

## **CHANGES IN THE SYSTEM OF PUBLIC HEALTH INSURANCE AND THEIR CONSTITUTIONAL ACCEPTABILITY**

### **LEGAL POWER OF THE CONSTITUTIONAL COURT OF THE SLOVAK REPUBLIC TO DECIDE ON THE CONFORMITY OF LAWS WITH THE TREATY ON THE EUROPEAN UNION AND TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION**

#### **EXPEDIENCY OF APPLICATION OF LEGAL POWER OF THE CONSTITUTIONAL COURT OF THE SLOVAK REPUBLIC TO DECIDE ON THE CONFORMITY OF LAWS WITH THE TREATY ON EUROPEAN UNION AND TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION**

The legislator may, in the interests of protecting the legitimate public interest (e. g. protection of insured persons) accede to a more radical change in the system of public health insurance. However, the legislator must adequately justify and implement that change within the limits laid down by the Constitution of the Slovak Republic, taking into account, *inter alia*, the harm thereby caused to legal entities which participated in the administration of public health insurance in good faith until the new legislation came into force, and must deal with that change in a constitutionally acceptable manner.

If, through the amendment of the law there is a fundamental (conceptual) change in the system of public health insurance, the assessment of its constitutional acceptability in terms of substantive understanding of the rule of law, must necessarily also include an attribute of respect for legitimate expectations. If the original concept of the law on health insurance companies was based on the authorization of health insurance companies to autonomously decide on the use of profit (as a positive result of business) created in the field of public health insurance, then deprivation of this right causes a forced limitation of the ownership rights of private health insurance companies in the form of substantial restrictions on their ability to treat their own shares as asset values forming an integral part of their ownership rights.

In this particular case there was also a major modification to the content of these companies' authorization to provide public health insurance (licence), which represented a legislative intervention that fundamentally affected their legitimate expectations associated with the exercise of their property rights. Nevertheless, the legislator conducted this intervention into the ownership rights of non-state health insurance companies without any compensation (reasonable compensation). These facts indicate that this was an intervention which disregarded both the limits resulting from Art. 20 sec. 1 and 4 of the Constitution of the Slovak Republic and the rights guaranteed in Article. 1 of the additional Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms.

It is possible to include in the international treaties under Art. 7 sec. 2 of the Constitution of the Slovak Republic the following: the Treaty of Accession of the Slovak Republic to the European Union, the Treaty of Establishment of the European

Community, the Treaty on the European Union and the Lisbon Treaty, which *inter alia* has renamed the Treaty of Establishment of the European Community as the Treaty on the Functioning of the European Union. These are undoubtedly international treaties which meet the criteria laid down in Art. 125 sec. 1 of the Constitution of the Slovak Republic.

The Constitutional Court of the Slovak Republic is entitled in proceedings on conformity of legal enactments initiated at the suggestion of members of the National Council of the Slovak Republic to review the compliance of a domestic law with this international treaty whose criteria are listed in Art. 125 sec. 1 in conjunction with Art. 7 sec. 2 of the Constitution of the Slovak Republic, i.e. the Court is in that case entitled to decide on non-compliance of the contested provisions of the Law on Health Insurance Companies with the relevant provisions of the Treaty on the Functioning of the European Union.

Based on the principle of the primacy of European Union law, all public authorities, i.e. not only the ordinary courts, are obliged *ex officio* not to apply any domestic law which in their view is contrary to the law of the European Union, while the ordinary courts have, moreover, the possibility to verify such a legal opinion by submitting the question to the Court of Justice of the European Union according to Art. 267 of the Treaty on the Functioning of the European Union. It follows that until the decision of the Constitutional Court of the Slovak Republic about non-conformity of the contested legal enactment, its part or individual provision (or until its effectivity is postponed according to Art. 125 sec. 2 of the Constitution of the Slovak Republic) is issued, the ordinary courts as well as other public authorities must *ex officio* exclude the use of such domestic law. Following the decision of the Constitutional Court of the Slovak Republic on its non-conformity with the Constitution of the Slovak Republic or constitutional law, the non-conformity of that law with the Constitution of the Slovak Republic or constitutional law, but also the possible non-conformity of the contested national law with the law of the European Union is then eliminated.

If the Constitutional Court of the Slovak Republic in proceedings under Art. 125 sec. 1 a) of the Constitution of the Slovak Republic finds and decides that contested law, its part or some of its provisions are not in conformity with the Constitution of the Slovak Republic or constitutional law, in principle it is not necessary to examine their non-conformity with the law of the European Union (despite the fact that claimants may suggest this), because their possible non-conformity would lead to the same result and the same legal effect as the one achieved by the decision, according to which the contested legislation is not in conformity with the Constitution of the Slovak Republic or constitutional law. The Constitutional Court of the Slovak Republic essentially justifies this "self-restricting" approach to the exercise of its powers by the fact that after the proclamation of non-conformity with the Constitution of the Slovak Republic or a constitutional law, the subject of proceedings on conformity of legal enactments lapses in relation to the contested non-conformity with the law of the European Union.

*(Finding of the Constitutional Court of the Slovak Republic, Ref. No. PL. ÚS 3/09 of 26 January 2011)*