



IN THE NAME OF UKRAINE

JUDGMENT

OF THE CONSTITUTIONAL COURT OF UKRAINE

In the case on the constitutional petition of the 53 People's Deputies of Ukraine concerning the official interpretation of the provision of Article 49 paragraph 3 of the Constitution of Ukraine "in state and communal health protection institutions medical care is provided free of charge" (the case concerns free of charge medical care)

Kyiv, 29 May 2002

Case No. 1-13/2002

No. 10-пн/2002

The Constitutional Court of Ukraine consisting of Judges of the Constitutional Court of Ukraine:

Skomoroha Viktor Egorovich – the Chairman,

Vozniuk Volodimir Denisovich,

Ivashenko Vomodimir Ivanovich,

Koziubra Mikola Ivanovich,

Kornienko Mukola Ivanovich,

Kostizkii Mihailo Vasiliovich,

Malinnikova Liudmila Fedorivna,

Mironenko Oleksandr Mukolaiovich – Judge- Rapporteur,

Nimchenko Vasil Ivanovich,

Rosenko Vitalii Ivanovich,

Savenko Mikola Dmitrovich,

Selivona Mikola Fedosovich,

Tihii Volodimir Pavlovich,

Chubar Liudmila Panteliivna,

Shapoval Volodimir Mikolaiovich,

considered in the plenary session the case of the constitutional petition of the People's Deputies of Ukraine concerning an official interpretation of Article 49 paragraph 3 of the Constitution of Ukraine, "in state and communal health protection, institutions medical care is provided free of charge".

The consideration of the case in accordance with Articles 39 and 41 of the Law of Ukraine "On the Constitutional Court of Ukraine" was caused by the constitutional petition of 53 People's Deputies of Ukraine.

The grounds for considering the case in accordance with Article 93 paragraph 1 of the Law of Ukraine "On the Constitutional Court of Ukraine" is a practical need for an official interpretation of the below mentioned clause in Article 49 paragraph 3 of the Constitution of Ukraine "in state and communal health protection institutions, medical care is provided free of charge".

Having heard the Judge-Rapporteur Mironenko O.M. and having investigated the materials of the case the Constitutional Court of Ukraine

established:

1. The subject of the right in the constitutional petition – People's Deputies of Ukraine – in the application to the Constitutional Court of Ukraine with a request for an official interpretation of the phrase "free of charge medical care" and Article 49 paragraph 3 of the Constitution of Ukraine "in state and communal health protection institutions, medical care is provided free of charge", also raised the question: should medical care be paid just by the state's budget and health insurance, which are based on the employer's contributions, excluding other forms of financing involving private funds, or should this constitutional norm be understood as, "medical care in state and communal health protection institutions can be provided not just through the state funding and employer's contributions, but also by raising private funds through other forms of financing such as health insurance companies, credit union and so on".

According to the opinion of the People's Deputies of Ukraine the practical need for an official interpretation of this term in the provision mentioned below derives from the fact that nowadays citizens of Ukraine cannot obtain medical care in state and communal health protection institutions without paying for their own medicines, food, and "necessary expense materials". The majority of the population fails to cover these expenses, and therefore many people are forced to neglect visiting healthcare institutions. Thus according to the opinion of the People's Deputies of

Ukraine the constitutional right of citizens to health protection and medical care is not actually realised, and the free of charge requirement means that there should be no direct payment made by a patient when medical care is provided.

2. According to the opinion of the President of Ukraine, the Constitution of Ukraine guarantees that only one specific part of diverse medical services is provided free of charge, which entails that the latter is provided only on a guaranteed level and for the amount specified by the state at the expenses of taxes and duties from compulsory social insurance. At the same time according to the law, public authorities and local authorities in order to provide citizens with free of charge medical care may also direct other resources. Such assistance should be provided in “the form of free of charge or subsidized health care or target payments, which allow a person to pay for required medical services”.

The Committee of the Verhovna Rada of Ukraine on protection of health, motherhood and childhood, is underlining a practical need and urgency to provide an official interpretation of the phrase “free of charge” and the constitutional provision “in state and communal health protection institutions medical care is provided free of charge”, the meaning of the term “free of charge” is interpreted as full financial security providing basic health services, which are determined in accordance with the requirements of law, and purchase of the medicaments required to provide the below mentioned services for the costs of the managed by the state public financial resources formed according to a collective order (taxation or payment, including employees, of insurance payments).

The essence of the term “free of charge medical care”, according to the opinion of the Ministry of protection of health of Ukraine, is determined as an absence of a direct payment by a patient for a service obtained not just at the moment, when the services are obtained, but also prior and after it. In this case the costs of the medical care are to be reimbursed from the budget, insurance funds, or other sources, defined by the law.

