

## **17.11.1998, E.1998/35, K.1998/70**

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### Headnotes:

The principle of the social state governed by the rule of law provided in Article 2 of the Constitution means that the State has the duty to deal with the social conditions and welfare of its citizens and to provide a minimum of standard of living. The limitation on the period of receiving benefits for inability to work is contrary to the Constitution insofar as, from the point of view of social security, there is no difference between an illness caused by working conditions and other kinds of illnesses.

### Summary:

The 10th Chamber of the Court of Cassation applied to the Constitutional Court alleging that Article 37.1 of the Law on Social Security was contrary to the Constitution. According to the alleged provision, benefits for inability to work were limited to 18 months. That is to say, where a worker is temporarily unable to work because of an illness caused by working conditions, his or her benefits for inability to work are paid only for 18 months. Even though the illness lasts for more than 18 months, the benefits are not paid under the provisions of the Law on Social Security.

According to Article 11 of the Law on Social Security, where a worker is unable to work because of an illness caused by working conditions, there is no time-limit for receiving benefits for inability to work. On the other hand, where a worker is unable to work because of an illness other than one caused by working conditions, the benefits are granted for 18 months. The Constitutional Court noted that whether a worker was unable to work either because of an ordinary illness or an illness caused by working conditions, he/she would not receive his/her wage. Whatever the reason, there was no difference between the two kinds of workers with illnesses, since both groups of workers were unable to work. Consequently, it was contrary to Article 10 of the Constitution, i.e. the principle of equality.

Moreover, Article 17.1 of the Constitution provides: "...[e]veryone has the right to life and the right to protect and develop his material and spiritual entity". A duty was imposed on the State to remove all kinds of obstacles to these rights. The State

should protect the weak in society against the powerful. For that reason, regulations on social security must not contain any provisions that considerably harm or abolish "the right to protect and develop his material and spiritual entity".

Under the impugned provision, the benefits for the temporary inability to work are limited to 18 months, even though a worker is still undergoing treatment. At the end of that period, the benefits are cut off. That kind of limitation is not compatible with "the requirements of the democratic order of the society" as set out in Articles 13 and 17 of the Constitution.

According to Article 60 of the Constitution "Everyone has the right to social security. The state shall take the necessary measures and establish the organisation for the provision of social security." This provision is aimed at providing a minimum and humanitarian standard of living against social risks such as senility, maternity, accident, disability and illness. Social security is one of the most fundamental means of ensuring the happiness of the individual within the society. In modern times, the social state governed by the rule of law is under the obligation to protect individuals against social risks and to ensure the individuals can look forward confidently. One of the institutions founded to accomplish these duties is the Institution of the Social Security; it has the duty of administering the social security system.

Since the right to social security set out in Article 60 of the Constitution is related to the right to protect and develop the material and spiritual entity of individual, the State must not adopt or implement any rules that restrict or abolish the right to live.

Under the impugned provision, the benefits for the temporary inability to work are cut off after 18 months. Consequently, while a worker enjoys the benefits of health insurance, he/she is deprived of the financial support that would enable him/her to continue living. It is clear that Article 11 of the Law on Social Security interrupts the right to social security and leaves the worker without any security in his/her life.

For these reasons, the Constitutional Court found that the impugned provision was in conflict with Articles 2, 10, 13, 17 and 60 of the Constitution and that it should be annulled.