



## Case 2009-166f

C. C., n°2009-166f, 29 October 2009

**Country:** Belgium

**Region:** Europe

**Year:** 2009

**Court:** Constitutional Court [Court Constitutionnelle]

**Health Topics:** Health systems and financing, Medicines

**Human Rights:** Freedom from discrimination

### Facts

The National Institute of Health and Disability Insurance (INAMI) sued the defendant company Aktuapharma for payment of fees. The defendant company was a parallel importer, importing pharmaceutical products from other countries to Belgium. A specific brand-name drug available in Belgium might be available in another country at a cheaper price. The defendant company would import these drugs directly from the other country, without any involvement from the pharmaceutical company that manufactured the drug, and sell them on the Belgian market. INAMI alleged that the defendant owed them the payment of fees that all pharmaceutical companies must make, based on the sale of specialty reimbursable pharmaceutical products. The defendant refused to pay these fees, on the grounds that they did not manufacture any pharmaceutical products and were subjected to a different licensing scheme. A question was posed to the Constitutional Court whether imposing these fee obligations on parallel importers violated the principles of equality and non-discrimination, Articles 10 and 11 of the Constitution.

### Decision and Reasoning

The Court held that the obligations imposed on parallel importers by INAMI did not violate Articles 10 and 11 of the Constitution. The Court considered the equal treatment of parallel importers and pharmaceutical manufacturers, as well as the unequal treatment of parallel importers and wholesale distributors of pharmaceutical products. In both instances, the Court held that the treatment of parallel importers was constitutionally valid.

In terms of imposing the same fees on pharmaceutical manufacturers and parallel importers for the sale of specialty reimbursable pharmaceutical products, the Court examined the legislative reason behind such fees. The fees were meant to ensure that pharmaceutical companies contribute to financing the national health insurance scheme, since their profits depended on being reimbursed by INAMI after people purchased medicine through their health insurance plans. While the nature of their businesses is different, the Court recognized that both parallel importers and pharmaceutical manufacturers profited from placing specialty reimbursable pharmaceutical products on the Belgian market in the same manner, and should therefore be subject to the same fees.

The Court held that treating wholesale distributors of pharmaceutical products and parallel importers differently was justified. Wholesale distributors were not required to submit their sales numbers to INAMI, since they did not have to pay the same fees. Parallel importers generated profits by putting certain products on the Belgian market and asking for reimbursement from INAMI. Working in tandem with manufacturers rather than directly putting products on the Belgian market, wholesalers distributed products for which reimbursement had already been asked, Wholesalers profits were less directly dependent on the existence of the national health insurance scheme, and their differential treatment was therefore justified. Â Â Â

### Decision Excerpts

â€œLes cotisations et redevances en cause ont pour but de maintenir en Ã©quilibre le budget de lâ€™assurance maladie-invaliditÃ© obligatoire, notamment en obligeant les acteurs Ã©conomiques qui rÃ©alisent un chiffre dâ€™affaires sur la base de cette assurance obligatoire Ã  contribuer Ã  son financementâ€™- (B.10.1)

â€œThe contributions and fees in question have the objective of maintaining a balanced obligatory health insurance budget, specifically by forcing economic actors that profit from the obligatory insurance to contribute to its financingâ€™- (B.10.1)

â€œLes grossistes-distributeurs de mÃ©dicaments diffÃ©rent des importateurs parallÃ©les en ce qu'ils ne mettent pas de mÃ©dicaments sur le marchÃ© belge. Ils n'interviennent que plus tard dans le processus commercial. Par consÃ©quent, ils ne sauraient influencer lâ€™offre de mÃ©dicaments de la mÃªme maniÃ¨re que les producteurs ou les importateurs parallÃ©les de médicaments.â€•- (B.15)

â€œWholesale distributors of medicine differ from parallel importers in that they do not place medicine on the Belgian market. They only intervene later in the sales process. Therefore, they do not influence the supply of medicine in the same manner as manufacturers or parallel importers of medicine.â€•- (B.15)

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