



Case 2005-169

C. C., n°2005-169, 23 November 2005

Country: Belgium

Region: Europe

Year: 2005

Court: Court constitutionnelle [Constitutional Court of Belgium]

Health Topics: Health systems and financing, Medicines

Facts

The lower court referred to the Constitutional Court a question as to the constitutionality of certain provisions regarding the obligatory health care and compensation insurance; the challenged provisions treated equally those pharmaceutical companies which were producing drugs of human origin and those pharmaceutical companies which were producing drugs chemically prepared or by recombination.

The claimant, the Central Fractionation Unit of the Belgian Red Cross argued that it produced drugs of human origin with specific production and marketing conditions and therefore should not be subject to the same requirement to pay annual charges and make contributions of its sales. The respondent, the Council of Ministers, argued that because the claimant produced drugs qualifying for reimbursement there was no real difference between drugs sold by the claimant and the chemically-prepared or recombined drugs sold by other pharmaceuticals companies which would justify separate treatment.

The lower court asked the Constitutional Court to consider whether these provisions violated the constitutional principle of equality and non-discrimination by deciding if there was a reasonable justification to treat those two categories of companies differently regarding health insurance charges.

Decision and Reasoning

The Court noted that the objective of the challenged provision was to curb the increase of drugs consumption. With that rationale in mind, the Court concluded that, since the Central Fractionation Unit of the Belgian Red Cross was a company aiming at making profits and provided drugs that were on the list of reimbursable health care products, the equal treatment with other producers of such drugs was justified. The fact that the organization also produced drugs of human origins aiming a specific segment of the market did not constitute a reason for the challenged provision to not be objectively and reasonably justified. Therefore, the challenged provision did not violate the principle of equality and non-discrimination protected by articles 10 and 11 of the Belgian Constitution.

Decision Excerpts

B.2.2. The charges or contributions imposed by the provisions at issue fall within the alternative financing of the health and disability insurance and is a continuation of an existing scheme of many years. The contributions are due by the pharmaceutical companies that generate sales on the Belgian market for drugs which are on the list of the pharmaceutical reimbursable products.

B.2.3. The Central Fractionation Unit of the Belgian Red Cross, which is a company aiming at making a profit, provides pharmaceutical products that are on the list of the reimbursable products, targeted in article 35bis of the Law of 14 July 1994. This justifies the equal treatment with the other producers corresponding to the aforementioned conditions.

B.2.4. The fact that the Central Fractionation Unit of the Belgian Red Cross also produces drugs of human origin, prepared by a specific process and intended to a small segment of the market, does not imply that the non-exemption of the charges or the contributions imposed by the provisions at issue as a measure that would not be objectively and reasonably justified.