

Implementation of the constitutional rights to health insurance on the Albanian legislation

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II. The abstract

The right to health insurance is a constitutional right. The Constitution of the Republic of Albania provides in its Article 55 "Citizens enjoy equally the right to health care from the state. Everyone has the right to health insurance in accordance with the procedure established by law ". In the Constitution, the right to health insurance of citizens is included into the group of economic and social rights. Based on the classification of rights made in theoretical perspective of constitutional law, it is not difficult to conclude that even this right is a positive right, just like most of the rights that are part of this group. This fact is confirmed by constitutional provisions references, where it underlines that the implementation of this rights is conditioned to a special law which has to establish rules and its application procedure. Starting from March 2013, Albania has started to implement a new law, Law no. 10383 dated 24.2.2011 "On mandatory insurance of health care in the Republic of Albania.

In the study we have presented, we intend to analyze the concrete way of fulfilling this constitutional obligation of the Albanian legislation. Law defines the main principles on which the health insurance is established in Albania. Albanian health insurance is based on Bismark system and is financed mostly by contributions of the insured people. Law confirms the application of the solidarity and universal coverage of the population regarding health insurance and it brings a new approach on relation between public and private sector on health care.

Keywords: *Constitution, health, insurance, law, the right*

III. Implementation of the constitutional rights to health insurance on the Albanian legislation

Albanian Constitutional framework

The right to health insurance is a constitutional right. The Constitution of the Republic of Albania provides in its Article 55 “Citizens enjoy equally the right to health care from the state. Everyone has the right to health insurance in accordance with the procedure established by law. The right to health insurance take place within the social and economic rights group of the constitution. Based on the classification of rights made in theoretical perspective of constitutional law, it is not difficult to conclude that even this right is a positive right, just like most of the rights that are part of this group. This fact is confirmed by constitutional provisions references, where it underlines that the implementation of this rights is conditioned to a special law which has to establish rules and its application procedure.

It is also understood that the existence of this right is based not only on human nature but is associated with the interaction of the state and its obligation to create special conditions so that this right can be realized. Considering the importance of health care, and in fulfillment of the constitutional obligation¹and constitutional objective² as well, the state takes on the responsibility of enabling and creating the conditions for the implementation of this right. In this way this commitment comes from the framework of the good and the rights of individuals and it’s raised in a broader plan being put in the public service. In this way this right is a public right, which creates an obligation for the state as such, as well as for the specially created institutions of the state that aims to fulfill the constitutional obligation.

Albanian social protection schemes defined by the law includes health services, health insuranceservices, social assistance and social security services. This scheme is established with respect to fundamental human rights provided by the Albanian Constitution in Articles 52, 54, 55, 57, and constitutional and social objectives, as provided in Article 59 of the Constitution. In particular, Article 55 of the Constitution provides for the right to health care and Article 59 of the Constitution states that the State within its constitutional powers and potential resources,aimed to the highest available standard of physical and mental health.

¹ Article 55, The Constitution of the Republic of Albania

²Article 55, The Constitution of the Republic of Albania

Article 55 of the Constitution provides for the right to health care as a fundamental right with socio-economic character. In this article is clearly stated the State's duty to guarantee health care for its citizens and the right to health insurance for all in accordance with the law. Article also states repeatedly that citizens should not be discriminated against but treated equally. This is evident in two cases: when it is mentioned that "citizens enjoy equally the right of health care by the state," as well as the right to health insurance is referred to as a right of all. The Constitution provides that health insurance procedures are regulated by law.

Further note that the law no. 10 383, dated 24.02.2011 "On Compulsory health care in the Republic of Albania", correctly interprets the Constitution when it specifies that "the scheme of compulsory health insurance is intended to cover the population to benefit from health care services, financed by public and private sector, according to this law³."

