Roll numbers: 861 and 862
Order no. 37/96 Dated June 13, 1996

ORDER

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At issue: the request to annul article 21 of the law dated December 21, 1994 bearing on social and various provisions introduced by the Belgian Professional Association of Urologists and by the Group of Belgian Professional Unions of Specialty Physicians.

The Court of Arbitration,

Composed of the presidents L. De Grève and M. Melchior, and the judges L.P. Suetens, H. Boel, L. François, J. Delruelle and H. Coremans, assisted by the clerk L. Potoms, presided over by president L. De Grève,

after having deliberated render the following order:

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I. *Subject of the requests*

In petitions addressed to the Court by letters registered with the postal service on June 22, 1995 and received by the clerk on June 23, 1995, the requests to annul from article 21 of the law dated December 21, 1994 bearing on soial and diverse provisions, published in the Belgian Monitor dated December 23, 1994 (second edition) have been introduced respectively by the Belgian Professional Association of Urologists and by the Group of Belgian Professional Union of Specialty Physicians, both of which have their headquarters at avenue de la Couronne 20, 1050 Brussels.

II. *The proceedings*

In orders dated June 23, 1995, the acting president designated presiding judges in each of the cases in compliance with articles 58 and 59 of the special law dated January 6, 1989, on the Court of Arbitration.

The judges charged with making legal enquiries deemed that there was no standing in the respective cases to make application of articles 71 or 72 of the organic law.

In the order dated July 12, 1995, the Court assembled in a plenary session combined the cases.

Notification of the requests was made in compliance with article 76 of the organic law by letters registered with the postal service on August 10, 1995; parties were notified of the order to combine the cases in the same letters.

The notice provided for in article 74 of the organic law was published in the Belgian Monitor dated August 10, 1995.

The Council of Ministers, rue de la Loi 16, 1000 Brussels, introduced a report by letter registered with the postal service on September 22, 1995.

Notification of this report was made in compliance with article 89 of the organic law, by letter registered with the postal service on October 12, 1995.

The petitioning parties introduced a report in response by letter registered with the postal service on November 14, 1995.

In the order dated November 28, 1995, the Court extended until June 22, 1996, the time frame by which the order has to be rendered.

In the order dated January 18, 1996, the Court declared that the cases were not yet ready to be heard and asked the clerk to send a copy of the appendices to the report by the Council of Ministers to the petitioning parties, which could introduce by February 6, 1996, at the latest an additional report in response.

The parties as well as their attorneys were notified of this order by letters registered with the postal service on January 19, 1996.

The petitioning parties introduced an additional report by letter registered with the postal service on February 6, 1996.

In the order dated February 28, 1996, the Court declared that the cases were ready to proceed and set the hearing for March 21, 1996.

The parties as well as their attorneys were notified of this order by letters registered with the postal service on February 29, 1996.

At the public hearing held on March 21, 1996:

-appeared:

. the Hon. J. Ghysels, Esq., attorney at the bar of Brussels on behalf of the petitioning parties;

. the Hon. K. Winters, Esq., *loco,* the Hon. J.L. Jaspar, Esq., lawyers at the bar of Brussels on behalf of the Council of Ministers;

- the judges tasked with legal enquiries H. Coremans and L. François made their report;

- the aforementioned attorneys were heard;

- the cases were set for deliberation.

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

III. *Subject of the provision being contested*

Article 21 of the law dated December 21, 1994, containing provisions that are both social and various inserts in title III, chapter V, of the law related to mandatory health treatment insurance and indemnities, coordinated on July 14, 1994, under the heading “Nomenclature in medical imaging”, a new section XII*bis*, including articles 69*bis*, 69*ter*, 69*quater*, 59*quinquies*, 69*sexies*, 69*septies*, and 69*octies*.

With respect to medical imagery, this articles take up the provisions of the royal order dated December 7, 1989, modifying the royal order dated September 14, 1984, establishing the nomenclature of health services in terms of mandatory insurance against illness and disability.

IV. *In law*

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Petitions

A.1.1 The petitioning parties are professional unions. Their social mission is the the protection of the professional interests of their members, and they can, as the Court allowed on several occasions, act in the justice system with a view to contesting provisions that are likely to directly or unfavorably affect the interests of their members.

