



Joint Stock Company "Transkop", Bitola to the Constitutional Court

77/1998-0-0

Country: Macedonia

Region: Europe

Year: 1997

Court: Constitutional Court

Health Topics: Health care and health services, Health systems and financing

Human Rights: Freedom from discrimination, Right to health, Right to social security

Facts

The Joint Stock Company "Transkop"™, Bitola (the Company), challenged two bylaws establishing conditions of the funding of treatment abroad by the Health Insurance Fund. These bylaws were the Rulebook on the conditions and manner for referring the insurees to treatment abroad (the Rulebook) and the Resolution of the Minister of Health no.02-1439/1 delivered on February 27, 1998 (the Resolution).

The Rulebook provided that a Health Insurance Fund insuree could be reimbursed for expenses arising from referral to medical treatment abroad in three circumstances: if the Health Insurance Fund passed a resolution for referral on the basis that the insuree could only be successfully treated outside Macedonia, in emergency cases, or if an insuree was working abroad. However, if the insuree were treated in a foreign healthcare facility outside of these conditions, the Health Insurance Fund could acknowledge expenses only up to the predetermined price of in-country care, while the difference in the price of the health services and the travel and per diem expenses would be borne by the insuree. The Resolution provided that the decision to reimburse expenses for health services obtained abroad in the absence of a resolution was to be made by doctors'™ second instance commissions.

The Company challenged these provisions, arguing that by failing to reimburse the full cost of treatment abroad, the provisions violated the rights to health and social security, and discriminated against insurees who use health services abroad. At the time of the proceedings, two employees of the Company had been granted full reimbursements for emergency care, one had been granted partial reimbursements for non-emergency care without a resolution, and two more had cases pending.

Decision and Reasoning

The Court rejected the Company's™ arguments and dismissed the case.

The Court held that the Constitution granted the right to health and health care and the right to social security only within Macedonia, and not abroad. It concluded that because these rights were essentially territorial, the Rulebook did not place insurees in an unequal position. It provided insurees seeking health care abroad with the same benefits they would be entitled to in-country, by reimbursing them for the same amount as they would have expended in-country. Furthermore, the Rulebook guaranteed insurees full reimbursement in cases where they had sought a resolution for referral, in emergencies, and while working abroad. The Court therefore held that the challenged provision from the Rulebook was in line with the Constitution.

The Court declined to examine the constitutionality of the Resolution, as by the time of the case it had been repealed.

Decision Excerpts

"[T]he constitutional guarantee about the right to health care presupposes that the right will be realized within the country. Because of this the Court is of the opinion that the insurees who use health services abroad without a resolution for referral to treatment abroad, and for which the Fund acknowledges part of the expenses, are not being discriminated against compared to the insurees which are provided health care in the country, for which the Fund acknowledges the factual expenses with co-funding paid for such type in the country."• Section 5.

â€œDuring the public hearing the Court determined that the contested Resolution given by the Minister of Health is replaced by Resolution no. 02-1439/1 of February 27, 1998 and because of this the Court decided that there are no procedural suppositions for continuing the proceeding and for evaluating its constitutionally and legality.â€• Section 6.

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