Stamen Filipov to the Constitutional Court

112/2003-0-0

Country: Macedonia
Region: Europe
Year: 2004
Court: Constitutional Court
Health Topics: Health care and health services, Hospitals
Human Rights: Right to favorable working conditions, Right to health

Facts

The Petitioner, Stamen Filipov, challenged a provision regulating right to strike for employees in health care organizations from the Law on Health Care (the Law). The provision stipulated that health care workers had a right to strike as long as doing so did not risk the life and health of citizens. Accordingly, it laid down conditions for health care workers to exercise their right to strike. These were, first, that emergency care and the core organizational functions of the health care organization needed to be retained during the strike, and second, the various tasks and functions meeting these criteria would be determined by a general act of the health care organization.

The Petitioner contested the second requirement in the provision, arguing that the importance of protecting the right to health for citizens required strikes of health care workers to be governed by law or collective agreement, rather than a general act of the health care organization. The importance of the fundamental right to health could not be regulated with anything less than a law. He challenged the provision from the Law on grounds of the following constitutional provisions: Article 8 (para.1, lines 3 and 4), Article 32 (para.5), Article 38 and Article 51.

Decision and Reasoning

The Court held that the challenged provision violated the Constitution.

It considered that the Constitution allowed a right to be regulated by law in order to ensure the enjoyment of other rights and freedoms. In this case, the Law attempted to balance the right to health with the right of workers to strike, as the disruption of health services caused by a strike of health workers could have severe consequences for a fundamental social interest. The Law ensured that at all times, there would be a minimum level of health care provided.

However, the Court considered that allowing each health organization to independently determine which services would be continued during a strike did not adequately guarantee that the right to health would be protected. It distinguished between a situation where a general act would simply regulate the implementation of criteria already defined in the Law, and the present situation, where each health organization could independently define the coverage provided by the Law their acts. The challenged provision allowed health organizations to decide the terms and conditions of health worker strikes on their own, without reference to law. It was therefore unconstitutional.

Decision Excerpts

â€œHealth care activity and the health care itself belong to the group of activities that the law defines as activities of special social interest related to their primary meaning for the lives and health of people. Considering the characteristics of health care, as mechanism that secures the exercise and protection of what is inextricably bound with the human existence, it is quite clear why the legislator determined it as an activity of special social interest. Hence, the state is undertaking measures in terms of creation and provision of conditions for health care to be exercised at all times and in all situations, including times of a strike. This, above all, refers to the provision of a minimal level of health protection that will eliminate, or at least reduce to a minimum, the possibilities of harmful consequences for the lives and health of people that could arise from non-provision of the health care. The strike, as a legitimate means of the workers for exercising other rights (economic and social above all), represents organized termination of work, which in its terms leads to a disturbance of the regular working process. This disturbance brings into question the needed level of health care, whereupon

the legislator authorizes the health care organization to determine, by general act, all matters and tasks whose completion is necessary in order to remove all harmful consequences that could arise from non-provision of the health care to citizens during the time of a strike.â€• Section 5.

â€œYet, according to the opinion of the Court, the establishment of the conditions under which this right can be exercised in this exceptionally important sphere of life and health of people, can only be subject to legislation, and in no case to the general act that would be brought by the health care facility itself. The Court marked that health care and its influence on the life and health of all citizens is too subtle and important, and thus the authorization of health care facilities to independently, by general act, determine these matters and tasks, the completion of which is necessary for removal of possibly harmful and negative consequences, is considered to be unacceptable.â€• Section 5.

â€œThe Court marked that this is not a case of simple operationalization of the legal provision from paragraph 1 of the Article 171-b, i.e. that the general act of the organization will only further stipulate the means of implementation of what is already defined in the Law itself, but also in this case the health care facility determines the matters and tasks by a general act, i.e. by grasping into the essence of the matter, it gains the right to independently determine what must be provided in times of strike in its own general act. With this, health care facilities are given the space to determine, create or change by their own act the existing conditions under which the right to strike in health care sector can be exercised, and not to do it based on law, and due to this, the Court found that the contested provision is not in accordance with the above mentioned provisions of the Constitution of the Republic of Macedonia.â€• Section 5.