



Case 2009-0023

No. 4379 & No. 4396. C. C., n°2009-0023

Country: Belgium

Region: Europe

Year: 2009

Court: Constitutional Court [Court Constiutionelle]

Human Rights: Freedom from discrimination, Freedom of association

Facts

Three non-profit organizations concerned with Belgian healthcare and nursing brought forward a plea seeking to annul a 2007 law relating to the representation of homecare nurses within the Conventions Committee of Nurses. At a later date, another non-profit organization brought forth a plea challenging Articles 2-5 of the 2007 law. The Constitutional Court heard both pleas jointly.

The Conventions Committee regulated the financial and administrative relationships between beneficiaries and insurance organizations, as well as the relationships between several categories of healthcare providers. The disputed provision had the objective of reorganizing and improving the representations of homecare nurses within the Committee by taking into account the fact that homecare nursing is provided by both salaried and independent nurses. The law aimed to reduce the tension between independent and salaried homecare nurses, and better defend the interests of the independent homecare nurses.

The pleas alleged that the 2007 law violated constitutional principles of jurisdictional competence, equality and freedom of association.

Decision and Reasoning

The Court dismissed the pleas, holding that the 2007 law was constitutionally valid.

The first plea argued that the disputed law violated the jurisdictional competence rules. The law required that professional associations of independent nurses hoping to act as representatives within the Committee must represent nurses from at least two regions of Belgium. Additionally, the law did not guarantee linguistic parity among the representatives within the Committee. The Court held that the disputed provisions regulated a matter that was within federal jurisdiction. The disputed provision set a criterion for recognizing organizations as representatives. By setting this criterion, the law was not modifying jurisdictional rules. In terms of linguistic parity, the Court held it did not follow from the jurisdictional rules that the committee must be divided equally along linguistic lines.

The second plea argued that the 2007 law violated the rule established in a 2003 Constitutional Court decision relating to homecare health services. The Court held that the 2007 law did not have the same objective as the law annulled in the 2003 decision, and therefore the two laws could not be compared. The 2003 decision annulled a law that allowed only salaried personnel and staff access to certain health insurance benefits, and was unrelated to the representation of nurses within the Committee.

Both pleas argued that the disputed provision violated freedom of association, by not permitting mixed organizations comprising independent as well as salaried nurses within the Committee. Given that the principal objective of the legislature was to reduce tensions between independent and salaried nurses, taking into account the specificities of each profession, the Court held it reasonable that only organizations that exclusively represented independent or salaried nurses could be within the Committee. Additionally, the Court held it did not affect freedom of association because this right did not entail freedom to be part of the Committee.

Both pleas challenged that the appointment of independent homecare nurse representatives was done by a survey of members of professional organizations, whereas representatives of salaried nurses were elected. Examining the legislative reasoning behind this discrepancy, the Court held it was justified. Electing the representatives of salaried nurses reflected the situation on the ground. There would be a number of

administrative difficulties in establishing elections for the independent nurses representatives, but such a system was already in place for the salaried nurses.

Both pleas alleged that the disputed provision unlawfully excluded certain categories of independent nurses from representation, namely nurses who occasionally did independent work but were primarily salaried employees. The Court held this exclusion was justified for the same reason that mixed organizations composed of independent and salaried nurses could not be representatives within the Committee, because nurses who were solely independent or salaried would best represent the specificities of the profession.

Both pleas challenged the requirement that professional associations included within the Committee must represent nurses from at least two linguistic regions, because it would prevent nurses from the same community or region to create associations to defend their specific interests. The Court held that the purpose of this requirement was to ensure sufficient representativeness of the nursing associations. The law did not exclude associations targeting a specific community or linguistic group, such as the German community, it simply stated that such an association must be represented in at least two regions to be recognized by the Committee. The Court held that this condition did not imply that all national nurses should be grouped into two communities, or two linguistic groups.

