

■ CONSTITUTIONAL DEVELOPMENTS IN AUSTRIA

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No infringement of the principle of equal treatment by abolition of the death grant in the doctor's law of obligations

Austrian Constitutional Court
Judgement from June 13th, 2007
B 1478/06, VfSlg. 18.139

Facts of the case

The complainant was appointed as beneficiary of the death grant by Dr. G.D., who was the recipient of a retirement pension from the Welfare Fund of the Medical Association of Vienna. After the death of Dr. G.D. in April 2005, the complainant made an application for payment of the funeral aid as well as the survivor's benefit to the Welfare Fund. Furthermore, she transmitted calculations about invoices for costs incurred by reason of the death and demanded payment of the death grant in the amount of "at least EUR 9,000.-". The Administrative Committee of the Welfare Fund settled the funeral aid with EUR 1,000.- and the survivor's benefit with EUR 3,000.- and rejected the request on payment of the death aid. The complaint was dismissed by the Appeals Committee of the Welfare Fund and the first instance decision was confirmed. Against this decision she filed a complaint with the Constitutional Court according to Art. 144 Austrian Federal Constitution ("Bundes-Verfassungsgesetz", hereinafter B-VG) because of the violation of constitutionally guaranteed rights caused by the application of unconstitutional legislative or regulatory provisions. Specifically, it was argued that § 104 para. 1 of the Law on Doctors, in the absence of an appropriate transitional provision, unconstitutionally intervenes in the constitutionally guaranteed principle of equal treatment for infringement of the legitimate expectation and because §§ 30 et seq. of the Statute of the Welfare Fund containing provisions about the death aid were replaced by the §§ 78 et seq. of the Statute provisions, by means of which the funeral grant and survivor assistance entered into force.

Relevant Provisions

With the 6th amendment of the Law on Doctors, BGBl. I 179/2004, the provisions on death grants were replaced by the provisions of funeral aid and

survivor's benefit. These amendments were brought into force by means of the Statute of the Welfare Fund of the Medical Association of Vienna retroactively as of 1 January 2005. The 7th amendment of the Law On Doctors, BGBl. I 156/2005, set out the funeral aid and survivor's benefit no longer as compulsory, but as an additional benefit.

§ 104 Law On Doctors 1998 as amended by BGBl. I 156/2005 reads:

"§ 104

(1) At death of a chamber member or a beneficiary of a retirement or invalidity pension the Statute of the Welfare Fund can set, taking account of the contribution rate for all or certain groups of survivors of chamber members or beneficiaries of a retirement or invalidity pension,

1. a funeral aid,
2. a survivors' benefit.

(2) The extent of benefits under para. 1 shall be determined by the Statute of the Welfare Fund and may differ regarding the survivors' benefit according to the practice for chamber members and beneficiaries of a retirement or invalidity pension.

(3) At the funeral aid and survivors' benefit are successively entitled, unless the deceased chamber members or beneficiary of a retirement or invalidity pension has appointed a different beneficiary for payments designated thereon and has filed a written, personally signed statement to the Welfare Fund:

1. the widow (widower)
2. orphans and
3. other legal heirs.

(4) – (5) ..."

The Statute of the Welfare Fund of the Medical Association of Vienna was prior to this amendment as follows:

"Death Aid"

§ 30

(1) At death of a fund member or the beneficiary of a retirement or invalidity pension, the death aid is granted.

(2) At the funeral aid are successively entitled, if the deceased fund member or the beneficiary of a retirement or invalidity pension has not appointed a different beneficiary for payments designated thereon and has filed a written, personally signed statement to the Welfare Fund:

- a) the widow (widower)
- b) the orphans,
- c) other legal heirs.

(3) – (4) ..."

Ruling of the Constitutional Court

First of all, it is important to state that the instrument of death grant is only a non-recurring aid for the purpose of covering the funeral costs and providing

immediate assistance for the survivors. The legal institutions "death grant " and "pension" are not comparable. With the cancellation of an aid, such as the death grant, the future lifestyle is not affected to a comparable measure as it would be by restriction of the survivors' benefit. The Constitutional Court has expressed in VfSlg. 16.764/2002 that no trust can be acquired at the point of time of the occurrence of the insurance event of reduced capacity to work as a rule, due to the unpredictability of timing. Also in this case, the Constitutional Court considers, when assessing the § 104 Law on Doctors 1998, that there is no violation of the constitutional legitimate expectation.

Moreover, the complainant could not assume any more, in view of the constitutionally acceptable legislative amendment which entered into force on 31st of December 2004, that at the time of death of the beneficiary of the retirement pension in April 2005, the death grant will be paid contrary to law. The comments on the amount of funeral expenses, which were based on the expected death grant, therefore, are not substantiated. On the issue of retroactivity of the coupled amendment to the changed legal situation in the Statute of the Medical Association of Vienna, the Constitutional Court refers to its decision VfSlg. 16.539/2002, in which the Court stated with detailed explanation that no constitutional concerns exist regarding the retroactive effect. It is therefore inconceivable that the complainant has been violated in her rights by an unlawful general norm. The Constitutional Court cannot see neither that the complainant has been violated in constitutionally guaranteed rights. Thus, the complaint was dismissed.

Assessment

In this decision the Austrian Constitutional Court makes clear, that there exists a basic difference between a one-time aid like death grants and a periodic benefit like a survivor's benefit in the pension right, because the future lifestyle is not affected to an extent comparable to the cancellation of the respective legal institutes. By abolition of the death grant the principle of equal treatment was not infringed therefore. As a rule, no trust can be acquired for a one-off aid, especially due to the unpredictability of timing at the point of time of the occurrence of the event.

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