The litigious provisions directly and unfavorably affect the professional interests of the urologists and specialty physicians because they partially regulate the nomenclature of the health services they perform. Their effect is that urologists and specialty physicians are directly affected in their revenues, given that henceforth they will earn less for the services at issue.

A.1.2. The requests were introduced on time. The time frame for requests begins the day following the publication of the standard in litigation in the Belgian Monitor, in this case on December 24, 1994, and runs for six months, in this case until and including June 23, 1995.

A.1.3. The first argument for annulment is taken from the violation of articles 10 and 11 of the Constitution in that the provision being litigated modifies the royal order dated September 14, 1984 establishing the nomenclature of health services in matters of mandatory insurance against illness and disability, by not granting fees to urologists and non-radiological specialty physicians for certain medical imagery services serving to establish the diagnosis in the specialization concerned, while such fees are paid to radiologists for an identical service, or by granting the former, in certain other cases, lesser fees than those earned by radiologists for an identical service. Nothing, with regard to the intent and the effects of the measure allows one to objectively and reasonably justify this distinction, in such a way that the principle of equality is violated.

Categories found to be in a comparable or analogous situation should be treated equally. The goal that the legislator pursues by establishing a distinction between urologists and non-radiological specialty physicians is not clear. It is probably the limitation of expenses in illness-disability insurance, through a fight against over-consumption, which is addressed. It fails to observe however that to reach this objective, it doesn't matter who the physician is that performs the medical imaging service. The urologists and the non-radiological specialty physicians, on the one hand, and radiologists, on the other, find themselves in a comparable or analogous situation with respect to the objective being pursued by the legislator, in such a way that the principle of equality is violated. The circumstance that the provision being contested is the confirmation of a prior regulation is without relevance in this case.

If one had to deem that the basis of the distinction is found in a difference of specialization, there would be standing for confirming whether the unequal treatment is reasonably justified.

Unequal treatment can not be justified by objective material circumstances, given that the medical imagery services performed by the different categories of specialists are perfectly identical. Each service provider should invest in identical or similar equipment. The distinction can also not be justified by differences in training or aptitude since urologists and specialty physicians are trained in the use of medical imagery in their specialty, and there is standing for taking into account the inclusion of examination by medical imagery techniques in the global medical exam.

Even though the limitation and the control of expenses in the illness-disability insurance sector and the fight against over-consumption in this sector represent a lawful objective, the means by which one seeks to reach this objective should be adequate and proportionate. This is not the case in this instance: by compensating urologists and specialty physicians less, one assists in displacing expenses rather than in reducing them. Patients will have to be sent to radiologists more often. Given that the urologists and specialty physicians, account taken of their responsibility in the interpretation of images, will nevertheless most often have to take additional images, the expenses will even turn out to be increased.

What's more, no data is known or invoked that would make it appear that urologists and specialty physicians, as a category, would be guilty of over-consumption in taking images for diagnostic purposes.

Even if one did consider the argument used as being adequate with respect to the objective pursued, it is still just as disproportionate. The measure will have as an effect to increase the services performed by radiologists, to increase the inconveniences endured by patients, to increase the responsibility of urologists and specialty physicians who request a radiodiagnosis and to increase the costs for illness-disability insurance. Besides, it damages the patient's right to freely choose his or her doctor, and the freedom of commerce and industry of urologists and specialty physicians is also reduced. Finally, public authorities have another argument, with a view to achieving a limitation on expenses and to combat over-consumption, meaning the provisions related to the fight against over-consumption which are part of the law on illness-disability insurance.

Regardless, the existence of a discriminatory treatment is attested by the sole fact that the difference in treatment was once again eliminated by royal order dated June 7, 1991.

