

**U. no:** 23/1996-0-0

**Date:** 03/13/1996

## Preface

The Constitutional Court of the Republic of Macedonia, by virtue of Article 110 of the Constitution of the Republic of Macedonia, and Article 71 of the Rules of Procedure of the Constitutional Court of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia", no. 70/92), at its session held on March 13, 1996, adopted the following

## RESOLUTION

### Text

1. A PROCEDURE IS NOT INSTIGATED for appraisal of the constitutionality of Article 11, 16 paragraph 3 and 203-a of the Law on amending and supplementing the Law on Health Care ("Official Gazette of the Republic of Macedonia" no. 55/95).

2. The Macedonian Trade Union Association and the Trade Union of Construction, Construction Materials Industry and Design of the Republic of Macedonia, submitted initiatives to the Constitutional Court of the Republic of Macedonia for instigating a procedure for appraisal of the constitutionality of the contested provisions in the law marked in item 1 of this resolution, because of Article 11 of the Law, the right to health care guaranteed in Article 39 of the Constitution was being limited, a right which arises from the fundamental values of the constitutional order of the Republic among which are humanism, social justice and solidarity. The Insured workers could not exercise the right to guaranteed health care because of the inability to fulfil the condition provided in Article 11 due to the objective circumstance of not receiving salary for several months. According to the Law, the insured worker was burdened with proving that his employer paid the health insurance contribution, and only after that could they use a health service for which the cost was borne by the resources of the Health Insurance Fund. However, according to the Law, the rights of basic health care could be realized by a person who was nevertheless insured after an application of the employer to the Fund within an 8 day deadline from the day of establishing the labour relations. From that moment onwards the person has a right to compulsory insurance. Article 16 paragraph 3 of the Law was unenforceable because: the Law on Health Care could not determine the lowest salary as this was a right of parties in collective bargaining, it wasn't specified according to which collective agreement (general, sector or on employers' level) the lowest salary per employee will be determined, whilst the manner for calculating the average coefficient of labour complexity was not determined in a situation where the basis for calculation was not legislated, nor which coefficient to be used – according to the job or according to the qualification. Regarding Article 203-a of the Law it is stated that the rights of employees and their position were regulated by the Law on Labour Relations and by a collective agreement, consequently the Law on Health Care in Article 203-a could not determine its own lowest salary as a basis for the payment of the

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health insurance contribution until a lowest salary was determined in accordance with a collective agreement.

3. At the session, the Court determined that according to Article 11, the rights from compulsory health insurance in the framework of the scope of rights determined with this law and regulations based on it, the insured persons and the members of his family exercise these using a health identification card as well as proof provided by the Health Insurance Fund that the health insurance contribution has been paid.

According to Article 16 paragraph 3 the basis for calculating the contribution is determined as at least in the amount of the lowest salary per employee determined with a collective agreement multiplied by the average coefficient of labour complexity in the organization and by the number of the workers employed in the organization.

According to Article 203-a, until a lowest salary is determined in accordance with a collective agreement, the law will consider as lowest salary the amount of 65% from the average net salary per worker in the corresponding sector in the preceding month.

4. According to Article 34 of the Constitution, citizens have the right to social security and social insurance determined by law and collective agreement, and according to Article 35 paragraph 1 of the Constitution the Republic provides social protection and social security for the citizens in accordance with the principle of social justice.

According to Article 39 of the Constitution, every citizen is guaranteed the right to health care, and the citizen has the right and the duty to protect and promote their own health and the health of others.

The guaranteed right to health care for citizens arises from the stated constitutional provisions as one of the social rights of man and citizen is enforced under conditions, in a manner and in a procedure determined by law and collective agreement on the basis of the principle of social justice. The care for social protection and social security of citizens, and the right to health care in this case, the Republic accomplishes with the adoption of normative acts where it determines the sources of the funds needed to realize this right, and the manner of payment, with the goal of having equal conditions for all citizens for realizing this right and equal burden for providing the resources.

The Law on Health Care ("Official Gazette of the Republic of Macedonia" no. 38/91, 46/93 and 55/95) regulates the citizens' rights related to health care, the relations and rights from health insurance, the procedure for usage of health care and the system of organization of health care.

According to Article 3 of this law, everyone has a right to protection of health, and for the purpose of exercising certain rights in case of illness or injury or other rights of health care as determined with this law and on the basis of the principles of mutuality and solidarity, compulsory health insurance is established.

According to Article 35 of the Law, the attribute of being an insured person is established on the basis of an insurance application filed with the Health Insurance Fund within 8 days of

establishing the labour agreement, i.e. from the day of acquiring the attribute on the basis of which the person is obligated to get compulsory insurance.

According to Article 37 of the Law, the rights from the compulsory health insurance in the framework of the scope of the rights determined with this law and regulations based on it, the insured and the members of their family exercise these with a health identification card as well as proof that the health insurance contribution has been paid. The health identification card and the proof are issued by the Health Insurance Fund.

On the basis of the stated it turns out that every citizen has a right to health care, and the relations and rights from health insurance as well as the procedure for usage of health care are regulated by law. Considering the fact that the law anticipated that the rights of the insured and the members of his family from the compulsory health insurance exercise on the basis of a health identification card as well as proof that the health insurance contribution has been paid, the Court is of the opinion that the issue of accordance of Article 11 of the Law on amending and supplementing the Law on Health Care with the Constitution cannot be raised.

Regarding the contested Article 16 paragraph 3 and relating to it Article 203-a of the Law, the court decided that their accordance with the Constitution cannot be questioned as the legislator has the right to determine the manner for providing the resources needed for realizing the rights guaranteed by law, the determined needs and interests of society and the rights resulting from health insurance, also determined by law, as well as to set the basis for calculation and payment of the health insurance contribution.

5. On the basis of the above, the Court decided as in item 1 of this resolution.

6. This resolution was delivered by the following composition of the Court: president of the Court Jovan Proevski PhD and the judges Bahrišljami, Nikola Krleski PhD, Stojmen Mihajlovski PhD, Milan Nedkov PhD, Besim Selimi, Josif Talevski PhD and Todor Dzunov PhD. (U.no. 23/96 and U.no. 46/96)