Roll number: 777
Order no. 47/95 dated June 6, 1995

ORDER

At issue: the action for annulment in article 8 of the law dated February 22, 1994, containing certain provisions related to Public Health, inserting an article 6bis in the law dated July 8, 1964, pertaining to urgent medical assistance, introduced by a.s.b.l. Group for intervention and training in urgent medical assistance.

The Court of Arbitration,

composed of the presiding judges M. Melchior and L. De Grève, and judges P. Martens, G. De Baets, J. Delruelle, H. Coremans, and A. Arts, assisted by clerk L. Potoms, presided over by President M. Melchior,

After having deliberated, render the following order:

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I. *Subject of the action*

By petition addressed to the Court by letter registered with the postal service on October 5, 1994, and received by the clerk on October 6, 1994, an action to annul article 8 of the law dated February 22, 1994, containing certain provisions pertaining to Public Health, inserting an article 6bis in the law dated July 8, 1964 pertaining to urgent medical assistance published in the Belgian Monitor dated May 28, 1994, was introduced by the a.s.b.l. intervention and training group for urgent medical assistance (GIFAMU), whose headquarters is located in Houffalize, Ville Basse 30.

II. *The proceedings*

In the order dated October 6, 1994, the acting president designated the presiding judge in compliance with the articles 58 and 59 of the special law dated January 6, 1989, on the Court of Arbitration.

The judges in charge of legal enquiry deemed that there was no standing for the application of articles 71 or 72 of the organic law.

Parties were notified of the action in compliance with article 76 of the organic law by letters registered with the postal service on October 25, 1994.

The notice provided for in article 74 of the organic law was published in the Belgian Monitor on October 25, 1994.

Reports were introduced by:

-the Walloon Government, rue Mazy 25-27, 5100 Namur, by letter registered with the postal service on December 8, 1994;

- the Council of Ministers, rue de la Loi 16, 1000 Brussels, by letter registered with the postal service on December 9, 1994.

Notification of these reports was provided in compliance with article 89 of the organic law by letters registered with the postal service on January 3, 1995.

A report in response was introduced by the petitioner by letter registered with the postal service on January 27, 1995.

In an order dated February 1995, the acting president noted that the Judge E. Cerexhe, presiding member, was legitimately impeached and replaced by the Judge R. Henneuse, solely to allow the Court to rule on the extension of the time frame provided for in article 109 of the organic law.

In an order issued the same day, the Court extended to October 5, 1995, the time frame in which the order has to be rendered.

In an order dated March 7, 1995, the acting president noted that the Judge E. Cerexhe, member of the seat, was legitimately impeached and replaced by the Judge J. Delruelle.

In an order issued the same day, the Court declared that the the case was ready and set a hearing for April 4, 1995.

The parties as well as their lawyers were notified of this order by letters registered with the postal service on March 7, 1995.

At the public hearing dated April 4, 1995:

-appeared:

-the Honorable Ph. Coenraets, Esq., lawyer of the bar of Brussels, on behalf of the petitioner;

-the Honorable M. Uyttendaele, Esq., lawyer of the bar of Brussels, on behalf of the Walloon government;

-the Honorable M. Cools, Esq., lawyer of the bar of Liège, on behalf of the Council of Ministers;

-judges in charge of legal enquiry, P. Martens and G. De Baets, gave their report;

-the aforementioned lawyers were heard;

-the case was set for deliberation.

The proceeding took place in compliance with articles 62 and following of the organic law pertaining to the use of languages before the Court.

III. *The Provision at issue*

Article 8 of the aforementioned law dated February 22, 1994 inserts into the law dated July 8, 1964 pertaining to emergency medical assistance an article 6bis which anticipates creating in each province a center for training and advancement of emergency medical and ambulatory technicians (1st paragraph); the approval by the King of these centers and the determination by Him of the rules for organization, operation, and control, as well as the methods for training and advancement (paragraph 2); the coverage by State subsidies and by candidate inscription rates, operational costs of these training centers.

The petitioner requests annulment of the words “by the King” in the first sentence of paragraph 2 of the article 6bis, 1st §.

IV. *By law*

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Position of the Petitioner

A.1. The petitioning association, whose goal is the promotion of emergency medical assistance, particularly by the training of emergency medical and ambulatory technicians, proves its interest in the annulment of the provision being critiqued, which concerns it directly. It came to an end in the authorization which it gave on August 22, 1991, and the new authorization it sought was rejected by a decision of the federal minister of public health dated September 7, 1993. It contested this decision before the Council of State (ref. G/A54.321/III-16570).

A.2. The provision that is being contested violates article 128 of the Constitution and article 5, 1st §, I, 1◦ of the special law dated August 8, 1980, pertaining to institutional reforms, because the King is not endowed with the authority to take individual authorization measures in the framework of emergency medical assistance, which is a community matter that can be connected to the treatment provision policy for treatments in and outside treatment institutions. Federal authority is, in this framework, limited to the determination of the conditions and methods of organization, functioning, and monitoring of the training centers as well as the rules that govern training itself (opinion of the legislation section of the Council of State dated June 21, 1991, Parl. Doc., Chamber, 1991-1992, no. 1777/1).