A.14. The argument is taken from the violation of articles 10 and 11 of the Constitution in that the provisions that are subject to litigation return to and confirm those of the royal order dated December 7, 1989, modifying the royal order dated September 14, 1984, establishing the nomenclature of the health services in matters of mandatory insurance against disease and disability, although this royal order was annulled by the Council of State. A law may not have as its subject the elimination of an irregularity of a royal order after the latter was noted by the Council of State or to prevent that the courts and tribunals or the Council of State make a ruling on any possible irregularity. As a result of the return to and confirmation of the royal order dated December 7, 1989, the persons to whom this order applies and the law being litigated are treated in an unequal fashion both with respect to the legal protection that they are guaranteed before the courts, tribunals, and the Council of State and with respect to access to these jurisdictions, without there being an objective and reasonable justification for this.

From the jurisprudence of the Court, the result is that a legislative provision can not have as its subject the lifting of a royal order out of its irregularity after this irregularity has been established by a decision of the Council of State, nor can it confirm an administrative act annulled by the Council of State, which, according to the presentation of reasons included in the project that became the law being contested, is the case in this instance. What's more, there is also an impediment to the Council of State or the courts or tribunals being able once again to make a pronouncement on any other complaint of illegality other than the one founded on the violation of article 3 of the laws coordinated on the Council of State.

The recourse to the validation technique was not necessary to eliminate the formal flaw noted by the Council of State, since all that was needed was to submit a new project to add an order to the legislation section of the Council of State. If the objective sought was to confer a retroactive effect on the provisions annulled, the only thing needed was to take a provision that repeals only the retroactive ban, since this ban of non-retroactivity is only of a legislative nature. The technique used is therefore disproportionate.

In the presentation of the reasons, the procedure implemented is justified by reasons of legal security. The legislator has however not explained why legal security required that the annulled order be taken

up and confirmed, nor what the legal insecurity it invokes actually consists of. Legal security can not be summarized by the suppression of the legal effects of an annullment order of the Council of State. That legal security does not require that the order dated December 7, 1989, comes into force beginning on January 1, 1990, stems from the rest of the royal order dated June 7, 1991, which, starting with June 1, 1991, repealed the unequal treatment that is presently being contested. Finally, there are no special circumstances which could justify the use of the validation technique.

Report "in response" from the Council of Ministers

A.2.1. The allotted time for submitting a request starts from the same day as the publication of the standard, as the Court and the doctrine intend. Then requests will be unreceivable by *ratione temporis*.

A.2.2. The situation of urologists and specialty physicians (called "connectors" in the report) differs from that of radiologists. The difference in treatment between the two categories can be justified by the differences in training and qualification that exist between them.

The radiologists and the connectors are not in comparable situations when they perform medical imagery services; their responsibilities differ. In addition, radiologists derive their revenues exclusively from medical imagery services, while the connectors derive their revenue from their other activity, which constitutes their principal activity. The Minister of Social Affairs of the period recalled, in a response to a parliamentary question, that the distinction is based on differences of qualification. The King could have reserved radiodiagnostic services only for radiologists. He did not do this, but opted for a lower reimbursement rate for the services performed by specialists other than radiologists.

The distinction complies with the objective to combat over-consumption and stabilize the financial situation of the illness-disability insurance sector. What's more, setting fee rates should be considered along with the limitation of services that are likely to be provided by a non-radiologist specialist.

The goal pursued in limiting expenses in the health treatment insurance sector is neither unreasonable nor illegal. In addition, it is not up to the Court to assess the opportunity of the measure adopted by the legislator to reach this goal.

The affirmation of the petitioning parties, according to which the measure would be inadequate or disproportionate to the goal pursued, is not founded on any objective element. There is nothing that shows that a smaller compensation of connectors' services would have as its effect the displacement of expenses toward radiologists, rather than to reduce them. It is also hard to see how the provisions being contested would affect the freedom to choose a physician.

A.2.3. The introduction of the provisions being litigated through the use of a law responds to the issue of guaranteeing legal security and was suggested by the legislation section of the Council of State. Because doubts could arise regarding the conditions according to which the provisions of a royal order could have a retroactive effect, it was permissible for the government to insert these provisions into a law. At that point, neither articles 10 nor 11 of the Constitution, nor the authority of a final legal ruling connected to an annullment order by the Council of State, nor the principle of separation of powers

were violated. The Court considered on three counts that the procedure of legal substitution was admissible.

