

## Romania, Court of Appeal Cluj, Judgement of May 31st 2013

### Deciding bodies and decisions

Court of Appeal Cluj, case 408/33//2013, Judgement of May 31st 2013

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### Area of law

Non-discrimination

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### Subject matter

Prohibition of discrimination - fundamental rights - application of the Council Directive 2000/78/EC - Discrimination on grounds of state of health - the right to benefit of an insurance - application of the Government Order no. 137/2000 and of the Council Directive 2000/78/EC

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### Summary Facts Of The Case

On 05.04.2012 P.V. bought from a travel agency a package tour for a stay of 7 days in an Austrian resort, in the period 21-28.07.2012, and he paid for it 1020 Euros. He also bought from the insurance company M.A.R., through the travel agency, an insurance policy, in force for 10 days, for cases of interruption or cancellation of the trip and health insurance. P.V. affirmed that when he bought the insurance policy, he communicated to the travel agent that he was suffering from a non-contagious illness, but the travel agent replied that this is not an impediment and he issued the insurance policy. On 20.07.2012 P.V. and his wife began their trip to the Austrian resort, but on their way P.V. felt very sick and they stopped at the Austrian hospital where P.V. underwent a complex surgery for the implant of a neurological stimulator 7 years before. The professor F.A., neurosurgeon, established that P.V. must be operated in a very short time because the battery of the stimulator was no longer valid and the surgery took place on 23.07.2012. P.V. announced this event to the insurance company M.A.R., who informed him what documents he must provide in order to receive back the money he paid for the tour package. After he sent all the documents to the insurance company, on 11.10.2012 M.A.R. sent an e-mail through which P.V. was informed that he would not receive the money because there is not protection under the insurance policy for psychic or neurological diseases. P.V. knew he was suffering of Parkinson since 2009, but he declared this illness when the insurance policy was concluded and he was not informed that for this reason he would be excluded from the benefits of the insurance. P.V. underlined the fact that he received just an insurance policy and he didn't sign a contract in which he could see clauses (meaning especially the exclusion and restriction clauses).

P.V. complained to CNCD that the reason of M.A.R. for not paying him the money was the preexistence of a chronicle neurological disease and this fact represented a discriminatory treatment as established by art. 2 (2) from the G.O. no. 137/2000 and art. 5 from the Directive 2000/78/CE.

CNCD issued the Decision no. 39/30.01.2013, rejecting this complaint as being beyond its material

competence. CNCD considered that only a court of law has the material competence to decide if the insurance company has to be obliged to pay to P.V. the amount of money he asked for and also that the facts do not fall under the incidence of G.O. no. 137/2000, because only the courts of law can interpret and apply the laws.

P.V. registered an application before the Cluj Court of Appeal, contesting the decision of CNCD.

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### Relation to the scope of the Charter

The case fell within the scope of the Charter pursuant to Article 51(1) therein as it concerned the interpretation and application of the EU non-discrimination directives to the national law on health insurance services.

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### Relation between the Charter and EHCR

The national court referred to the case law of CJEU and ECHR, considering that both of them establish the same rules for the burden of proof in case of discrimination. To this ends, Art. 21 (1) EU Charter on prohibition of discrimination has been referred to together with Art. 1 Protocol 12 ECHR - General prohibition of discrimination as both provision were applicable in the case.

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### Sources - EU and national law

#### EU law

- EU Charter, Article 21, Non-discrimination
- Council Directive 2000/78/EC on equal treatment in employment and occupation
- Council Directive 2000/43 on racial equality

#### National law

- Government Order no. 137/2000 on prohibition of discrimination
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### Sources - ECHR

- Article 1, Additional Protocol 12 ECHR
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### Sources - CJEU Case Law

- C-196/02 - Vasiliki Nikoloudi vs. Organismos Tilepikoinonion Ellados AE, 10.03.2005;
  - C-167/97 - Regina vs. Secretary of State for Employment, ex parte Seymour-Smith and L. Perez, 09.02.1999
  - C-17/05 - B. F. Cadman vs. Health & Safety Executive, 03.10.2006
  - C-54/07 - Centrum voor gelijkheid van kansen en voor racismebestrijding vs. Firma Feryn NV, 10.07.2008
  - C-236/98 - Jamstalldhetsombudsmannen vs. Orebro lars landsting, 30.03. 2000
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### Sources - ECtHR Case Law

- Case 12033/86 - Fredin vs. Sweden, 18.02.1991;
  - Case 12875/87 - Hoffman vs. Austria, 23.06.1993;
  - Case 12868/87 - Spadea and Scalabrino vs. Italy, 28.09.1995;
  - Case 22083/93, 22095/93 - Stubbings and others vs. United Kingdom, 22.10.1996
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