Using the term "population coverage" law has avoided the use of words "nationals" or "foreign nationals" and furthermore foreign nationals working in Albania which were present to year 1994 law under which compulsory insurance covers all citizens of the Republic of Albania residing permanently in Albania, as well as the foreigners employed and insured in Albania⁴. The previous definition narrows the scope of protection in relation to the constitutional norm, because excluded from this right stateless persons and foreigners living but not working in Albania. Speaking to cover the population, current law provides a precise reference to Article 55 of the Constitution, the second paragraph of which reads: "Everyone has the right to health insurance under the procedure established by law".

In observance of the Constitution, Law no. 10 383, dated 24.02.2011 "On Compulsory health care in the Republic of Albania", has set up an non for profit mandatory national system. Compulsory Health Care Insurance Fund is the administrative body charged with implementing the scheme. In accordance with the health insurance scheme provided for by law, in return for payment of the contributions, there are covered by the scheme the health care service packs of the compulsory insurance which include visits, examinations and treatments in primary health care centers and in hospitals, private or public ones, drugs of the reimbursement list of drugs and medical products. All these aspects are regulated with bylaws, most of them by the decisions of the Council of Ministers.

³Article 4,parag. 2 of Law no. 10 383 dated 24.02.2011 "On Compulsory health care in the Republic of Albania

⁴Article 4 of Law no. 7870 dated 13.10.1994 "On health insurance in the Republic of Albania", as amended .
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Given the above regulation, problems that can be analyzed to verify the implementation of constitutional law, related to the relationship between citizens and the Fund. Here are some of the issues that may cause debate:

- How will respect the citizen's right to a fair hearing?

The Constitution guarantees the general tools, but the problem arises because the Fund does not provide health services by themselves, but enters into contracts with providers for this service. In these cases, problems arise not only regarding to the determination of the parties to the conflict, but also to the implementation of judicial decisions. The solution in this case we think that should be sought in contain wording that contracts concluded by the Fund will have as the such.

- - Potential concern remains the case when the person remains a debtor to the Fund as there is sufficient income. *Would he be deprived of the benefit of the right to equal health care from the state without paying contributions?*

Such a situation can be avoided by providing the possibility of distribution of social and economic risk between the various institutions of the system.

New law on health insurance

The legal framework regulating the right to health insurance in the Republic of Albania is relatively broad and complex. The most important among them is Law no. 10 383, dated 24.02.2011 "On Compulsory health care in the Republic of Albania". The law which satisfies the constitutional obligation to determine the procedure by which everyone will realize the right to health insurance is no law. 10 383, dated 24.02.2011 "On Compulsory health care in the Republic of Albania. The law provides that health insurance in the Republic of Albania is a mandatory provision. Such a formulation can spread issue: We are dealing with a right to health insurance or with the obligation to be insured to health?

On the other hand such a formulation goes toward confirmation of the principle of universality. The thesis that compulsory schemes aimed at covering the entire population in a given country finds support not only factual determination made by the second paragraph of

Article 4 of the law when it comes to coverage of the population, but also the categories of persons referred to subject to compulsory insurance. By law we have a division into two groups: the group of economically active persons (employees, self-employed, unpaid family workers, other persons economically active) and that of economically inactive persons (persons benefiting from the Institute of Social Security, people receiving social assistance or disability payments, in accordance with relevant legislation, persons registered as unemployed jobseekers in the National Employment Service, aliens asylum in Albania, children under the age of 18, pupils and students under the age of 25 years, provided they do not have income from economic activities, categories of persons defined by special laws.⁵

Groups covered

Theoretically all population groups have been covered by health insurance. However, the law has provided this opportunity for inclusion under the protection of any isolated individual who can not match the names of categories provided by law. To this will serve voluntary insurance⁶. This approach is a further development and protection of the constitutional right to health insurance, but that the circumstances of the times above do not present the features of an obligation, but a right in the sense that it is the free choice of the person to join the scheme. However, we think that this selection is binding again indirectly, because the uninsured person who needs medical care, can get this service by paying its full cost. In this way, those who do not comply with the procedure established by law, shall have unequal treatment from the financial standpoint, of course. On the other hand, when one makes the voluntary insurance scheme he join the scheme with the right to benefit in the same way and amount with the rest of the obligatory insured population⁷. As explained above, the universal character of health insurance lies not only on Albanian citizens but also on foreign nationals and stateless persons adhering to the term "anyone" who used to the Constitutional provision.