In its control of “legislative validations”, the Court emphasized the intent of the legislator and the objective pursued by the validation. In an earlier ruling, on this matter, reference was made to the objective of legal security.

There is an obvious disproportion between the request that led to the annulment of the royal order dated December 7, 1989 (a formal fault), and the seriousness of the practical consequences that result from this order. Under this report, the objective of the legislator (controlling expenses and the guarantee of legal security) is legitimate.

The substitution technique that was used does not deprive the justiciable parties of their rights, and this is all the more so in that there could be no damage to rights acquired, given the successive modifications that have been made in nomenclature before the order of the Council of State. The provision under litigation does not modify the reach of this order.

On a subsidiary level, it is appropriate to underline also that there are exceptional circumstances that are likely to justify recourse to the technique of validation. The provision being contested should allow for savings in the order of a billion and a half francs.

The petitioning parties have no basis for judging the validation technique chosen and also they do not specify in what ways the techniques used are not proportionate to the goal addressed.

A result of a recent Court order is that the mere fact that retroactive provisions can have an impact on the outcome of procedures underway is not sufficient for this retroactivity to be illegal: it would only be illegal if its sole or main objective was to influence the outcome of these jurisdictional procedures or to prevent jurisdictions from making a pronouncement on a legal question, without exceptional circumstances to be able to reasonably justify this interference. In this case, the retroactivity of the provision being contested has its basis in the clearly expressed concern for legal security.

Report in response by the petitioning parties

A.3.1. The law dated December 21, 1994, was published in the Belgian Monitor, second edition, of December 23, 1994. The six months' request time frame runs up to and includes June 23, 1995. The request was introduced on June 22, 1995, and therefore it is not late.

A.3.2. The institutional parties should intervene by introducing a report within the appropriate time frame. The Council of Ministers however addressed a "report in response" to the Court and to the petitioning parties. What's more, the petitioning parties received an official copy of this document, but on it, the words "in response" were crossed out. The words crossed out were however not initialed by the lawyer of the Council of Ministers. Thus, the Council of Ministers did not introduce a report and can not be a party according to the terms of article 85 of the special law dated January 6, 1989. Its report in response should then be excluded from the debates.

A.3.3. By virtue of article 62 of the special law dated January 6, 1989, and article 17, 1st §, of the laws on the use of languages in administrative matters, the Council of Ministers should, in this case, use Dutch. The procedural acts drafted in another language or drafted bilingually are void. Now, the report in response from the Council of Ministers contains a certain number of citations in French only, in such a way that this report should be declared void and excluded from the debates.

A.3.4. The Council of Ministers includes with its report in response no index of documents, nor does it mention the documents sent. However, it does make mention in this report of a note of the "Healthcare insurance committee" and a notice of the legislation section of the Council of State related to the royal order reestablishing the order dated December 7, 1989. These documents were not provided to the petitioning parties. To the extent that the "report in response" of the Council of Ministers will be declared admissible, the transmission of these documents should be orderly, and sufficient time needs to be granted to the petitioning parties for the formulation of a response.

A.3.5. It is accurate that training in radiology differs from training in urology and all other specialized fields, but the Council of Ministers does not indicate why this difference in training justifies that the greater fee is granted to radiologists. Each specialist in fact receives, with respect to his or her own specialty, training in radiology and echography that is much deeper and has a direct relationship with his or her specialty, which allows the specialist to obtain more guided images. Radiologists do not benefit from this particular training.

Radiologists, urologists, and other specialists find themselves to be in a comparable situation when they themselves take these images.

Radiology training is technical in nature. In a certain number of cases, the radiologist does not take the images himself or herself, but simply drafts a protocol for them. This shows that the radiologist does not take guided images and does not envisage the dynamic aspect of the examination.

When a specialist, who is not a radiologist, takes images himself or herself with a view to establishing a diagnosis, he or she should not only be physically present, but should also perform the technical examination himself or herself. He or she is also responsible for the protocol he or she writes for the images that he or she has taken.

