

TechLaw Clinic - Case 2022

Facts

The year is 2035. Mr. Horace Munk, a French citizen and second year law student at the Catholic University of Lyon, is also an accomplished sportsman, having competed in international snowboarding competitions since the age of 12.

However, this intensive practice of sports, after several injuries, led his doctor to recommend that he undergo a routine operation to replace the menisci and cruciate ligaments of his knees. He therefore decided to have the operation during the All Saints' vacation so that he could resume training as soon as possible in December. His doctor assures him that the new techniques only require a two-day hospitalization and that he should have fully recovered after one week. The operation is therefore scheduled for October 27, 2035.

The civilian hospices of Lyon have set up a system for registering and referring patients for pre-hospitalization. To do this, patients must connect to the "HCLservices" application. Mr. Munk loaded this application on his smartphone and chose the option "log with Facebook" and agreed to share all data with the application.

He is then in contact with a chatbot "Paulo" who asks him questions to better welcome him during his hospital stay. Paulo initiates the conversation and asks him questions about his culinary preferences, bedding, music or movies. Paulo then summarizes all these elements and proposes to Mr. Munk a hospital package that amounts to 800 euros for two days and that summarizes all these elements. A copy of the conversation with the chatbot is attached to the contract.

The price is actually calculated by the application, which has detected that Mr. Munk is potentially able to pay this amount (and no more) because of information crossing of his place of residence, his hobbies and his relations.

Mr. Munk accepts the offer made by the application, which tells him that, for this type of dispute, the administrative justice code stipulates that the case must be brought before the virtual administrative tribunal (TAV) if the case involves compensation of less than 5000 euros.

The operation goes perfectly well. However, in the hospital Mr. Munk finds out that his room is of very limited quality. The bed is very uncomfortable. The temperature of the room is badly regulated and especially while he thought he had clearly indicated to the chatbot that he was a vegetarian, he receives meat-menus. Also his musical choices are not respected because instead of the baroque music he had mentioned in his conversation, he is entitled to the complete concerts of "Gigi Seven", a post-zumba band of which he ironically relayed a clip on his Facebook page.

Warned by an article in the magazine Lyon Scoop about the pricing system adapted to financial capacities, Mr. Munk, through a small survey of people hospitalized at the same time as him, noticed that the prices were very variable, ranging from 100 euros to 800 euros.

The dispute

He therefore started a procedure in front of the virtual administrative court asking to set aside the pseudo contract and to compensate him: by reimbursing him 1) a sum of 700 euros to align the price paid with the lowest price found and 2) a compensation of 1000 euros for the unsuitability of the conditions of stay to his demands.

The virtual administrative court is a method of automatic dispute resolution provided for by the administrative justice code for small compensation disputes (less than 5000 euros). It replaces the administrative court for the first instance judgment and consists of a procedure entirely managed by a system based on artificial intelligence and analyzing the claim and the defense produced to produce the most probable solution from the totality of the jurisprudence. In case of appeal, on the other hand, the appeal is presented before a normal administrative court of appeal.

The virtual administrative court rejects Mr. Munk's claim in its entirety.

The means considered

Mr. Munk plans to rely on the following grounds:

- 1) Incompatibility of the "virtual tribunal" procedure with article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms
- 2) Misuse of private data
- 3) Discrimination in pricing