Both pleas challenged the restriction that prevented salaried homecare nurses from electing their members themselves to the Committee. Employers, homecare service companies, and insurance organizations elected four representatives of salaried nurses, looking only at members of two specific nursing associations. The applicants argued that in order to become representatives they therefore had to be members of one of these two associations, infringing on their freedom of association. The Court held it was reasonable that salaried nurses elected to the Committee would be chosen from these two associations. This choice was not disproportionate given that effective representation of salaried nurses was assured within these associations. Also, the two associations served a specific purpose distinct from the insurance organizations, and therefore the Court held that these associations were not merely representing the insurers interests.

Decision Excerpts

â€œLa Cour a annulé l'article 24, 1^o, de la loi [2001] au motif qu'il réservait aux seules organisations exclusivement le personnel salarié ou statutaire le bénéfice des interventions forfaitaires de l'assurance obligatoire soins de santé et indemnités excluant d'autres formes d'organisation des mêmes soins de santé de ces interventions ayant été considérées comme non pertinentes par rapport à l'objectif poursuivi par la mesure annulée par la Cour n'avait pas le même objet que la loi attaquée dans la présente affaire, laquelle concerne la représentation des praticiens de l'art infirmier du secteur des soins à domicile au sein de la commission de conventions.â€ (B.9.2)

â€œThe Court annulled Article 24, 1^o, of the [2001] law on the grounds that it reserved the benefit of fixed-rate assistance from compulsory health insurance and allowances only to salaried homecare workers and staff excluding other types of employees from the same benefits, which was not considered relevant to the pursued objective. The measure annulled by the Court did not have the same objective as the contested act in this case, which concerns the representation of homecare sector nurses in the Conventions Committee.â€ (B.9.2)

â€œ[L]e législateur ayant notamment pour objectif de réduire les tensions entre les infirmiers indépendants et infirmiers salariés, en tenant compte des spécificités liées à l'exercice d'une profession selon qu'elle est exercée comme indépendant ou comme salarié, il pouvait raisonnablement prévoir que seules des organisations représentatives exclusivement des uns ou des autres siègent au sein de la commission de conventions. Cette mesure est également pertinente pour mettre fin à la situation existant avant la modification législative, lorsqu'une seule organisation d'infirmiers représentant à la fois des infirmiers indépendants et des infirmiers salariés détenait ensemble des mandats.â€ (B.10.2)

â€œ[The legislature having the particular goal of reducing tensions between independent nurses and salaried nurses, in taking into account specificities linked to the profession depending on whether it is practiced independently or as a salaried employee, it could reasonably foresee that only organizations exclusively representing one or the other sit on the Conventions Committee. This measure is equally relevant for putting an end to the situation that existed before the legislative change, when only one nursing organization representing independent and salaried nurses held office.â€ (B.10.2)

En imposant aux organisations de s'adresser statutairement aux infirmiers au moins deux régions, le législateur a pour objectif d'assurer une représentativité suffisante des associations professionnelles appelées à représenter les infirmiers indépendants. Contrairement à ce que soutiennent les parties requérantes, l'article 4, § 2, troisième tiret, de la loi attaquée n'exclut aucune association qui serait créée sur la base de son appartenance communautaire ou linguistique, toutes les associations devant être représentées dans deux régions au moins, ce qui n'implique pas qu'elles doivent nécessairement regrouper des infirmiers ressortissant de deux communautés ou deux groupes linguistiques différents. (B.14.2)

By requiring organizations to target nurses from at least two regions, the legislature aims to ensure sufficient representativeness of professional associations called to represent independent nurses. Contrary to the applicants' submission, Article 4 s. 2, third paragraph of the contested law does not exclude any association created on a community or linguistic basis, all organizations must represent at least two regions, which does not necessarily imply consolidating national nursing into two communities or two different language groups. (B.14.2)

Copyright © 2015 www.GlobalHealthRights.org