



**REPUBLIKA SLOVENIJA**  
**USTAVNO SODIŠČE**

U-I-7/91  
20/2-1992

**DECISION and RESOLUTION**

In the proceeding of evaluation of the constitutionality and legality of the Resolution on Prescription of Medicines and the Rules of the Classification of Medicines, initiated by Marija Legan, Ljubljana and the Slovene Association of Societies for Struggle against Diabetes, Ljubljana, the Constitutional Court, at the meetings on Feb. 13 and 20, 1991,

**1) made the following decision:**

The Resolution by the Executive Council of the Assembly of the Republic of Slovenia on Prescription of Medicines (Official Gazette of RS, No. 45/90) is hereby abrogated retroactively as far as it relates to the obligation of the users under the second and third paragraphs of Art. 20 of the Health Protection Act (Official Gazette of SRS, No. 1/80, 45/82, 42/85, 42/89 and Official Gazette of RS, No. 8/90) to participate in the payment of medicines.

**2) passed the following resolution:**

The Constitutional Court refuses to accept the initiative lodged by the Slovene Association of Societies for Struggle against Diabetes, Ljubljana and will not institute the proceeding of evaluation of the constitutionality and legality of the Rules of Classification of Medicines passed by the Republican Secretariate of Health and Social Welfare (Official Gazette of RS, No. 45/90, 7/91 and 8/91, year I).

**Reasons**

The initiators impugn the constitutionality and legality of the above-mentioned Resolution which ensures the right to medicines by classifying the medicines on one of the three lists: the positive list of medicines for intermediate list of medicines for which the user pays 50 % of the value of the medicine and the negative list of medicines for which the user pays the total price. The initiators allege that the impugned provision which determines the payment of the medicines from the intermediate and negative lists is not in conformity with the provisions of Art. 20 and 46 of the Health Protection Act, which provides that contributions payable by individual users in exercising their rights to health protection cannot be imposed on the categories of beneficiaries specified by statute. The Slovene Association of Societies for Struggle against Diabetes, lodged, for the same reasons, also an initiative for evaluation of the constitutionality and legality of the Rules of Classification of Medicines because it understands that on the basis of the provisions of these Rules diabetics pay 50 % of the price for the medicines from the intermediary list and 100 % of the price for medicines from the negative list. The Association also understands that both impugned acts are in conflict with Art. 11(7) of the Selfmanagement Agreement on the Implementation of Health Protection. By Resolution of May 23, 1991, the Constitutional Court accepted the initiative lodged by Marija Legan on Jan. 30, 1991 and instituted the proceeding of evaluation of constitutionality and legality. By Resolution of Feb. 13, 1991, it joined together both cases for joint discussion and decision.

The Health Protection Act (Official Gazette of SRS, No. 1/80, 45/82, 42/85, 32/89, 42/89 and Official Gazette of RS, No. 8/90) provides uniform principles of the health protection system, the substance thereof, ensures the right to health protection and regulates other issues in this field (Art. 1). Workers and employees, other working people and citizens in the Republic of Slovenia are entitled to the extent of health protection provided by this Act (Art. 8, Para 1). In the field of health protection all citizens are guaranteed rights which, among others, include the right to medicines (Art. 46). A self-management agreement or a contract may provide that individual users may contribute for satisfying common needs

or to the payment for certain medical services from their personal income or from their other resources (Art. 20, Para 1). No contribution may be imposed on individual users in exercising their rights to health protection which is secured by the Act to certain categories of users (Art. 20, Para 2 and 3).

The impugned Resolution on Prescription of Medicines (Official Gazette of RS, No. 45/90). passed by the Executive Council of the Assembly of the Republic of Slovenia on the basis of Art. 12, Para 4 of the Enabling Statute for the Implementation of the Constitutional Amendments IX thru LXXXIX to the Constitution of SR Slovenia (Official Gazette of SRS, No. 32/89) regulating the takeover of responsibilities of the self-managing interest communities at the level of the Republic, became effective on Dec. 22, 1990 and applicable as of Jan. 1, 1991.

The impugned Rules of Classification of Medicines passed by the Republican Secretariate of Health and Social Welfare (Official Gazette of RS, No. 45/90, 7/91, 14/91 and 8/91-year I), with an appendix which is an integral part of the Rules, on the other hand, regulates the classification of medicines on the positive, intermediate and negative lists of medicines.

The Constitutional Court understand that classification of medicines intended to serve a doctor as a professional tool in prescribing medicines, reminding him of obsolete medicines or on preparations without effects and directing him to medicines with a greater probability of healing effect, is a question of the profession and as such incontestable. Contestable, on the other hand, is the Resolution on Prescription of Medicines if it regulates matters which are already regulated by statute or regulate them contrary to statute. In the first paragraph of Art. 20, the Act provides that a self-management or a contract may provide that individual users have to contribute for the purpose of satisfaction of common needs or to the payment of certain medical services from their personal income or from their other resources. The second and third paragraphs of Art. 20 of the Act provide expressly that a contribution payable by individual users cannot be prescribed in connection with exercising the rights to health protection guaranteed by the Act in the first paragraph of Art. 8 and in Art. 20. Professional classification of medicines may not have any influence on the system of rights to health protection as determined by statute. Because the second paragraph of Art. 46 does not authorize the Executive Council to impose on the categories of users who are exempt from payment of the participation - by giving more detailed definitions of rights and by determining the manner and terms of the exercise thereof in conflict with Art. 20, Para 2 and 3 - an obligation to pay total or half the price for certain medicines. Pursuant to the provision of Art. 20 of the Act on users under second paragraph - and those under the third paragraph if treatment of diseases set forth in the third paragraph is in question - no contribution can be imposed and the are completely exempt from payment of any participation, including payment of total or half the price of a medicine.

The Constitutional Court refused to accept the initiative for evaluation of constitutionality and legality of the above-mentioned Rules for the reasons set forth above, because in this case the classification of medicines is just a professional classification which may not have any influence on the rights to health protection provided by statute.

Subject to the conditions of Art. 415 of the 1974 Constitution, users under the second and third paragraphs of Art. 20 of the Act are entitled to claim repayment of the amounts paid for medicines.

The Constitutional Court passed this Decision and Resolution on the basis of the first paragraph of Art. 161 of the Constitution, applying the provision of Art. 25, Para 3, Item 2 of the Law on the Procedure in the Constitutional Court of SRS (Official Gazette of SRS, No. 32/74 and 28/76) at a meeting with the following judges present: President Peter Jambrek, PhD. and the judges: Tone Jerovšek, LL.D., Matevž Krivic, LL.M., Anton Perenič, LL.D., Janez Snoj, LL.M., Janez Šinkovec, LL.D and Lovro Šturm, LL.D.

P r e s i d e n t  
Peter Jambrek, PhD.,