



## In the matter of Article 26 of the Constitution and the Health (Amendment) (No.2) Bill 2004

[2005] I.E.S.C. 7 (Ir.)

**Country:** Ireland

**Region:** Europe

**Year:** 2005

**Court:** Supreme Court of Ireland

**Health Topics:** Aging, Health care and health services, Health systems and financing, Hospitals

**Human Rights:** Right to health

### Facts

The Health (Amendment) (No.2) Bill of 2004 was referred to the Supreme Court for review. Primarily the Supreme Court was asked to analyse the constitutional validity of the bill. Amendment to Section 53 of the Act imposed certain charges mostly on elderly people with limited means for in-patient treatment by public health services. Further, the amendment retrospectively made charges legal, which were not allowed under the previous regulation. Therefore no recovery claims against those charges could be made.

It was argued that citizens particularly elderly people with no means have a constitutional right to human dignity and health and the State should be responsible for their care and protection.

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### Decision and Reasoning

The Court held that the imposition of charges was no unconstitutional as the Bill provided adequate safeguards in relation to constitutional rights. However the Court stated that the retrospective application was unconstitutional, as it would violate the constitutional right to protection of property of persons. As the retrospective element of the Bill did not allow a person any right of recovery, the Court stated that such abrogation of right could be allowed only in exceptional cases.

### Decision Excerpts

“The level at which charges can be fixed by the Minister is narrow in scope, ranging from a nominal charge to 80% of the pension referred to. It was clearly the intention of the Oireachtas that any charges would not cause undue hardship generally or in individual cases and, no doubt, this is why it fixed the maximum charge at 80% of the pension on a judgment that this in itself should not cause undue hardship. On the other hand, if, hypothetically, the real value of the said pension was to fall over time because, for example, its level failed to keep pace with the rate of inflation, the Minister would be bound to avoid imposing charges, even within the scope open to him, that caused undue hardship generally. That is, at least implicitly, the intention of the Bill. The Minister in fixing charges within the limited scope granted to him must take into account the twin policies of the Act of making resources available to the health board from those who can pay the charges for the service provided without undue hardship and avoiding any general effect of undue hardship (as distinct from undue hardship that may arise because of the special circumstances of an individual).

In these circumstances, the court is satisfied that the imposition of charges by the Minister pursuant to the section in question would be no more than the implementation of the principles and policies contained in the Act and the power delegated to him to make the regulations is compatible with the Constitution.” (Para 52-53)

“Moreover, it is evident from the terms of the Bill and the submissions on behalf of the Attorney General, that the persons who are affected by its retrospective provision are being required by the Bill to bear the consequential burden of the unlawful charges in order to protect the exchequer generally, or the health budget in particular, from that burden. The rationale for so doing, according to the submissions of the Attorney General, is that these were persons who actually benefited from the services in question. The court does not accept this as a rational basis for requiring that class of person to bear the burden of the ultimate cost of the charges which were unlawfully imposed on them. Those persons are in no different position from

all other persons who enjoyed a whole range of free statutory services or benefits under the Health Acts. The fact that they received a service to which they were freely entitled by statute is not a distinguishing feature. Their only distinguishing feature is that they were unlawfully charged for the service. It is, in effect, for this reason that their property rights are being abrogated.â€• (Para 131)

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