

U. no: 77/1998-0-0

Date: 03/03/1999

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 line 2 of the Rules of Procedure of the Constitutional Court of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia", no. 70/92), on its session held on March 3, 1999, adopted the following

RESOLUTION

Text

1. The procedure for appraisal of the constitutionality and legality of the provisions listed below is hereby ENDED:

a) Article 15 from the Rulebook on the conditions and manner for referring the insurees to treatment abroad ("Official Gazette of the Republic of Macedonia", no. 3/92, 11/92, 32/92 and 48/92) and of the

b) Resolution of the Minister of Health no.02-1439/1 delivered on February 27, 1998

2. The Constitutional Court of the Republic of Macedonia, on the initiative by "Transkop" – joint-stock company for auto transport, logistics and warehousing - Bitola, with Resolution U.no. 77/98 delivered on October 28, 1998, instigated a procedure for appraisal of the constitutionality and legality of the acts marked in item 1 of this decision, as their accordance with the Constitution and the law is contested.

3. In the session and in the public hearing the Court determined that according to the contested Article 15 of the Rulebook, if a Health Insurance Fund insuree is treated in a foreign healthcare facility without a resolution for referring treatment abroad, the Health Insurance Fund can acknowledge part of the expenses up to the predetermined price for the corresponding health service, while the difference in the price of the health services, and the travel and per diem expenses are borne by the insuree.

In Article 1 of the contested resolution, authority for deciding upon requests for reimbursement of the expenses for the health services obtained abroad without a resolution for referring treatment abroad is given to doctor's second instance commissions for appraisal of the temporary inability to work in the regional offices, according to Article 15 of the Rulebook on the conditions and manner for referring the insurees to treatment abroad.

According to Article 2 of the Resolution, the Commission is assigned to review the cases regarding the usage of health services in foreign healthcare facilities obtained without a resolution for referral to treatment abroad. The Commission can acknowledge part of the expenses up to the predetermined price for the appropriate health service determined by the Price List for health services of the Republic of Macedonia, as though the same service would have been provided in the Republic of Macedonia, and the difference in the price of

the health services and travel and per diem expenses are borne by the insuree. At the same time, an original invoice should be sent along with: the request, a receipt for incurred expenses, the latest medical documentation with a discharge list for the performed treatment abroad, and a blue coupon as confirmation that the health insurance contribution of the insured person is paid for.

In Article 3 of the Resolution the compensation for working in the doctors' commission and the manner of payment of the compensation is detailed, and in Article 4 it is anticipated that with the adoption of this Resolution, Resolution number 12-3634 from May 21, 1996 ceases to be valid.

According to Article 5 of the Resolution, this Resolution is valid from the day of its adoption.

The contested Resolution is not published in the "Official Gazette of the Republic of Macedonia".

4. During the public hearing the representative of the submitter of the initiative stated that after a resolution for instigating a proceeding for appraisal of Article 15 of the Rulebook in an administrative procedure, the Health Insurance Fund reimbursed the expenses to the company for the treatment of two of their employees abroad and both cases were according to Article 45 of the Law emergency cases (due to stroke), one other case was under Article 15 of the Rulebook and for two other cases the proceeding was already in progress. During this he restated the reasons for the initiative of instigating a proceeding.

The representative of the Ministry of Health stated that the indisputable claims concerning the employees of 'Transkop' in Bitola are emergency cases, and does not exclude the possibility that the administrative procedure deciding the request for compensation of damages for treatment abroad was not actioned according to Article 45 of the Law on Health Care. Otherwise, he agreed that in emergency cases the factual expenses with the anticipated co-funding should be paid out, and not only up to the costs in the country. According to this, Article 15 of the Rulebook this does not regulate this issue; instead Article 45 from the Law on Health Care is directly applied.

Regarding the issue of whether the Rulebook can be used to prescribe conditions and the manner for treatment abroad he pointed out that the Rulebook does not legislate conditions but only the manner of referral to treatment abroad, in other words the rights and duties of the insurees are not being legislated.

There exists an important difference between the insurees who are being referred to treatment abroad after a completed procedure and insurees who are in need of medical help in emergency cases or while working abroad, these are also a separate category in the law. But the third type of insurees are not included in the Law or in Article 45 of this law. Same as other countries, our country has a policy that the insurees should not be referred to treatment abroad if the conditions for treatment exist within the country. Otherwise a chaotic situation in the health sector would occur. However, considering the real situation and the situation dictated by the practice of the courts, the insurees who have had treatment abroad on their own initiative, without a referral for treatment abroad, are reimbursed for part of their expenses on the basis of the contested Article 15 of the Rulebook, only up to the costs in the country. In fact Article 15 of the Rulebook refers to this group of insurees, and not the emergency cases, and it expands the rights of the insurees who are receiving treatment

abroad on their own initiative and this does not infringe Article 9 of the Constitution, because the Constitution guarantees health care within the country, but not abroad.

