

Decision 1316B/1995

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the basis of the petitions aimed at the subsequent examination and annulment of the unconstitutionality of the legal rule, the Constitutional Court has adopted the following

Decision:

The Constitutional Court rejects the petitions seeking the unconstitutionality of and to annul Section 24 Paragraph 4 of Government Decree 103/1995 (VIII. 25.) on Certain Issues of Social Security Funding of Health Care and its Annex No. 6.

Reasoning

I.

Based on Section 10 point i) of Act LXV of 1990 on Local Governments, bodies of representatives of several settlements filed petitions to the Constitutional Court, seeking the unconstitutionality and to annul Section 24 Paragraph 4 of Government Decree (hereinafter: GD) 103/1995 (VIII. 25.) on Certain Issues of Social Security Funding of Health Care and its Annex No. 6. The petitions were evaluated in one procedure.

According to the legal standpoint of the petitioners the challenged provisions of GD, which defines levels of care and factors in financing inpatient care, infringes the requirement of legal equality worded in Article 70/A of the Constitution, because, as a result of these financing regulations institutions providing inpatient care cannot guarantee equally to every citizen the emergence of the fundamental right to the highest possible level of physical and mental health, regulated by Article 70/D. According to the reasoning of the petitions based on Article 70/D of the Constitution every Hungarian citizen is entitled to equal inpatient care. If the government decree differentiates in financing different types of institutions, equal inpatient care cannot be guaranteed. The difference in financing by types of institutions does not guarantee equal opportunities for citizens living in different regions of the country and using the services of different institutions.

According to other petitions, the challenged provisions include discrimination between sick citizens based on the regions and the size of the hospital of the settlement.

II.

The Constitutional Court has established that the petitions are unfounded.

The challenged Section 24 Paragraph 4 of the GD rules that Annex No. 6 contains the definition of certain service levels to be used in financing active care services and the rates of their factors, while Annex No. 7 contains the nationwide flat rate of factors by professions. Annex No. 6 defines compensatory factors of the institution by groups and service levels. In this framework, in point of factors, it differentiates between different

categories of institutions providing inpatient care based on their service area, and the range of health care services the institution is able to provide.

These compensatory factors act as the correction of nationwide standard financing regulations, favouring those institutions that provide higher level of services, those institutions that provide services at the regional level or in several specialities within the same level of services, or provide services in a speciality that plays a particularly important role in the health care of the population.

Thus, these regulations differentiate between hospitals from financing aspect, based on the existing differences of services.

The standpoint of the petitioners, claiming that this at the same time means discrimination between the citizens using the services of the hospitals and an infringement of Article 70/A of the Constitution, is improper. According to Article 70/A Section 1 of the Constitution the Republic of Hungary shall ensure the human rights and civil rights for all persons on her territory without any kind of discrimination, such as on the basis of race, color, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever. This general legal equality requirement of the Constitution applies to the State obligation as public authority to treat entities equally when distributing the rights. It does not mean at the same time the equality of the entities based on aspects outside the law. The differences in health care services of citizens arising due to the uneven development of health care institution system and taking these into consideration when financing the institutions does not result in an unconstitutional discrimination infringing Article 70/A of the Constitution.

According to the standpoint of other petitioners the challenged provisions infringe the requirement of legal equality defined in Article 70/A as they exclude the emergence of the right to the highest attainable level of physical and mental health regulated in Article 70/D of the Constitution.

Article 70/D of the Constitution rules that every Hungarian citizen shall have the right to the highest possible level of physical and mental health and that the Republic of Hungary shall implement this right through the organization of labor safety, health care institutions, medical care, through securing the opportunities for regular physical activity, as well as through the protection of the built and natural environment. The Constitutional Court pointed out in its Decision 54/1996 (XI. 30.) that guaranteeing the right to the highest attainable physical and mental health worded in Article 70/D of the Constitution means a constitutional state duty that is realized through the systems of state central bodies, local governments and other authorities. Within this frame the state is obliged – among others – to maintain a health care system and organize medical care services. Judging what system and financing of health care and medical care is organized by the State to fulfil its obligation from Article 70/D of the Constitution pertains to the freedom and responsibility of the legislator, and constitutional judgment of the system – except for extreme cases (e.g. if certain regions completely lack health care institutions or medical services) - does not have a constitutional standard. Thus the infringement of Article 70/D of the Constitution cannot be stated in respect of those citizens who reside in a region where certain aspects of inpatient services are provided by hospital which are categorized as municipal hospital 2 or municipal hospital 3 by the challenged

provisions, and thus are financed based on more unfavourable factors. Accordingly unconstitutional discrimination between citizens based on the infringement of Article 70/D of the Constitution cannot be established either.

The challenged financing regulations do not affect the service entitlement of the insured under mandatory social security. Act II of 1975 on Social Security defines those health care services – including services within inpatient care – which the insured can claim based on health insurance. These services are not provided by one institution, but by the system of institutions financed by social security. It is not only the municipal hospital that provides services for those living in its working area but services are also provided by the county hospital and in different specialities by other institutions providing regional and national services. As a consequence of the challenged provisions the service entitlement of the insured does not derogate, the differentiation used in financing hospitals does not result in a discrimination regarding the service entitlement of the insured.

Based on all these the Constitutional Court decided that the provisions of Section 24 Paragraph 4 of the GD and its Annex No. 6 do not eventuate in discrimination between citizens infringing Article 70/A of the Constitution.

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