All persons participating in the scheme called ensure. Participation in the scheme is based on the payment of contributions. Contributions are paid from income of economically active persons and the state budget, which pays for economically inactive persons. We do so with

⁵ Article 5 of the Law no. 10 383 dated 24.02.2011 "On Compulsory health care in the Republic of Albania.

⁶ Article 5/3 of the Law no. 10 383 dated 24.02.2011 "On Compulsory health care in the Republic of Albania

⁷ Stefan Grezd ,Regulated competition in social health insurance, International Social Security Review, Vol.59/2006

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the ideology of another important principle of health insurance schemes - the principle of solidarity.

Financial Resources

Under this law, the Fund realizes covering of health care services packages that are included in the scheme, through these resources:

1) compulsory contributions to health insurance, which are obtained from the contributions of economically active persons according to the categories defined in Article 5, paragraph 1 of Law.

2) the contribution of compulsory health insurance from State Budget for economically inactive persons, according to paragraph 2 of Article 5 of the law, which means contributions for persons benefiting from the Institute of Social Security, people receiving social assistance or payment ability limited, in accordance with relevant legislation, persons registered as unemployed jobseekers in the National Employment Service, aliens asylum in Albania, children under the age of 18, etc.

3) voluntary health insurance contributions, according to paragraph 3 of Article 5 of the law which is possible for that parts of the population that for specific reasons not included in the categories of compulsory insurance.

4) transfers from the Ministry of Health to subsidize a portion of direct payments. These transfers come as the financial support of various social policies that the government can undertake to facilitate various social categories in need.

5) transfers from the Ministry of Health for the services required of it, beyond those budgeted or contracted by the Fund, targeting financial guarantee to cover the predefined service packages.

6) transfers approved in the state budget to balance the budget of the Fund or for compensation of unrealized contributions due to implementation of the budget process, which does not allow de facto the bankruptcy of the Fund.

Among the financial resources provided even other alternative sources such as donations, grants from national and international sources.

The law provides rules on the Fund's financial resources, financial structure and rules of accounting and auditing. Meanwhile underlined that the Fund manages its activities within the available financial resources, are not included in debt and does not cover health care services outside the compulsory insurance package and according to the relevant contracts.

The contribution rate

The rate of contributions to health insurance is 3.4 percent of the basis for calculating contributions. In this way, the new law brings the unification of percentage contribution for all the insured. This represents a change compared to the previous law under which employees (including foreigners) pay a fixed contribution to 3.4% of gross salary, for the self-employed and unpaid family workers the contribution was 7% and self-employed and unpaid family workers working in the countryside, the contribution was 5% on the plains areas and 3% on hilly and mountainous areas.

For the category of self-employed workers and for voluntary insurance, unified percentage calculation will not be done based on the minimum wage but on the average between minimal and maximal wage due to contributions calculation.

Collection of contributions

The procedure part regarding the practical implementation of the process of realization of the constitutional right to health insurance fulfills the Law No. 9136 dated 11.9.2003 "The collection of mandatory contributions to social security and health insurance in the Republic of Albania".

The law regulates the collection of compulsory contributions to health insurance and decisions issued pursuant thereto. Fund is not directly responsible for the collection of contributions. Competencies in this case belong to the Ministry of Finance through the Directorate General of Taxation. Directorate General of Taxation, which operates through branches in the districts, as does the collection of contributions and taxes is responsible for exceeding the contributions to social security and health budgets of the respective institutions. According to this Law and other relevant laws, and taking into account that a part of the HIF budget is included in the state budget, delay interests regarding the payment of taxes or penalties imposed on parties for not registering or paying health insurance in time, not exceeding in favor of HIF fact that negatively affects fund of this institution.