The argument according to which radiologists, unlike non-radiologists, derive their professional revenues only from medical imagery services is not relevant. In numerous cases, medical imagery will constitute the main element of the examination of the non-radiologist, next to which only the patient consultation can be taken into account, while the radiologist receives compensation which is the equivalent of a fee for the consultation.

Sending back a parliamentary question for the response of the Minister of Social Affairs is a simple argument on authority. What's more, it is a question of an informal declaration which is not documented and which contains contradictions besides. The argument according to which the King could have established a monopoly in favor of radiologists can not be admitted, because that would constitute an attack on therapeutic liberty.

In the preparatory work, saving money is not mentioned as a goal to be reached. And even if one has to admit that this is an objective of the provision under litigation, it remains no less inadequate and disproportionate in any case with respect to this goal. The measure under litigation does not even relate to the latter.

When the specialist, a non-radiologist, takes the images himself or herself, that reduces the costs because then there is no need to do additional exams or to start certain exams over again. The measure being litigated has an effect of increasing or at the very least shifting costs.

The Council of Ministers does not bring any element which would make it appear that the provision under litigation has the effect of reducing costs. In the past, in fact, the measure was returned.

A sliding of costs will be the result of the fact that specialists, who are not radiologists, will no longer invest in the medical imagery equipment and will send their patients to radiologists. Taking into account the duty of medical foresight, the number of services will increase.

The Council of Ministers does not respond to the argumentation related to the adequate character of the argument used and its proportionality with respect to the objective pursued.

The part taken by connectors in medical imagery remains limited. The affirmation of the Council of Ministers according to which a savings of a billion and a half of francs would result is neither supported nor accredited by anything.

If savings must be achieved in medical imagery, the responsibility should be shared for this by all of those interested, meaning radiologists and specialty physicians who are not radiologists.

One can cast doubt on the affirmation that states that therapeutic liberty is not threatened by the provision under litigation.

A.3.6. The legislation section of the Council of State, in its opinion dated June 2, 1994, did not take into account the circumstance that the royal order dated June 7, 1991, had repealed the unequal treatment, nor the fact of the annulment of the royal order dated December 7, 1989. The Council of State had only deemed that the royal order dated December 7, 1989 could not be reestablished with retroactive effect by a new order. From that point on, the argument of legal security can not be admitted.

The annulment order of the Council of State can not be reduced to an annulment due to an error in form. Indeed, article 3 of the coordinated laws of the Council of State also requires an internal control. In its order, the Council of State notes that, if the objective pursued was to quickly achieve savings in medical imagery, the minister did not act in consequence, and can not, for this reason, validly invoke urgency.

The Council of Ministers does not convince when it declares that there is no damage to the rights acquired. By alleging that the modifications brought to the royal order dated December 7, 1989, are implicitly taken back up, the Council of Ministers indicates that another reading is also posible. Beyond this, the Council of Ministers also invokes the fact that the cancellation of the provisions would have the effect that the connectors would once again issue invoices on the basis of the former nomenclature.

The report of the Council of Ministers reveals that the provision under litigation contains a veritable validation and that the objective of the law is in no way to achieve savings in the area of medical imagery or to fight against over-consumption. The provisions of the annulled royal order are in fact taken back up exactly as they are in the law.

Taking back up the annulled royal order in a text of law prevents the Council of State from being able to make pronouncements on the other arguments for annulment. The request for annulment before the Court only authorizes that arguments founded on a violation of the principle of equality be invoked against the law of validation, in such a way that is indeed an obstacle for jurisdictions making pronouncements on certain questions of law.

Affirmations that contend that the measure achieves a savings of 1.5 billion francs and that the annulment of the provision in litigation would mean that the “connectors” would once again invoice their services on the basis of the former nomenlature, which would go against the achievement of the objective, which consists of combatting over-consumption, are not exceptional circumstances according to the terms of order no. 45/95.

If the royal order dated June 7, 1991, which reestablished an equal treatment of radiologists and other specialists, is maintained in force without modifiation, one asks oneself why a differentiated treatment should exist for only the period during which the royal order dated December 7, 1989, annulled by the Council of State, combined its effects. Everything indicates that one in fact does not wish for the annulment order of the Council of State to result in legal effects. The real objective of the provisions

Comment [SS1]: It appears there is an error in the original: the word “sortissait” in the original most likely should be “assortissait”.

under litigation is the validation of an annulled order. The savings claimed and the fight against over-consumption are only pretexts.

