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FLASH REPORT

Country:	Slovakia
Title:	The Constitutional Court found to be discriminatory a legal provision that excluded people with severe health disability younger than 6 and older than 65 years from receiving state allowance for personal assistance and the purchase of a car
Date:	28 July 2020
Expert:	Vanda Durbáková
<u>Context</u>	
Issue at stake:	Discrimination of people with severe health disability over 65 years old
Grounds of discrimination:	Age, Disability
Field of application:	Social advantages, Social protection
Source:	National court decision
Applicable law:	The Constitution of the Slovak Republic No. 460/1992 Coll., as amended, Articles 1(1-2), 12(1), 13(4), 125(1), 151(a) and 130(1); Act No. 314/2018 Coll. on the Constitutional Court of Slovak Republic, Section 74 Act No. 447/2008 Coll. on financial allowances for the compensation of severe health disability, as amended, Sections 22(2) and 34(3) Articles 2(2) and 9 of the International Covenant on Economic, Social and Cultural Rights, Articles 5(1-2), 19(b), 20(a-b), Articles 5(1-2), 19(b) and 20(a,b) of the Convention on the Rights of Persons with Disabilities, Protocol No. 1 of the European Convention on Human Rights, Article 1

Content

Facts of the case: In September 2018, the Public Defender of Rights (the Ombudswoman) submitted a proposal to the Constitutional Court to initiate the proceedings on conformity of the particular wording of the domestic Act on financial allowances for the compensation of severe health disability with the Slovak Constitution and human rights treaties (UN CESCR, UN CRPD). The wording of the Act generally specified that 1./ only persons with severe health disability till reaching the age of 65 are eligible to receive the state allowance for the purchase of a car 2./ only persons with severe health disability from the age of 6 till reaching the age of 65 are eligible to receive the state allowance for personal assistance. Persons over 65 years were eligible to keep receiving the allowance for personal assistance only if it was already provided to them before reaching this age.

The Ombudswoman in its proposal argued that such an age restriction on receiving these allowances constitutes intersectional discrimination on the ground of age and health disability. She turned to the Constitutional Court after she was asked to investigate the issue by the Slovak Commissioner for Persons with Disabilities, who received complaints

from affected individuals and who found that the given wording of the Act violates their fundamental rights.

The Government, represented by the Ministry of Justice in the proceedings, argued that the given state allowance is only one specific form of the state support and the persons with severe health disability, who are not eligible to receive them, have possibilities to apply for other available financial support (such as allowance for nursing, parental allowance and others). The Ministry described a range of existing alternatives of the state support for persons, who are excluded from receiving the given allowances.

Decision of the court: The Constitutional Court in its ruling¹ complied with the Ombudswoman's proposal. It found that the given legal provisions constitute an inadmissible restriction on the exercise of the right to equal treatment on the ground of age. It essentially reasoned that the other existing state financial or other support that the Ministry of Justice described, has a different character since its recipients are other persons (such as parents or nurses taking care of persons with severe disability) and it pursues different goals. The Constitutional Court concluded that the legislator violated the relevant provisions of the UN CESC and UN CPRD Treaties and also violated Slovakia's obligation to recognise and comply with international treaties set by Article 1 of the Constitution. The Constitutional Court did not address the whole issue through the scope of intersectional discrimination as the Ombudswoman did and found the contested provisions discriminatory solely on the ground of age.

The ruling of the Constitutional Court came into force on 6 May 2020. By publishing the ruling, the discriminatory provisions of the Act have lost their effectiveness and are not applied to persons in individual cases anymore. At the same time, the National Council of the Slovak Republic (the Parliament) has to bring the discriminatory provisions into line with the Constitution within six months. If they do not do so, these provisions will lose their legal validity. Persons who have been rejected the given allowances on the ground of their age under the discriminatory provisions or who have not applied for these contributions, being aware of the legal obstacles, will be able to apply again.

The Ombudswoman in her press release welcomed the decision of the Constitutional Court, while considering it profoundly important for eliminating unequal conditions in accessing to various state allowances supporting the inclusion of people with disabilities in the active social life.

Key points of analysis: The Constitutional Court found to be discriminatory legal provisions conditioning financial allowances for persons with severe health disabilities by their age. According to the country expert, the contested legal provisions clearly constituted discrimination on the ground of age and the Constitutional Court's ruling resolved this problem.

Internet link source: The ruling is available in an online database of the Slovak Constitutional Court: <https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#>.

¹ Ruling of the Constitutional Court of the Slovak Republic from 2 April 2020. No. PL. ÚS 16/2018-104.