



Case 2009-170

No. 4607. C. C., n°2009-170, 29 October 2009

Country: Belgium

Region: Europe

Year: 2009

Court: Constitutional Court [Court Constiutionelle]

Health Topics: Health care and health services, Health systems and financing, Hospitals

Human Rights: Freedom from discrimination

Facts

The applicants were two, non-authorized physicians registered with the Saint-Vincent-Sainte-Elisabeth Hospital Center. Non-authorized physicians, unlike authorized physicians, work in private settings and do not fall within the public national healthcare system. The applicants challenged the constitutionality of Article 46 of a 2006 law passed on health provisions, in that it treated authorized and non-authorized doctors in an identical manner, despite essential differences between these two categories. Article 46 restricted the conditions in which both authorized and non-authorized doctors could charge supplementary hospital fees to patients staying in individual, single bed hospital rooms.

Decision and Reasoning

The Court dismissed the challenge and upheld the contested law finding that it was constitutionally valid to impose the same limits on authorized and non-authorized doctors from claiming supplementary fees from patients staying in individual rooms. Belgian law stipulates four conditions in which doctors or hospitals are prohibited from charging supplementary fees to patients staying in individual rooms. The four conditions are (1) when the medical state of the patient or the technical requirements of the treatment necessitate an individual room, (2) when there are no available beds in two-patient or multiple patient rooms, (3) when the patient is admitted in an intensive care or emergency unit and is assigned a single bed independent of their desire for an individual room, (4) when the patient is a child whose parent(s) will be staying with them for the duration of his/her hospital stay.

The Court dismissed the applicants' challenge that these same conditions should not apply to non-authorized doctors. The Court noted that the primary concern behind these restrictions on charging supplementary fees is to ensure patient security and access to healthcare. Ensuring affordable access to medical treatment should be given priority over allowing doctors or hospitals to charge supplementary fees. The Court was opposed to imposing supplementary healthcare fees when there was no opportunity to discuss such fees with patients due to extraneous logistical reasons or medical reasons beyond their control, as compared to patients that demanded individual rooms and were able to appreciate the consequences of their choice. The Court found that charging patients supplementary fees when they could not appreciate the consequences of staying in an individual room would potentially constitute abuse.

The Court acknowledged the applicants' complaint that Article 46 treated authorized and non-authorized doctors in the exact same fashion, despite key differences between the two categories, The Court found that while such similar treatment was not always appropriate, in this case it was. The detrimental impact treating authorized and non-authorized doctors in the same manner was not disproportionate to the positive outcome of ensuring that patients could affordably access healthcare.

Decision Excerpts

“Toutefois, ces effets n'apparaissent pas disproportionnés au regard de la volonté du législateur de garantir l'accès aux soins de santé en améliorant la sécurité et la transparence dans le secteur hospitalier et d'éviter les abus qui s'y seraient produits, en évitant que des patients se voient facturer des suppléments d'honoraires en raison d'un séjour en chambre individuelle dont ils n'ont pu apprécier les conséquences.”- (B. 14.2)

“In any case these effects [on non-authorized doctors] do not appear disproportionate to the will of the legislature to guarantee access to healthcare, improve the security and transparency of the hospital sector,

and to avoid abuse that would be produced by charging patients supplementary fees for staying in individual rooms when they were unable to appreciate the consequences” – (B. 14.2)

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