Position of the Council of Ministers

A.3 Emergency medical assistance is not part of the policy or the provision of treatments in the sense of article 5, 1st §, I, I◦, of the special law dated August 8, 1980. This is not a customizable matter. The mechanism provided for in the law dated July 8, 1964, pertaining to emergency medical assistance, and more particularly its article 6bis, is not connected to any of the matters intended during the preparatory work to define the field of application of the aforementioned article of the special law dated August 8, 1980. Properly speaking, it is not connected to the provision of treatments: this is a unified call system that deals with emergency treatment on site for people whose status requires immediate treatment, their transportation to the hospital, and their admission to a hospital service. The law plans for actual requisition of physicians, transporters, and hospital institutions called by the operator of the “100”. It aims to provide treatment to any person addressed by the 1st article. This is not a “communication between a person and a service”, a notion that is essential and inherent in the very definition of customizable matters.

A.4. According to the first article of the law dated July 8, 1964, the following must be understood by emergency medical assistance: the unified call system, emergency treatment on site, transportation to the hospital, and admission to a hospital service. The analysis of these notions, explained by the preparatory work, indicates that emergency treatments on site are acts related to the art of healing, which does not belong to the authority of the communities, that the beneficiary does not have any freedom of choice, that the transport personnel do not provide any treatment, limited to providing

assistance in the sense of the 422ter article of the Penal Code. The hospital designated by the employee is required to receive the victim. As soon as the hospital has given the emergency treatments that are required, this is the end of the emergency medical treatment regimen, after which the patient has freedom of choice.

A.5. Therefore this is not a treatment provision service but a service for assistance to the population for which belonging to a linguistic community is of no importance.

A.6. The legislation section of the Council of State has issued no remark on the subject of the authority of the Federal State. Even if the law and its orders of application increase the professional authorities of ambulance service providers, they are not qualified to administer treatments, as these are reserved for the doctor called to the site and the hospital physician.

A.7. Emergency medical assistance, established by the law dated July 8, 1964, is an assistance service, like civil protection, the state police, and fire services, which have not been the subject of any communitization. To the degree that the economic aspects of the law dated July 8, 1964 is covered by federal authority, it would be incoherent to assign authority to the communities for the authorization of centers for training for emergency medical and ambulatory technicians called to work within ambulance services which have finalized conventions with the Federal State for the provision of emergency medical assistance services.

Position of the Walloon Government

A.8. The report being presented contains no observations.

Response from the petitioner

A.9. The Constituent did not define the notion of "customizable matter", leaving the special legislator with the task of specifying the notion, which he did by writing in article 5, 1st §, I, 1◦, of the special law dated August 8, 1980, "the policy for provision of services in and outside of treatment institutions". This competence permits exceptions, but they are restrictively listed in the special aforementioned law.

A.10. With the authority of the communities in health policy matters being the principle at issue, exceptions are subject to strict interpretation. The law dated July 8, 1964 constitutes an "organic legislation" in that it sets in an abstract and general way the standards of the authorization. It is therefore the responsibility of the federal authority to set them by virtue of article 5, 1st §, I, 1◦, a), of the special law dated August 8, 1980. However, the authority to deliver authorizations belongs to the communities, by virtue of the residual second degree authority that belongs to them.

A.11. In its order no. 38.514 dated January 17, 1992, the Council of State annulled due to lack of authority a decision of the Federal Ministry for Social Affairs repealing the authorization given to a clinic.

A.12. One can not, as the Council of Ministers does, exclude emergency medical assistance from the customizable matters and health policy. The auditor, in a report prepared regarding the action the

petitioner introduced to the Council of State against the refusal to authorize it, concludes what's more that the matter does have a customizable aspect.

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B.1. The law dated February 22, 1994 containing certain provisions pertaining to Public Health introduced in the law dated July 8, 1964, related to emergency medical assistance, an article 6bis, whose 1st paragraph provides the following:

"One center for training and development for emergency medical and ambulatory technicians is created per province, whose mission is to train emergency medical and ambulatory technician candidates on the theoretical and practical knowledge required to allow them to provide effective assistance to the persons indicated in the 1st article of the present law. These centers also ensure permanent training for emergency medical and ambulatory technicians.

They are authorized by the King according to the conditions of the present law and according to the terms that He determines. The King determines the rules for organization and function and monitoring of the centers as well as the methods for training and development.

The operations costs of the training centers are covered by subsidies from the State and by candidate registration costs according to the methods set by the King."

Only paragraph 2 of this article is undertaken and only in that, in the first phrase, it endows the King with the authority to authorize centers.

B.2. The petitioner contends that this provision violates article 128 of the Constitution and article 5, 1st §, I, 1◦, of the special law dated August 8, 1980 on institutional reforms, as the King is not endowed with the power to take authorization measures in the framework of emergency medical assistance, which is a community matter that can be associated with the policy for the delivery of treatments in and outside of treatment institutions.

