



NEWS REPORT

Date: 9 June 2011
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Title: Sickness benefits for people aged 65 and older
Country: Estonia
Context
Issue at stake: Discrimination of an age group in access to sickness benefits
Ground of discrimination: Age
Source: Decision of the Supreme Court *en banc* of 7 June 2010 (case 3-4-1-12-10)
Field: Social protection, health

Content

Case: The case concerned working 67 years old I. I. was also an old age pensioner. According to Article 5 (2) 1 of the Health Insurance Act, persons who work on the basis of a contract of employment and for whom the employer is required to pay social tax are insured persons. Article 57 (5) says that an insured person has the right to receive sickness benefit for not more than a total of 250 calendar days per calendar year. However, insured persons who are at least 65 years of age have the right to receive sickness benefit in the event of an illness and injury for up to 60 consecutive calendar days for one illness but not for more than a total of 90 calendar days per calendar year (Article 57 (6)).

Due to these provisions I. did not receive his sickness benefit in full and filed a complaint with the court. A constitutionality control procedure was initiated by a second instance court.

Decision of the Court: The Supreme Court *en banc* (i.e. a chamber comprised of all justices of the Supreme Court) came to the conclusion that special provisions regarding sickness benefits for people aged 65 and older violated Article 12 (1) of the Constitution (equality before law; ban of discrimination). The limitations at stake were recognised as suitable and necessary but not proportionate. Article 57 (6) of the Health Insurance Act was claimed unconstitutional as regards limitations for people who are at least 65 years of age.

In this case the Supreme Court used the proportionality test, which was elaborated in its own practice. The principle of proportionality proceeds from the second sentence of Article 11 of the Constitution (restrictions of rights and freedoms “must be necessary in a democratic society and shall not distort the nature of the rights and freedoms restricted”).



The Supreme Court reviewed the conformity of the restriction to the proportionality principle through the three characteristics thereof - suitability, necessity and proportionality in the narrowest sense.

The Court rejected the argument that the limitations at stake were established in the interests of health protection of people aged 65 and over (because they in no way fostered the achievement of a goal). However, the goal to save health insurance financial means was recognized as both suitable and necessary (because it was not possible to achieve it by some other measures which were less burdensome on a person but which were at least as effective as the former). The Court argued that in order to decide on the proportionality of a measure in the narrowest sense the extent and intensity of interference with a fundamental right on the one hand and the importance of the aim on the other hand had to be weighed. The Court came to conclusion that setting limits for those 65 years of age and older was intensive interference with a fundamental right provided in Article 12 (1) of the Constitution (equality before law; ban of discrimination). In the context of proportionality age limits at stake were claimed unjustified. Furthermore the argument that people of this age group might receive old age pensions was dismissed as inappropriate.

Internet link source and additional information: <http://www.nc.ee/?id=11&tekst=222535250&print=1>