



## Case 2009-171

No. 4611. C. C., n°2009-171

**Country:** Belgium

**Region:** Europe

**Year:** 2009

**Court:** Constitutional Court [Court Constiutionelle]

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

**Human Rights:** Freedom from discrimination

### Facts

The applicant pharmaceutical company, which marketed cheaper, generic drugs, brought forward a claim against the "Institut national d'assurance maladie-invalidité" (National Institute for Health and Disability Insurance). The lower court referred a question to the Constitutional Court about whether Article 191 of the law concerning compulsory health insurance and benefits violated the principle of equality, as per Articles 10 and 11 of the Constitution. The law held that a fee be charged to pharmaceutical companies based on their sales of products registered on the list of specialty, reimbursable pharmaceuticals. This fee was calculated as a percentage of the pharmaceutical company's total annual revenue. The same percentage was used to calculate the fee regardless of whether the pharmaceutical company marketed cheaper, generic medicines or brand name medicines. The question sought to determine whether calculating the fee in the same manner was unconstitutional.

### Decision and Reasoning

The Court held that the disputed provision was constitutional. It was reasonably justified that no distinction was established between the different categories of pharmaceutical companies.

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The fee levied on pharmaceutical companies in the Belgian market for sales of specialty, reimbursable pharmaceutical products constituted the contribution of the pharmaceutical industry to financing social security programs. This fee was justified because the existence of compulsory health insurance programs contributed to the sales numbers of pharmaceutical companies. Given that these health insurance programs contributed to the sales of companies marketing both generic and brand-name medicines, the Court held it was not justified to distinguish between these two categories.

Pharmaceutical companies selling both generic and brand-name medicines were reimbursed by the State social security scheme for selling the products covered by the disputed provision. The Court recognized that the companies selling cheaper, generic medicines generated savings for the State, since the amount they had to be reimbursed was significantly less than companies selling more expensive, brand-name medicines. Despite this, the Court held that the legislature could not be expected to take into account all the possible variables impacting the profit margins and reimbursement rates of pharmaceutical companies.

### Decision Excerpts

"La circonstance que la mise sur le marché de médicaments génériques engendrerait des économies pour l'assurance soins de santé et indemnités ne change rien au fait que l'admission de ces médicaments sur la liste des spécialités pharmaceutiques remboursables contribue à la réalisation du chiffre d'affaires des entreprises en question et elle ne permet d'insister lors pas de considérer le traitement égal en cause comme étant une mesure qui n'est pas objectivement et raisonnablement justifiée." (B.10.)

"The circumstance that putting generic medicines on the market would create savings for the health and disability insurance program does not change the fact that the presence of these medicines on the list of specialty reimbursable pharmaceuticals contributes to the revenues of the businesses in question and they do not permit considering the equal treatment in question as being a measure that is not objectively and reasonably justified." (B.10.)

â€œEu Ã©gard Ã l'objectif des cotisations, on ne peut pas attendre du lÃ©gislateur qu'il tienne nÃ©cessairement compte, lorsqu'il fixe les critÃ©res de l'obligation de cotisation, de toutes les variables possibles des marges bÃ©nÃ©ficiaires sur le chiffre d'affaires qui forme la base des cotisations.â€• (B.10.)

â€œWith regard to the objective of the fees, one cannot expect the legislature, when it fixed the criteria for the fees, to take into account all the possible variables affecting profit margins, that form the basis of the fees.â€• (B.10.)

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