Benefits from mandatory schemes, services packages

One of the innovations that brings this law is the introduction of the Fund in the exercise of its functions through development and purchase packages of health services by health care provider . In this way, the Fund achieves an active function.

The particularity is that the law creates flexibility in the process of drafting packages associated with the respective prices, given the solvency of the Fund's budget. This implies that not all types of services can be included in the package financed by the Fund. On the other side are given the medical, economic and social criteria on basis of which will be designed packages of services, such as mention the extent to which the service impacts life extension, efiktivitety, the cost of service, the solvency of the population.

Drafting of services packages is made by technical committees, which are composed by experts, who represents, in an equal manner, the division of medical, economic and social criteria. The nominative composition of the technical committees is appointed by the Fund's Administrative council according to the rules set in the Fund's Statute. The Administrative council of the Fund approves the draft packages proposed by the technical commission, and sends it to the Minister of Health for processing to the Council of Ministers. The proposed package is accompanied by a financial report of the Fund's General Director, on financial coverage options of the proposed packages, by Fund.

the compulsory insurance packages services contain:

- a) visits, medical examinations and treatment in public primary health care centers and public hospitals;
- b) visits, medical examinations and treatments in private primary medical care and private hospitals.
- c) drugs, medical products and treatments by contracted providers of health services

Copayment

In special order law addresses the problem of copayment confirming the principle of participation on covering the price of services covering the insured persons. Copayment mechanism in a health insurance scheme aims to achieve several goals: first, reminds consumers that health services costs; secondly it helps to manage the scheme by formalize informal payments, and the third it is a means to prevent or limit abusive requests for access

the insurance scheme. However, the extension of the principle of solidarity, the law also provides the exemptions from copayments of the categories of persons because of social or health characteristics, determined by DCM. These categories are pensioners, children up to one year old, war invalids, the sick people with some diagnoses as Ca, AIDS and TB, etc..

Fund of compulsory health insurance does not finance health care services to persons who are not insured in accordance with the provisions of this law except in cases of medical emergency. We thus excluding cases of emergency, in order that persons to get benefit from health insurance must follow the procedures and rules established by law to certify his health insurance under the categories in which they are a part .

Contracts with service providers and the private sector

The Fund pays health care providers only for services provided to insured persons and based on the terms and conditions of the respective contracts and their annexes. The Administrative Council shall adopt the procedures and criteria for the award of contracts and payments, aiming to stimulate access to services, cost effectiveness and increase the quality of services provided by public and private providers to the community.

The Fund may enter into contracts with private health care providers, licensed by the competent authority. The contract provides health services to be covered by the Fund. Contracts related to a certain period and can be renewed.

The law creates the possibility that the Fund be selective in the selection of those institutions with health service providers that will contract to purchase the services package. The selection process is done through the implementation of transparent criteria and procedures, taking into account the health needs of the population and their right to access to health services package that covers compulsory healthcare. In this law made a distinction between private service providers, in the contracting process. Putting these institutions at the same start, the aim is to create a real market and competition between service providers that will

Fund terminates the contract with a service provider when performance analysis shows that the transducer does not meet the criteria foresign by law. Before the termination of contract, Fund should inform the Ministry of Health and has to appoint to service provider a prescribed time limit within which he must meet the criteria.

Administrative Council sets the various forms of payments to providers of health care services and health care institutions.

The Fund reimburses the insured persons who receive services from health care providers within the country, which have not contract with the Fund, only in the absence of contracted providers of health services, after verification by the relevant Fund. The Administrative Council shall specify the cases of persons providing reimbursement and reimbursement rules and procedures.

A special attention, the law attaches issues related to information providing the obligation of a number of public institutions to exchange information with the Fund. Thus, the Fund receives information from the Ministry of Finance, the Ministry of Health by the Directorate General of Taxation and the other institutions.

While health care providers are required to submit to the Ministry of Health and the Fund, periodically, information concerning their activities, according to reporting obligations stipulated in contracts with the Fund. The Fund will manage confidential information in accordance with the health care legislation, legislation on data protection and other legislation.

IV. References

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