



Macedonian Trade Union Association to the Constitutional Court

23/1996-0-0

Country: Macedonia

Region: Europe

Year: 1996

Court: Constitutional Court

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

Human Rights: Right to health, Right to social security

Facts

The Macedonian Trade Union Association and the Trade Union of Construction, Construction Material Industry and Design of the Republic of Macedonia challenged the constitutionality of Articles 11, 16 paragraph 3 and 203-a of the Law on amending and supplementing the Law on Health Care (the Law).

Article 11 of the Law required insured workers to prove that their employers had paid a health insurance contribution in order to access health services. The plaintiffs disputed this requirement as insured workers did not receive their salary for several months and were therefore unable to fulfill the Article 11 condition. The plaintiffs alleged that as a result, workers and their family members were denied the legal right to compulsory insurance under Article 34 of the Constitution, which guaranteed citizens the right to social security and social insurance, and their right to health care, as guaranteed by Article 39 of the Constitution, were limited.

Article 16 paragraph 3 of the Law set out the formula for health insurance contributions, which included the lowest salary per employee as determined by collective agreement. According to Article 203-a of the Law, until a lowest salary was determined via collective agreement, the basis on which to calculate health insurance contributions would be 65% of the average net salary in that worker's sector from the preceding month. The plaintiffs challenged these Articles by alleging that determining the lowest salary was a right of parties in collective bargaining, and that there were no specifications as to how the lowest salary was to be determined.

Decision and Reasoning

The Court did not allow the plaintiffs to initiate proceedings regarding the constitutionality of Articles 11, 16 paragraph 3 and 203-a of the Law.

The Court noted that Article 3 of the Law affirmed citizens' right to protection of health, and that Article 37 of the Law regulated the scope of the rights of insured persons as they are defined in Article 35 of the Law.

The Court held that the constitutionality of Article 11 of the Law could not be put into question because it specifically anticipated that insured workers' health rights be regulated in certain ways, such as requiring proof of employer health insurance contribution.

The Court also held that Article 16 paragraph 3 of the Law, as it related to Article 203-a of the Law, could not be contested since the legislature had the right to determine the way in which resources were distributed in order to realize constitutionally protected rights, which included setting the basis for calculating health insurance contribution. In other words, the Court recognized a dilemma resulting from mutually dependent conditions: first, collective bargaining could not move forward without information that included the lowest salary of workers. This figure was necessary to calculate the amount of health insurance contribution to be made by employers. This paralysis resulted from lack of legislative direction as to which collective agreement should be used (general, sector or employer-level basis). Finally, the Court held that the judiciary could not resolve the legislative root of the dilemma because the legislature had the right to determine the manner in which citizens' right to health insurance could be fulfilled.

Decision Excerpts

