



Case 2002-026f

C. C., n°2002-026f, 30 January 2002

Country: Belgium

Region: Europe

Year: 2002

Court: Court constitutionnelle [Constitutional Court of Belgium]

Health Topics: Health systems and financing, Medical malpractice

Human Rights: Freedom from discrimination, Right to due process/fair trial

Facts

A medical provider was accused of having provided unnecessary medical services paid for by the mandatory healthcare and benefits insurance regime of Belgium, in violation of Article 73 of the Law relating to mandatory healthcare and benefits insurance (‘‘Healthcare Law’’), which prohibited the provision of unnecessarily expensive or superfluous services. The medical provider contested the fact that the case was in front of an administrative court, arguing that, because the case concerned a civil right, the case had to be heard in front of the judiciary. He claimed that the Healthcare Law violated Article 6.1 of the European Convention on Human Rights and Article 14.1 of the International Covenant on Civil and Political Rights, in particular, the right to an impartial and independent judge.

The National Institute for Health and Disability Insurance (INAMI) Medical Control Service challenged Articles 142 and 157 of the Healthcare Law as violating articles 10 and 11 of the Constitution.

Decision and Reasoning

The Court held that when the legislator delegated the disputes in question to an administrative jurisdiction, it did so by rightly considering the matter as a political right, rather than a civil right. As such, the Court decided that this did not violate the equality and non-discrimination principle protected by the Constitution in terms of the judiciary protections afforded in the context of cases on civil rights decided by judicial bodies, which are not afforded in the context of administrative jurisdictions.

Decision Excerpts

‘‘Selon B. Simoens, le constat qu’il a fourni des prestations superflues ou a prescrit des examens et traitements inutilement onéreux crée une contestation ayant pour objet un droit civil. En confiant cette contestation à une juridiction administrative, le législateur l’a soustrait, de façon discriminatoire, à la juridiction des tribunaux et le prive donc également des garanties de l’article 6.1 de la Convention européenne des droits de l’homme et de l’article 14.1 du Pacte international relatif aux droits civils et politiques, en particulier de la garantie d’un juge impartial et indépendant.’’

A son estime, le droit du médecin d’exercer sa profession en toute liberté thérapeutique et de diagnostic est un droit civil. » Para. A.1.

‘‘According to B. Simoens, the statement that he has provided superfluous services or prescribed unnecessarily expensive examinations and treatments creates a contestation on a civil right. By delegating to an administrative jurisdiction such a contestation, the legislator subtracted him, in a discriminatory manner, from the jurisdiction of tribunals and thus deprives him from the guarantees of article 6.1 of the European Convention on Human Rights and of article 14.1 of the International Covenant on Civil and Political Rights, in particular the guarantee of an impartial and independent judge.’’

In his view, the right of the doctor to exercise his profession in full therapeutic freedom and freedom of diagnostic is a civil right. » Para. A.1.

‘‘La loi relative à l’assurance obligatoire soins de santé et indemnités, coordonnée le 14 juillet 1994, prévoit un système d’intervention dans les frais de prestations médicales. Le bon fonctionnement de ce système suppose que les dispensateurs de soins, qui sont associés à l’application de cette loi et qui coopèrent en ce service public, ne prescrivent ni exécutent des prestations inutilement onéreuses ou superflues.’’

charge du régime d'assurance obligatoire soins de santé et indemnités. »

The Law relating to mandatory healthcare and benefits insurance, coordinated on 14 July 1994, created an intervention system in the medical services fees. The good functioning of this system supposes that the care dispensers, which are associated to the enforcement of this law and thus cooperate to a public service, do not prescribe nor execute unnecessarily expensive or superfluous services paid for by the mandatory health and benefits insurance. • Para. B.6.

« Les contestations en cause ont donc pour objet l'appréciation du respect des obligations du dispensateur de soins en tant qu'il collabore à un service public. Lorsqu'elle statue en la matière, la Commission de contrôle agit dans l'exercice d'une fonction qui se trouve dans un rapport tel avec les prérogatives de puissance publique de l'Etat qu'elle se situe en dehors de la sphère des litiges de nature civile au sens de l'article 144 de la Constitution. Il s'ensuit que le législateur a pu qualifier le litige concernant l'interdiction d'intervention dans les frais de prestations médicales de contestation qui a pour objet un droit politique, au sens de l'article 145 de la Constitution.

Le législateur a donc pu, en application de la possibilité que lui offre l'article 145 de la Constitution, confier le contentieux relatif à un tel droit politique à une juridiction administrative disposant en la matière d'une compétence de pleine juridiction, créée en application de l'article 146 de la Constitution. » Para. B.7.

The contestations in question thus are on the appreciation of the respect of the care provider's obligations as he contributes to a public service. When it decides on the matter, the Control Commission is acting within the exercise of a function in such a relation with the public power prerogatives of the State that it is located outside of the sphere of disputes of a civil nature under article 144 of the Constitution. As such, the legislator was able to qualify the dispute on the prohibition to intervene in the fees for medical services as a contestation on a political right, in accordance with article 145 of the Constitution.

The legislator thus was able, pursuant to the possibility offered by article 145 of the Constitution, to delegate the dispute relating to such a political right to an administrative jurisdiction having full jurisdiction in the matter, created pursuant to article 146 of the Constitution. • Para. B.7.

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