

Decision 537B/1994

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the basis of the petition 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 petition seeking the unconstitutionality of and to annul Section 7 Paragraph 5 of Government Decree No. 52/1993 (IV. 2.) on certain aspects of the social insurance financing of health services.

Reasoning

I.

Section 8 Paragraph 4 of Act LXV (1990) on Local Governments declares that local governments are obliged to provide basic health services. According to Section 129 Paragraph 1 of Act XX (1991) on functions and competences of local governments and its offices, commissioners of the Republic and certain organs under central subordination, local governments provide regional health services within the framework of basic health services. Local governments deliver these tasks either by operating their own institutions or by buying these services.

Independent family doctor services maintained by the local government and family doctor services provided within the framework of institutions providing specialized health services and maintained by the local government are qualified as institutions owned by the government. Besides these more and more local governments use the opportunity of contracting with medical enterprises. In both cases the obligation of the local governments is special as the operational costs of both, own institutions and enterprises providing tasks of the local government charge social security.

Government Decree No. 52/1993 (IV. 2.) covers certain aspects of the social insurance financing of health services. This decree includes provisions on covered charges of medical services and the methods and elements of the modeling of charges. One of these elements is the so-called professional factor in Section 7 Paragraph 5 of the Decree, which is to be determined based on the skill and the duration of medical practice of the doctor continuously providing the services. The petitioner requested the declaration of unconstitutionality and the annulment of these provisions. According to the petitioner using the professional factor in addition to the period served as a public servant and the number of registered patients results in different financial coverage per local governments of similar facilities, depending on the skill of the family doctor(s). This financial fund, necessary for fulfilling obligations based on the Act on Local Governments, discriminates between certain local governments. The petition did not name which provisions of the Constitution are conflicted by the provisions challenged.

II.

The petition is unfounded.

According to Paragraph 1 point c of Article 44/A of the Constitution, local governments are entitled to receive funds from the state to deliver tasks determined in the Act on local governments, and that they are entitled to state support proportionate to these tasks.

Article 70/A of the Constitution ensures equal rights to all persons in the territory of the Republic of Hungary and prohibits all discrimination that offends legal equality.

In connection with these two constitutional provisions and based on the content of the petition, the Constitutional Court had to examine whether the distinction, applied for services based on the skills of the doctors within the rules of the social security cover of health services as a local government obligation is a discrimination prohibited by the Constitution.

In this way it also had to be noted that according to Article 70/D of the Constitution everyone living in the territory of the Republic of Hungary has the right to the highest possible level of physical and mental health, and that this right is realized, amongst others, through the organization of medical care.

One of the tools of realizing the highest possible level of physical and mental health is the highest possible skill of the doctor providing health care services. The fee of doctors with higher skills and longer practice is also higher. This is covered by the higher social security support, which increases with the so-called professional factor for local governments employing doctors with higher skills. A higher level of services is not only realized by intellectual input but a more complete examination and care of the patient can also be manifested in the intervention performed, the equipment used, medicines and diagnostics.

Professional factor, as one of the elements of financing social insurance on the one hand covers the higher costs of more complex services associated with higher skills. On the other hand, it provides an opportunity for those operating GP services to assign professionals with the highest possible skills to provide basic health services for their inhabitants. These provisions constituting Article 70/D of the Constitution provide significant constitutional reason to allow differential support.

Taking all these into consideration, as the unconstitutionality could not be established, the Constitutional Court rejects the petition.

Budapest, October 20, 1994

Dr. Péter Schmidt

Judge of the Constitutional Court

Dr. Imre Vörös

Judge of the Constitutional Court

Dr. János Zilinszky

Judge of the Constitutional Court, Rapporteur