



Case 2001-131n

C. C., n°2001-131n, 30 October 2001

Country: Belgium

Region: Europe

Year: 2001

Court: Constitutional Court

Health Topics: Health care and health services, Health systems and financing

Human Rights: Freedom from discrimination, Right to life, Right to social security

Facts

Illegal migrants who had applied for regularization were de facto condoned on the territory pending their application, but were not entitled to full social services; they were only entitled to urgent medical care. In contrast, asylum seekers who were appealing a rejection and foreigners residing legally in the country were entitled to full social services.

The question arose whether this was in violation of article 23 of the Belgian Constitution (right to a life in dignity) read together with article 11.1 of the International Covenant on Economic, Social and Cultural Rights (right to an adequate standard of living) and article 3 of the European Convention on Human Rights (prohibition of torture, inhuman or degrading treatment or punishment). Technically, the issue was raised as one of discrimination of certain categories of foreigners, as the Court of Arbitration had at the time only the power to verify the conformity of legislation with the non-discrimination provisions and right to education provisions in the Belgian Constitution.

Decision and Reasoning

The Court held that it was not unreasonable to limit social services to urgent medical care pending the regularization procedure, as it was not sure that the conditions for regularization had been met. The Court gave deference to the legislature as the legislation used objective distinctions in determining the granting of social assistance.

Decision Excerpts

"B.3.3. ...

When the legislator wants to pursue a migration policy and therefore imposes rules that have to be fulfilled in order to legally reside on the territory, he uses an objective and pertinent distinction insofar as meeting the conditions entails consequences for granting social assistance.

The policy on access to the territory and the stay of foreigners would be undermined if it was to be assumed that for illegally residing foreigners in Belgium the same conditions would need to apply as for those who reside legally in Belgium."

"B.3.8. The regularization offers illegal migrants a chance to acquire a legal residence status, and thus also to secure a right to social assistance in accordance with Article 57, §1 of the law on the Public Centers for Social Welfare, despite their clandestine residency or the exhaustion of previous procedures. Meanwhile, urgent medical care is guaranteed. Moreover, they can obtain a temporary work permit on the basis of the Circular of 6 April 2000 on the temporary work permit for foreign nationals who have applied for regularization of residency, as replaced by the Circular of 6 February 2001 and foresee in their upkeep.

In light of the above, it is not manifestly unreasonable that, whilst awaiting the outcome of the regularization procedure, and while it therefore has not yet been established that the conditions of regularization have been met, the social assistance guaranteed to the applicants is limited to urgent medical care."