Finally, one can not deprive the petitioning parties of the right to judge the validation technique used, without which they are taken away, in violation of article 13 of the Constitution, from the judge that the law assigned them to.

Additional "Report in response" of the petitioning parties

A.4.1. No report is made of the savings goals and the fight against over-consumption in the prepatory work.

The rare arguments that one finds in INAMI's notes concern the situation of radiologists and not that of the connectors. It is not explained why connectors are treated even more unfavorably than radiologists.

The argument according to which the connectors, in the absence of a measure under litigation, could reinvoice is not relevant to their situation beause the discrimination that they were subjected to was already reported before the Council of State annulled the royal order dated December 7, 1989.

A.4.2 The Council of Ministers incorrectly cites the opinion of the legislation section of the Council of State and makes no mention of the fact that the Council of State issued reserves with respect to retroactivity. Also, the Council of State underlined that retroactivity would have been necessary for the proper functioning of the public service, that it could not do harm to any possible acquired rights, specifically the right of property, and that this retroactivity should be based on a sufficient justification.

A.4.3 This kind of justification does not exist in this instance, and account taken of the fact that the royal order dated June 7, 1991, repealed the discrimination, it appears strange that no harm would have been done to rights acquired. What's more, several members of the "Insurance Committee" of INAMI underlined the violation of rights acquired.

What's more, the argument with respect to budgetary implications only applies to radiologists and not to connectors, with whom there is no danger of reinvoicing. The reason why legal security required a retroactive intervention of the legislator is all the less clear because the discrimination established again by the provisions being litigated was already repealed by the royal order dated June 7, 1991.

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Regarding the ratione temporis receivability of the request

B.1. In the terms of article, 1st §, of the special law dated January 6, 1989, on the Court of Arbitration, a request for annulment is only receivable if it is introduced within a period of six months following the publication of the rule being contested.

In this instance, the law undertaken was published in the Belgian Monitor of December 23, 1994 (second edition). The request, which was introduced on June 22, 1995, is receivable ratione temporis.

Regarding the "report in response" of the Council of Ministers

B.2. The petitioning parties contest that the Council of Ministers is a party to the litigation, given that it did not submit a report, rather it submitted only a report in response. For this same reason, they are asking that the "report in response" of the Council of Ministers be excluded from the debates.

The document submitted by the Council of Ministers is in fact entitled "report in response", but it was introduced in the time frame set in article 85, 1st section, of the special law dated January 6, 1989. Despite the terms used, this document is in reality a report in the sense of the aforementioned legislative provision, in such a way that the Council of Ministers is regularly a party to the cause. There is no reason for excluding from the debates the document submitted by the Council of Ministers.

Regarding the article 62 of the special law dated January 6, 1989

B.3. The petitioning parties ask that the "report in response" of the Council of Ministers be declared void and eliminated from the debates because certain passages of this report contain citations in a language other than the language of the proceeding, without a translation in the language of the proceeding being provided.

The report of the Council of Ministers was prepared in Dutch, in compliance with article 62, section 2, of the special law dated January 6, 1989, on the Court of Arbitration.

The fact that this report contains short citations in French in two places could not result in declaring the report void; there is no basis for excluding the report from the debates based on this reason.

With respect to the extent of the request

B.4. The petitioning parties request in principal order the cancellation of the totality of article 21 of the law dated December 21, 1994, bearing on social and various provisions. In subsidiary order, they request the cancellation of the provisions of article 69*ter*, § 7, 5°, 6° and 7°, of article 69*ter*, § 8, 4°, and article 69*ter*, § 11, inserted by the aforementioned article 21 into the law pertaining to mandatory health treatment and indemnity insurance coordinated on July 14, 1994. The grievances formulated address only the provisions inserted. The Court limits, as a result, its examination to these provisions.

With respect to the basis

B.5.1. The provisions being litigated modifying the nomenclature of health services reimbursable by the mandatory healthcare and indemnity insurance, in particular the nomenclature of medical imagery services performed by urologists and non-radiological specialty physicians.

