



Case 95

Decision No. 95 of 9 June 2010

Country: Romania

Region: Europe

Year: 2010

Court: National Council for Combating Discrimination

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

Human Rights: Freedom from discrimination

Facts

The petitioner, the National Council for Combating Discrimination, alleged that Order No. 1352/2009 (the "challenged order") issued by the Ministry of Health, the defendant, violated the paragraph 1 of Article 1 and Article 10, pt (b) of Governmental Ordinance No. 137/2000, which prevented and sanctioned all forms of discrimination. The petitioner claimed that the challenged order used a point system for prioritizing requests for financing medical treatments abroad, which point system had the effect of disadvantaging persons over 60 years old.

In response to the claim, the defendant insisted that the age criterion was not disqualifying since even if a person who was over 60 years old obtained a lower score because of his/her age, such person could obtain a higher score on other priority criteria, depending on his/her medical situation. In addition, the defendant stated that all of the medical files (i.e., requests for financing treatments abroad) which had been submitted for 2009 for persons over the age of 60 had been approved. The defendant further evidenced that a new order, which would exclude the criteria of age, was to be issued.

Decision and Reasoning

The Court first noted the various guarantees against discrimination set forth in the Romanian Constitution, the European Convention on Human Rights (the "Convention") and the relevant Government Ordinance. It then discussed prior case-law from the European Court of Human Rights which had set forth that differential treatment was permissible under the Convention where such treatment had a legitimate aim and the means employed were proportional to such aim (with no other means available).

In this case, the Court found that the means employed did not accomplish their desired aim, that the challenged order may have triggered discriminatory effects (as persons over 60 may not have applied for financing treatment abroad for fear of being rejected) and that, considering the defendant was planning on excluding the age criteria from the future law, the means employed were not necessary. The Court therefore found that the challenged order represented an act of direct discrimination and recommended that the defendant amend the order to eliminate the age criterion.

Decision Excerpts

"When analysing the appropriate and necessary means, it must be ascertained if the means employed will achieve the desired aim and if there are no other available means that could have been used to reach the same aim without creating a situation of differential treatment.

On the one hand, it is ascertainable that the means employed did not reach the desired aim, since even the defendant stated that none of the requests pertaining to persons older than 60 were rejected. However, it cannot be said that the Order in question did not trigger discriminatory effects, since there is a possibility that persons over 60 years did not apply for the financing of treatments abroad, considering that they were older than 60 years and such an application would be worthless.

On the other hand, the defendant claimed that he wants to exclude the age criterion from the priority criteria, which shows that the means employed are not necessary.

The means employed are totally inadequate, affecting a category of persons who feel socially excluded and victims of the restrictive means sought by the Government. The only adequate means of prioritising can be

the application of objective and medical criteria that differentiate the patients according to diagnosis, risks, estimated benefits, etc. • Page 4.

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