The Ministry of Finance of Ukraine considers the gap between the guarantees declared by the Constitution of Ukraine to provide free of charge medical care, and the economic capability of the state and emphasizes the need for an official interpretation of the term “free of charge medical care”, with the scope of the interpretation being limited to the comparative analysis of Articles 49 and 67 of the Constitution of Ukraine. According to the Ministry’s opinion the term “free of charge” should be understood as an absence of payment only at the moment when medical care is obtained.

The Ministry of Economy and European Integration of Ukraine argues that within a market model of economy the term “free of charge” cannot be justified, since the costs for a “free of charge medical care” are always paid (sooner or later) by patients through deductions from wages

(income) to the budget. Therefore “the provision of Article 49 paragraph 3 of the Constitution of Ukraine on free of charge... is a recurrence of a planned economy... ignores totally market principles”. According to the opinion of the Ministry it would be better to view “free of charge medical care” as charitable, which is paid by other members of the society.

3. Definitions of such terms as “health”, “health protection”, “health protection institutions”, “medical care”, “medical service”, “medical attendance”, “guaranteed level of medical care”, “standards of medical care”, “health insurance”, “accessibility of medical care”, “free of charge medical care”, “paid medical care” and other relevant terms for this case were provided for study by the Constitutional Court of Ukraine by almost all leading research centers, medical universities and academies, academic institutes, famous scientists and practitioners, who are within the Ukrainian medical society, experts of the European regional office of the World Health Organization, who are working in Ukraine.

The definitions of the below mentioned concepts and terms, proposed by the scientists and practitioners, are diverse and only concur in some parts or elements. So the term “medical care” and “medical service” are interpreted as synonyms, antonyms, and as a part of each other. The same correlations have such terms as “medical care” and “medical attendance” and so on.

Some experts believe that the sense of free of charge medical care in the context of Article 49 of the Constitution of Ukraine is only in the absence of a direct immediate payment, “payment from a pocket of a patient” in a state or municipal health protection institution, and all other forms of expenses for providing medical care, including those paid prior to or after it, do not contradict the Constitution of Ukraine. Others believe that the constitutional clause “in state and communal health protection institutions medical care is provided free of charge” will be implemented only if medical care will be financed exclusively from the state and local budgets. Some scientists and practitioners consider establishment of a guaranteed level of free of charge medical care as the only means of compliance with the provisions of the Constitution of Ukraine, and their opponents believe that such approach is unacceptable, because “it is impossible to define this level without violating the Constitution of Ukraine and causing loss for a public’s health. One group of experts considers health insurances (unions, funds) as a primary form of protection of the existing health protection system, the second – admits their activities only under certain conditions, the third – considers them to be a covert way of taking money forcibly from patients for a medical care, and some scientists demand the prohibition of such health insurances (unions, funds) as the main core of financial abuse.

4. On a perusal of the case materials, the Constitutional Court of Ukraine reached the following conclusions.

The term “free of charge” (in the text of Article 49 of the Constitution of Ukraine – “free of charge”), whose official interpretation was requested by the People’s Deputies of Ukraine, does not have its separate value. Its content is defined by either a context or a logical interaction of words, in which it is used. In the phrase “medical care is provided free of charge” the last three words in the context of Article 49 of the Constitution of Ukraine mean that an individual who obtains such care in a state or municipal health protection institution should not cover its costs neither in form of any payments nor in any other form regardless the time when this medical care was provided.

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. The example of the latter opposition is given in Article 47 paragraph 2 of the Constitution of Ukraine: “Citizens in need of social protection are provided with housing by the State and bodies of local self-government, free of charge or at a price affordable for them, in accordance with the law”.

The content of the term “medical care” was clarified by the Constitutional Court of Ukraine through a grammatical analysis and research of legal acts. According to a linguistic aspect the word “care” means help, support (physical, pecuniary, moral etc.) in something; protection of somebody, saving somebody who is in trouble; to make some influence, which achieves needed consequences, brings relief, benefit, including a cure; action, which leads to support (realization of somebody’s requests in anything) under certain circumstances.

According to a legal sense the term “medical care” is used in the Preamble, Articles 4, 16, 25, 33, 37, 52, 58, 60, 78 of the Fundamentals of the legislation of Ukraine on protection of health (further – Fundamentals). Articles 33, 35, 58, 67, 68, 77 of the Fundamentals define the core elements of medical aid (emergency, urgent, primary, specialized, highly specialized etc.). Its definition is given in specialized dictionaries of concepts and terms of the World Health Organization, which are recognized by the below mentioned Fundamentals (Article 3). While studying the constitutional provision “in state and communal health protection institutions health care is provided free of charge” the content of medical aid was clarified by the Constitutional Court of Ukraine taking into account the provision of the Convention on Minimal Standards of Social Security, adopted in Geneva on 28 June 1952 (Articles 1, 2), the European Convention on Social and Medical Assistance, adopted in Paris on 11 December 1953 (Articles 1, 8-17), the European Code of Social Security, adopted in Strasbourg on 16 April 1964 (Part II), the Medical Care and Sickness Benefits Convention, adopted in Geneva on 25 June 1969 (Paragraph 1, 3), and the Recommendation of the same name, adopted in the same place and on the same day (Articles 7-12,

34), the European Social Charter, signed in Strasbourg on 3 May 1996 (Articles 11-13), and other international documents.