They reproduce the content of the royal order dated December 7, 1989, modifying the royal order of September 14, 1984, establishing the nomenclature of the health services in matters of mandatory insurance covering illness and disability. The royal order dated December 7, 1989, had been annulled by the Council of State for insufficient cause for the urgency claimed.

B.5.2. The consequence of the provisions being litigated is a reduction, with effect on January 1, 1990, of the fee rate that serves as a basis for reimbursement by mandatory healthcare and indemnity insurance, with this rate applicable to the treatment dispensers' fees addressed in article 50, § 3, of the coordinated law pertaining to mandatory healthcare and indemnity insurance. For one thing, their effect is also

to make some medical imagery services no longer reimbursable by mandatory healthcare insurance when they are performed by urologists or non-radiology specialty physicians at the same time as other services, and for another thing, that those dispensing the treatments mentioned above can no longer claim fees for these services.

With respect to the first argument

B.6. In their first argument, the petitioning parties allege that the provisions under litigation run contrary to articles 10 and 11 of the Constitution in the sense that, in the nomenclature of medical imagery services, they establish an unjustified distinction between, on the one hand, urologists and non-radiologist specialty physicians, and on the other hand, radiologists.

B.7.1. In governing mandatory healthcare and indemnity insurance, the legislator possesses a wide liberty of appreciation to set the nomenclature of medical services, with account taken in particular of the requirements for optimal health treatment and the financial balance of the system. In light of this last requirement, it is up to the legislator to examine to what degree the increase in expense or the over-consumption of medical services should be attributed to a particular category of dispensers of treatments and envisage, as a consequence, the measures to be taken. On this occasion, the legislator can however not be aware of the reach of articles 10 and 11 of the Constitution in treating in a particular manner one specific category of treatment providers as opposed to another that would be comparable for the same type of medical services, without being able to reasonably justify this difference.

B.7.2. In this instance, the Council of Ministers brings nothing that would justify the reestablishment, with a retroactive effect starting from January 1, 1990, of the distinction that is the subject of litigation which

appeared in the aforementioned royal order dated December 7, 1989, but which was then suppressed by the royal order dated June 7, 1991, modifying the royal order dated September 14, 1984, establishing the nomenclature of health services in matters of mandatory insurance against illness and disability, with this royal order dated June 7, 1991, according to the statements of the petitioning parties, amply encountering their objections.

The Council of Ministers does not indicate – and the Court doesn't perceive – in what way the differences in training and qualification that exist between urologists and non-radiologist specialty physicians, one the one hand, and the radiologists, on the other hand, can justify the distinction being used.

With respect to the link that the provisions under litigation could have with the fact that the urologists and the non-radiologist specialty physicians could be at the origin of an over-consumption of medical imagery services or that these treatment dispensers would be contributing from this point of view, more than comparable categories, to an unjustified increase in expenditures for mandatory healthcare and indemnity insurance, the Court notes that neither the preparatory work on the provisions being contested, nor the report by the Council of Ministers, nor the documents submitted by the latter present the slightest element of fact upon which such a hypothesis can be based.

B.7.3. The first argument is justified.

B.8. Because the second argument can not lead to a wider annulment, there is no standing for examining it.

B.9. With consideration of the extent of the administrative and financial difficulties, which in this instance, would result, in terms of application, from the retroactive effect of annulment, it is appropriate to maintain the effects of the provision annulled for the period included between January 1, 1990, and June 1, 1991.

By these reasons,

the Court

-annuls article 21 of the law dated December 21, 1994, on the provisions of a social and various nature as it inserts the provisions of the article 69*ter*, § 7, 5°, 6° and 7°, of the article 69*ter*, § 8, 4°, and of the article 69*ter*, § 11, in the coordinated law pertaining to mandatory health treatment and indemnity insurance dated July 14, 1994;

-maintains the effects of the provision annulled for the period included between January 1, 1990 and June 1, 1991.

Thus pronounced in Dutch, French, 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 on June 13, 1996.

The clerk, The president,

L. Potoms L. De Grève