B.3. In the terms of its 1st article, 1st paragraph, the object of the law dated July 8, 1964 is:

"the organization of an emergency medical assistance for persons who are located on public roads or in a public place, and whose health status, following an accident or disease, requires immediate treatment."

Paragraph 2 of the same article defines emergency medical assistance as:

"the unified call system, first response treatment on site for persons addressed in the previous paragraph, their transport to the hospital, and their admission to a hospital service."

B.4. The preparatory work of the law dated July 8, 1964 serves as a reminder that, before the adoption of this law, emergency medical assistance found pieces of its solution in two laws: the law dated April 8, 1958, modifying articles 66 and 70 of the organic law of public assistance and the law dated January 6, 1961, elevating to the level of offense certain culpable abstentions. Noting that the organization of emergency assistance is the responsibility of organizations whose means varied from one community to another, that the possibility of responding to an emergency call was practically out of the reach of public assistance commissions and that the transport of injured or ill people presented difficulties, the legislator deemed indispensable to provide emergency medical assistance with a legal foundation and proper material organization. Emergency assistance organized by the law dated July 8, 1964 was characterized by the creation of a single call system (articles 2 and 3), by the legal consacration of the obligation, for the physician, for the transport service provider, and for the hospital which receives a request by the employee of the unified call service to provide a reponse (article 4 to 6), under penalty of special legal sanctions (article 11), and by the creation of an emergency medical assistance fund, supplied by insurance

companies and by the State, which is tasked with guaranteeing the fees and payments due by the person assisted in the case where such person could not pay them (articles 7 to 10) (Parl. Doc. Chamber, 1963-1964, no. 677/1, pp. 1 to 5).

According to the same preparatory work, the matter comes under the authority of three ministers who are signatories to the legal project: the Interior Minister whose authority "extends to all that relates to the functioning of the '900' call number and the related fees", the Minister for Public Health and the Family, which has authority over "the technical equipment of the calls centers and the costs related to it" and the Minister of Justice who "has countersigned the law project because the provisions of article 11 complete article 422bis of the Penal Code" (Parl. Doc., Chamber, 1963-1964, no. 677/3, p. 4).

B.5. Emergency medical assistance organized in this way, is analyzed as a matter with its own purpose, which includes both a technical provision whose effectiveness requires that it be uniform, a group of obligations that can be criminally sanctioned which incorporate the ethics of medical and paramedical professions which are required to bring their contribution to the application of the law, and a mechanism that guarantees the retribution of persons and institutions for the services that they are obliged to accomplish.

B.6. If the emergency medical assistance requires that emergency treatment is provided, which evokes at first glance the "policy for the provisions of treatment in and outside treatment institutions" intended in article 5, 1st §, I, 1◦, of the aforementioned special law, it is not in itself part of health policy. Throughout the preparatory work, it was repeated that as soon as the result is reached, the assistance ceases to be urgent and the obligations of the law are no longer applicable (Parl. Doc. Chamber, 1963-1964, no. 677/1, p. 3), that the notion of emergency care pertains to "emergency treatments to be given on site, transportation by ambulance to the hospital, admission to the hospital, and the treatments required by the state in which the victim is located" but that "later treatment is not included in the notion

of ‘urgent treatments’” (Parl. Doc. Senate, 1963-1964, no. 240, p.4), once the initial emergency treatments were administered, it no longer departs from the principle of free choice of the patient, that this principle regains “all its value”, and that then the “victim can be transferred to the hospital institution of his or her choice” (Parl. Doc., Chamber, 1963-1964, no. 677/3, p. 4; Parl. Doc., Senate, 1963-1964, no. 240, p. 5, no. 273, p. 7).

B.7. Emergency medical assistance is analyzed as a matter in its own right which, failing an express assignment, remained under the authority of the federal legislator. In the sense that it involves certain treatments given to the people who receive service, it is limited to what the emergency requires and does not make the implementation of the authorities of communities with respect to the delivery of services impossible or excessively difficult.

B.8. The Court also observes that emergency medical assistance outside of public roads or a public place, which is part of public centers for social assistance by virtue of article 58 of the organic law dated July 8, 1976, is included among the matters that are exempted from the authority of the communities (article 5, 1st §, II, 2◦, b, of the special law dated August 8, 1980 for institutional reforms, such as it was modified by the special law dated July 16, 1993).

B.9. Therefore, the provisions being contested, which insert themselves into the law pertaining to emergency medical assistance, and which are meant to ensure the training of those who provide this assistance, are in their entirety under the competence of federal authorities.

There is no basis for the petitioner’s argument.

By these reasons,

the Court

rejects the action.

Thus it is pronounced in French, Dutch, and German languages, in compliance with article 65 of the special law dated January 6, 1989 on the Court of Arbitration, at the public hearing held on June 6, 1995.

The clerk,

L. Potoms

The president,

M. Melchior