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Roll number: 2510
Judgement nº130/2003
of 8 October 2003

JUDGEMENT

At issue: the action for annulment of article 28 of the Law of 14 January 2002 establishing measures with regard to healthcare, introduced by the not-for-profit organization Belgian Association of Medical Unions and the Consortium of Belgian Professional Unions for Medical Specialists.

The Court of Arbitration,

composed of the Presidents M. Melchior and A. Arts, and of the Judges L. François, R. Henneuse, L. Lavrysen, J.-P. Snappe and E. Derycke, assisted by the court clerk L. Potoms, presided by the President M. Melchior,

after having deliberated, render the following judgement:

I. *Subject-matter of the legal action and procedure*

By way of a request addressed to the court through a registered letter in the mail on 22 August 2002 which reached the court on 22 August 2002, an action for annulment of article 28 of the Law of 14 January 2002 establishing measures with regard to healthcare (published in the *Moniteur belge* of 22 February 2002) was introduced by the not-for-profit organization Belgian Association of Medical Unions, for which the headquarters are located at 1050 Bruxelles, chaussée de Boondael 6, box 4, and by the Consortium of Belgian Professional Unions for Medical Specialists, for which the headquarters are located at 1050 Bruxelles, avenue de la Couronne 20.

The Council of Ministers lodged a statement and the complainants lodged a statement in response.

Through a judicial order of 22 May 2003, the Court declared the case in order and set an audience for 11 June 2003, solely as concerns admissibility, after having invited the parties to explain, in a complementary statement to be introduced on 2 June 2003 at the latest, the incidence of the action, in particular on the admissibility plan, on the repeal of article 173*bis* of the Law of 14 July 1994 by article 29, 6º, of the programme act of 24 December 2002, published in the *Moniteur belge* of 31 December 2002.

The Council of Ministers and the complainants introduced the complementary statements.

At the public audience of 11 June 2003:

- appeared before the Court:

- Me E. Thiry, lawyer at the Bruxelles bar, and Me M. Vander Drope, lawyer at the Liege bar, for the complainants;

- Me P. Boucquey, lawyer at the Bruxelles bar, for the Council of Ministers;

- the judges-rapporteur R. Henneuse and E. Derycke provided reports;

- the above mentioned lawyers have been heard;

- the judgement has been deliberated.

The provisions of the Special Law of 6 January 1989 on the Court of Arbitration establishing procedures and use of languages have been respected.

II. *As concerns the Law*

- A -

A.1 The Court invited the parties to explain, in a complementary statement, the incidence of the action, in particular on the admissibility plan, on the repeal of article 173*bis* of the Law of 14 July 1994 by article 29, 6º, of the programme act of 24 December 2002, published in the *Moniteur belge* of 31 December 2002.

A.2. As concerns their standing to act, the complainants estimate that it would only disappear if the annulment of the provision they are attacking would apply in a retroactive manner.

Failing that, they would maintain a standing to act, considering that "it shall not be excluded that care dispensers might have been troubled by the article as it was introduced by the Law of 14 January 2002".

In addition, they have an interest "in noting that the provision repealing article 173*bis* must be considered as a more favourable provision in law that justifies that even for facts relating to the period preceding its repeal, there must not be enforcement of the indemnity claim provided by article 173bis as introduced by the Law of 14 January 2002".

A.3. For its part, the Council of Ministers states that, considering the repeal of article 173*bis* contested by article 29, 6º, of the programme act of 24 December 2002, on the one part – for the future -, the annulment would not benefit the complainants more than a repeal and, on the other – as concerns the future -, article 173*bis* not having been subject to implementation measures, it cannot have caused grievance to the complainants. In addition, this reveals that the contested provision was replaced by an article 164*bis*, introduced by article 25 of the same programme act, of which the complainants have not requested the annulment. The required standing to act would therefore not be as such justified, according to the Council of Ministers.

- B -

B.1.1. The complainants request the annulment of article 173*bis* of the Law of 14 July 1994, introduced in this law through article 28 of the Law of 14 January 2002 establishing measures with regard to healthcare.

The contested provision read as follows:

"If the Medical Control Service or the Administrative Control Service, on its own initiative or after communication by an insuring body, finds that a care dispenser, despite a written warning, unduly charges benefits or has them charge by a third party, this care dispenser owes a compensatory allowance, in conformity with the conditions and modalities to be determined by the King and without prejudice of the sanctions and reclamations mentioned in title VII of this Law.

This indemnity is due for misconduct that does not exclusively relate to the disrespect of

instructions about the invoice data transmission stored electronically, adopted by the Insurance Committee under the provisions of the royal decree of 24 December 1963 establishing the healthcare benefits relating to mandatory healthcare and indemnity insurance.

This indemnity amounts to 20% of the amount erroneously charged for a first misconduct, and to 50% of the amount erroneously charged in cases of repeated misconduct during a two-year period.

The King determines the destination and the accounting method of indemnity received, as well as the portion eventually paid to the insurer."

B.1.2 Article 173*bis* was repealed by article 29, 6°, of the programme law of 24 December 2002, published in the *Moniteur belge* of 31 December 2002.

Pursuant to article 50 of the same law, the repeal comes into effect the fifteenth day of the second month following the publication of the law in the *Moniteur belge*, which in this case is 15 February 2003.

B.2. It follows from this repeal that, from this date, the action has lost its purpose. It is however relevant to examine if the action remains admissible, insofar as it relates to article 173*bis* above mentioned before this date.

B.3.1. According to the complainants, they maintain a standing to act as relates to the annulment of article 173*bis* insofar as "it shall not be excluded that care dispensers might have been troubled" by this provision.

B.3.2. It does not appear – and the complainants do not demonstrate this further – that article 173*bis* of the law of 14 July 1994 has, before its repeal, been enforced.

The Court finds in particular that have not been adopted the royal decrees, required by paragraphs 1 and 4 of article 173*bis*.

Since article 173*bis* has not been enforced and that it was repealed by article 29, 6°, of the programme law of 24 December 2002, a provision which was not contested, the complainants do not have standing to act for the annulment of the contested provision.

On these grounds,

the Court

rejects the action for annulment.

Hereby delivered in French, in Dutch and in German, in accordance with article 65 of the special law of 6 January 1989 on the Court of Arbitration, at the public hearing of 8 October 2003.

The court clerk, The President,

L. Potoms M. Melchior