



Case 1-13/2002

Case No. 1-13/2002, Ukraine (Constitutional Ct. 2002)

Country: Ukraine

Region: Europe

Year: 2002

Court: Constitutional Court

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

Human Rights: Right to health, Right to social security

Facts

The People's Deputies of Ukraine requested the Constitutional Court to issue an official interpretation of Article 49 paragraph 3 of the Constitution of Ukraine which states "in state and communal health protection, institutions medical care is provided free of charge." Article 93 paragraph 1 of the Law of Ukraine empowers the People's Deputies to bring this issue to the Constitutional Court based on the practical need for an official interpretation of this provision.

Decision and Reasoning

A primary issue addressed by the Court was the meaning of "free of charge". Some parties believed this was confined to a prohibition on direct, immediate payments and not potential prior or subsequent payments, such as required insurance payments. The Court rejected this interpretation holding that individuals should be exempt from funding the costs for any healthcare received in state or municipal health institutions because "free of charge" clearly indicated a lack of obligation of payment.

This interpretation of "free of charge" banned compulsory insurance contributions. However, it did permit purchasing of voluntary insurance and payment of services that went beyond the definition of medical care, such as paramedical services by citizens. Additionally, the State could obtain funding through payments by employers and appropriation of other government funds. In general, though, citizens should not be specifically charged for health services they received at public health institutions under this constitutional provision.

Besides determining the breadth of the "free of charge" provision, the Court considered what constituted "medical care" under Article 49. The Court considered the understandings of "medical care" under the Constitution and international instruments, concluding there was no certain legal definition of the term. Thus, the Court refused to offer a precise interpretation. Instead, it offered the interpretation that the medical care required by the Constitution should satisfy a human's need in maintenance and recovery of health.

Overall, according to the Court, Article 49 paragraph 3 of the Constitution established a governmental obligation to provide healthcare to all citizens by State health institutions without prior, current or future payment. The Court also stated that the concept of medical care and certain other attendant conditions and procedures, should be defined by a law.

Decision Excerpts

"This is fully consistent with the meaning of the words 'free of charge': something for which nobody pays, something what does not require payment, something what does not need payment; something for what payment is not taken; something which did not get any payment, remuneration; something whose synonym is 'for free', 'without interest'; something whose antonym is a payment in any form." (5)

"The free of charge medical care, provided by the Constitution of Ukraine, should be fully provided for all citizens, meaning it should satisfy a human's need in maintenance and recovery of health." (7)

"Article 49 of the Constitution of Ukraine along with guaranteeing a free of charge medical care in state and municipal health protection institutions includes also other norms, including everyone's right to health protection, medical insurance, the state's obligation to create conditions for effective medical service accessible for all citizens, the promotion of development of medical institutions of all forms of ownership etc." (7)

(7)

“The provisions of Article 49 paragraph 3 of the Constitution of Ukraine “in state and municipal health protection institutions health care is provided for all citizens regardless of its scope and without prior, current or future payment for it.” (8)

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