Thus, the term “medical care” is widely used in the national legislation of Ukraine, there are certain definitions of it formulated by the World Health Organization, scientists, medical universities and academies, the contradiction in the definitions was described in the previous paragraph. There is no holistic legal definition of this term in the laws of Ukraine, and therefore a normative settlement is needed, which goes beyond the powers of the Constitutional Court of Ukraine.

However the below mentioned analysis of the terms “free of charge” and “medical care” in a systematic connection with other similar terms, which are used in the Constitution of Ukraine, laws of Ukraine, international treaties, makes it possible to reach an opinion concerning the content of the term “free of charge medical care”. The term means that citizens of Ukraine do not have an obligation to pay for medical care provided for them in state or communal health protection institutions neither at the moment when the care is provided nor prior nor after it. The phrase “free of charge medical care” means an impossibility of charging people for such care in state and communal health protection institutions in any way of payment (cash or noncash): or as a “voluntary contribution” to various medical funds or as compulsory insurance contributions etc.

Based on the study conducted by it, the Constitutional Court of Ukraine considers that Article 49 paragraph 1 of the Constitution of Ukraine provides that everyone’s right to health insurance, is not mandatory, but a voluntary medical insurance of citizens. Concerning the state’s health insurance, its establishment does not violate the constitutional provision “in state and communal health care institutions medical care is provided free of charge” just in case when organizations, institutions, enterprises and other companies, which make business, state’s funds and others would pay for compulsory insurance (contributions). If citizens would be obliged to pay these contributions to the state’s health insurance, then it would not correspond with the constitutional provision, which is under interpretation, because it would be one of the forms of a payment for a medical care provided in state and municipal health protection institutions.

This provision does not ban the possibility of providing medical services to citizens, which go beyond the medical care (according to the terminology of the World Health Organization – “less important medical services”, “paramedical services”) in such institutions by charging a separate fee. This issue has already been under the consideration in Judgment # 15-пп/ 98 of the Constitutional Court of Ukraine on 25 November 1998. The list of such paid medical services cannot invade the limits of a free of charge medical care and therefore according to Article 92 paragraph 6 of the Constitution of Ukraine should be established by law.

Taking into account Article 49 paragraph 3 of the Constitution of Ukraine, which is under interpretation, the Constitutional Court of Ukraine considers unacceptable the propositions of some state institutions, which propose to limit free of charge medical care by establishing a ceiling on what will be guaranteed, the free of charge medical care will be provided only for people without means or in cases “defined by a law” etc. This violates the provisions of Article 3, Article 22 paragraph 3 and other Articles of the Constitution of Ukraine. 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.

The operation of the provision “in state and communal health protection institutions medical care is provided free of charge” applies to all such institutions, which belong to a state’s (irrespective of a departmental submission) or a municipally owned property and are financed from a budget at any level.

5. 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. Considering the possibility of providing additional funding for the health protection sector by a solidary participation of people, this issue was raised by the subject of the right to constitutional petition, the Constitutional Court of Ukraine notes that free of charge medical care in state and communal health protection institutions does not exclude the possibility to finance this sector through developing extra-budgetary mechanisms of raising funds, for example by establishing health insurances (unions, funds), whose activities should be regulated by a law.

The sources of this additional income could be established by direct payments by people for less important medical services, the departmental appropriation of funds for maintenance of medical institutions, charity receipts, international programs’ funds of humanitarian aid, public donations, religious charity organizations and patrons, insurance payments of employers within the state’s compulsory health insurance, funds of companies-organizers of the voluntary health insurance, resources of local communities, state’s medical loans etc.

Given the above and pursuant to Articles 147, 150 of the Constitution of Ukraine, Articles 45, 51, 63, 95 of the Law of Ukraine “On the Constitutional Court of Ukraine”, the Constitutional Court of Ukraine

rendered the judgment:

1. The provisions of Article 49 paragraph 3 of the Constitution of Ukraine “in state and municipal health protection institutions health care is provided free of charge” should be understood as in state and communal health protection institutions medical care is provided for all citizens regardless of its scope and without prior, current or future payment for it.

The concept of medical care, conditions of introduction of health insurance, including state insurance, establishment and usage of voluntary medical funds, and the procedure of providing medical care, requiring payment, in state and communal health protection institutions and the list of those services should be defined by a law.

2. The judgment of the Constitutional Court of Ukraine shall be compulsory in the territory of Ukraine, final and may not be appealed.

The Judgment of the Constitutional Court of Ukraine shall be subject to promulgation in “Visnyk of the Constitutional Court of Ukraine” and other official publications of Ukraine.

CONSTITUTIONAL COURT OF UKRAINE