SVK-2014-1-001
a) Slovakia / **b)** Constitutional Court / **c)** Plenum / **d)** 19-06-2013 / **e)** PL. ÚS 13/12 / **f)** Nurses' wages / **g)** / **h)** CODICES (Slovak).

Keywords of the Systematic Thesaurus:

02.01.03.03	Sources - Categories - Case-law - **Foreign case-law.**
05.02.01.02	Fundamental Rights - Equality - Scope of application - **Employment.**
05.03.39	Fundamental Rights - Civil and political rights - **Right to property.**
05.04.05	Fundamental Rights - Economic, social and cultural rights - **Freedom to work for remuneration.**

Keywords of the alphabetical index:

Nurse / Healthcare / Remuneration.

Headnotes:

A law that raises wages of nurses too much and too quickly may be contrary to the right to property of private health care providers.

Summary:

I. In Slovakia, nurses are traditionally low-paid. In 2010, the nurse union asked the government to resolve this problem; otherwise, it would go out on strike. Then, shortly before the general elections, not only the coalition majority, but also virtually all the MPs voted to adopt the Law on Minimum Wages for Nurses (hereinafter, the «Law»). This applied to all nurses irrespective of public or private sector. The Law raised the wages for all nurses based on the principle of seniority in service.

The Prosecutor General, on the request of the Chamber of Physicians, challenged the whole Law before the Constitutional Court. He argued that the Law was contrary to the right of employees to remuneration which would allow for a decent standard of living. The reason was that the purpose of the Law, namely to prevent nurses from going abroad, was not a real threat. He then argued that the Law was contrary to the rule of law (impossible to fulfil it economically in practice), contrary to the right to protection of property of health-care providers, and contrary to the principle of equality because it discriminated against the other employees in the health sector.

II. The Court decided on the case, first, alluding to the development of western constitutionalism after the Lochner era. It also pointed to the decision of the Polish Constitutional Tribunal in a similar case K 43/01. As far as judicial self-restraint is concerned, it noted Lon Fuller´s theory of polycentric questions in constitutional adjudication and the necessity to support procedural democracy.

The Court stated that raising the wages (of nurses) naturally cannot be in breach of the (subjective) right of employees (nurses) to a remuneration that would provide them a decent standard of living. On the other hand, this right does not guarantee an optimum wage, but a

minimum wage. Because this right is not directly applicable, the Court tested it as a public good in an abstract review. The economic issue could not be unconstitutional as the Prosecutor General argued, because this impossibility is relative in comparison with physical or legal impossibility. Also, it is not the task of the Court to decide on economic matters (Cases like *Airey v. Ireland* mean something different). Moreover the Court divided health care providers into state and non-state, and concluded that it could only protect non-state ones, because the State may impose upon itself any financial duty. From this point of view, considering the state as a payer, it is constitutionally irrelevant whether the raising of wages is economically realistic.

However, although espousing the self-restraint approach, the Court found that the Law did not pass the third step in the proportionality test (proportionality *stricto sensu*). The reason is that the financial burden on private health care providers would be too heavy and immediate in the health sector with its sophisticated regulations and fixed prices. Hence, the right to property outbalanced the public interest in raising the wages for nurses. This financial burden was particularly heavy for small providers (one physician and one older nurse for example), and it could lead to the end of their business. So the unconstitutional issue was not the very idea of the Law but its quantitative parameters related to time and finances.

In any case, the legislative and executive branches are, according to the Court, in much better position to consider the economic situation in the health sector, and they bear political and constitutional responsibility for it.

The Law was not unconstitutional in relation to the rest of the referenced constitutional norms. It was not discriminatory because there was no conjunction with the right of employees to remuneration which would provide them a decent standard of living. The reason was that it guaranteed a general minimum wage and a person´s occupation was not a strictly prohibited ground for discrimination. The Law also passed the test of a general right to equality because the particular characteristics of nurses justified their particular wage.

Finally, the Court did not divide the operative part into state and non-state providers because this division is not practical, as many providers have mixed character.

III. Four judges dissented. Some of them wanted to stress the importance of equality among health employees, legal certainty and judicial self-restraint. Two dissenters argued that there was a possibility of derogating the Law just in favour of non-state providers.

Cross-references:

Polish Constitutional Tribunal:

- Decision no. K 43/01 of 09.09.2002, *Bulletin* 2003/1 [POL-2003-1-001].