per surgeon in six medical disciplines (which would affect specific procedures in certain areas of gynaecology, surgery of musculoskeletal medicine and urology). The Canton of Zurich also required hospitals to implement quality controls such as certification. A number of regional hospitals in Zurich have appealed to the Federal Administrative Court (FAC) against the decision.

Minimum case numbers to improve quality assurance

In a landmark judgment, the FAC has concluded that a canton may impose quality requirements on performance mandates that it awards to hospitals on its list. The disputed requirement regarding minimum case numbers per surgeon is adequately grounded in Swiss federal law, serves the public interest and does not violate the principle of proportionality. No additional basis in cantonal law is required. Setting minimum case numbers will serve quality assurance purposes. Although this requirement is linked to the activities and qualifications of individual surgeons, it is targeted at the hospitals themselves, to which the canton has awarded a performance mandate within the framework of mandatory health insurance.

The hospital is thus obliged to ensure that only surgeons who have reached the requisite minimum number of cases and can thus demonstrate sufficient practical experience are entrusted with the relevant operations. By contrast, the Swiss Health Insurance Act does not provide for an admission system regarding individual hospital doctors performing inpatient treatment under mandatory health insurance.

No infringement of economic freedom

The court has also ruled that setting minimum case numbers does not violate the

principle of economic freedom. It has furthermore considered lawful the fact that the Canton of Zurich will be introducing this new instrument shortly before implementing the planning horizon in 2020, which envisages a comprehensive plan for its hospitals including a new needs analysis and a re-evaluation of all its performance mandates. Finally, the move to introduce quality controls, especially the certification requirement, has also been deemed compliant with federal law.

Eight further appeals still pending

In the pilot verdict being covered here, the FAC rejected the appeal by the Bülach Hospital. The court has yet to rule on a total of eight further appeals from hospitals relating to the same questions.

This judgment is final and may not be appealed to the Federal Supreme Court.

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About the Federal Administrative Court

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 357 employees (307.65 FTE) and its 76 judges (68.2 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 7,500 judgments every year.