In his statement he also clarified why a part of the expenses are being paid. Namely, part of the expenses means that compensation is being paid only for the expenses for the cases for which there are medical indications, and not for services that are not connected to the case. During this a commission evaluates the medical indications and if there are any the Fund reimburses the expenses, and when dealing with an emergency case this is done in full with the anticipated co-funding that is only up to the costs of the treatment as if it was performed within the country for cases when the insuree is getting treatment abroad on his own initiative.

5. According to Article 34 of the Constitution of the Republic of Macedonia, citizens have a right to social security and social insurance, determined by law and collective agreement and in Article 39 of the Constitution it is stated that every citizen is guaranteed the right to health care.

In Article 44 of the Law on Health Care ("Official Gazette of the Republic of Macedonia", no. 38/91, 46/93, 55/95), the insuree has the right to treatment abroad under conditions and in a manner established with a general act of the Ministry of Health, if it is regarding a condition that cannot be treated in the Republic, and there is a possibility for successful treatment of the condition in the country where the insuree is being referred.

According to Article 45, also from this law, the insuree has a right to health care abroad while working abroad, and in emergency cases while staying abroad too, under conditions and in a manner established by a general act of the Ministry of Health.

According to Article 58 of the Law on Health Care, for the purpose of implementing health insurance on the basis of the principles of mutuality and solidarity, the Health Insurance Fund provides, among other things, payment of compensations for completed health services, the cost of which is borne by the health insurance (paragraph 1 item 3), and Article 59 paragraph 1 item 6 of the Law states that for the purpose of exercising the guaranteed rights and established needs and interests of society and for the purpose of exercising the rights and duties of health insurance, the Ministry of Health determines, among other things, the detailed conditions and the manner of treatment abroad.

The stated constitutional provisions suggest that the Constitution guarantees citizens a right to social security and social insurance as determined by law and collective agreement, including the right to health care. The Constitution also anticipates that a law and collective agreements should be used to determine the character of the social insurance, the sources of funding for social insurance and the arrangements needed for realization of the insurance. The right to health care means that it is the right of every man to ask and receive the health service needed to protect his health in the health care facilities in the country, but not abroad. The Constitution also obliges the citizen with a right and the duty to protect and promote one's own health.

Following this understanding of the constitutional guarantees for social insurance and the right to health care, it is beyond doubt that the Constitution allows the matter of rights of the insurees for treatment abroad to be regulated with the Law on Health Care. At the same

time, in Article 44 of this Law authority is given to the Ministry of Health to provide a general act to determine conditions and the manner for treatment abroad, but at the same time this provision determines the framework of when an insuree may be referred for treatment abroad – “if dealing with a disease which cannot be treated in the Republic, and there is a possibility for successful treatment within the country where the insuree is being referred”, and in Article 45 of the Law the cases when the insurees have a right to use health care abroad are stated, this is during work abroad and in emergency cases while staying abroad, also under conditions and in the manner determined by a general act of the Ministry of Health.

Article 15 of the Rulebook on the conditions and manner for referring the insurees to treatment abroad regulates the situation when a Health Insurance Fund insuree has been treated in a foreign health care facility without a resolution for referral to treatment abroad, and is only acknowledged for part of the expenses up to the cost of the corresponding health services in the country, while in the Rulebook the matter of conditions and the manner for realisation of the health care is not regulated. In fact, the provision in the Rulebook does not apply to insurees who are given health care abroad in emergency cases or while working abroad, but to the insurees who have treatment abroad on their own initiative.

Starting from the provision in Article 45 of the Law about the conditions and the manner for using health care abroad while working abroad, and in emergency cases while staying abroad, this provision without a doubt indicates a complex regulation of these rights of the insurees under a separate general act by the Ministry of Health. However, the Court is of the opinion that the provision in Article 15 of this Rulebook cannot be questioned from this aspect, because it does not regulate the matter of reimbursing expenses of this category of the insured for treatment abroad.

The Law on Health Care through the compulsory health insurance, provides a right to basic health care and other kinds of health care for insurees if there are medical indications for this on the basis of the principles of mutuality and solidarity, but according to the opinion of the Court this is to be realized within the country not abroad. Subsequently, the 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. Taking this into consideration the Court decided that the contested provision in Article 15 of the marked Rulebook complies with Article 9 paragraph 2 of the Constitution.

6. During 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.

On the basis of the above, the Court decided as detailed in item 1 of this Resolution.

7. This resolution was delivered by the following composition of the Court: president of the Court Milan Nedkov PhD and the judges BahriIsljami, Nikola Krleski PhD, Olga Lazova,

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