

**SEVERAL ISSUES FOR THE EXECUTION OF CONTRACTS  
ENTERED BETWEEN HEALTH INSURANCE HOUSES AND  
MEDICAL SERVICES PROVIDERS**

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**ABSTRACT** :*The contract between health insurance houses and providers of medical services belongs to a category of contracts regulated by law based on which the provision of public health services is guaranteed. In case such medical services are supplied by these service providers, contracts are being executed between the medical service provider and its beneficiary, the natural person. In this way, the public health service is insured by the state in the case of each person who is entitled to such services. Although in the case of civil contracts, the attachment entered between the health insurance houses and the medical services providers for the achievement of the public health services has generated debates in the legal practice in connection with certain issues of the execution of such contracts. The paperwork establishes the legal framework of the discussed contract and focuses on several particularities of the execution of this contract, such as the force of the contract, liability, the connection between the contract and patient's rights and aspects concerning litigation, reflected by the jurisprudence.*

**KEYWORDS:** *health insurance houses; providers of medical services; contract; public health; medical services*

**JEL CODE:** *K12, K32*

**1. INTRODUCTION**

Contracts between health insurance houses and medical services providers belong to a class of contracts (Vida-Simiti, 2013, pp.53-54) regulated by law, which guarantee the provision of public health services (Vida-Simiti, 2013, p. 53). Despite several terminological comments of the specialty literature, which speak about public medical services and not about public health services, we appreciate that the accurate terminology is that of public health services. Our conclusion is based on the terminology used at both an international and national level<sup>1</sup>. The term „medical” only refers to the medical act in itself, being detrimental to the purpose of legislation, which refers to a condition of the natural person, not to the means used to achieve it. Even though health is a complex desiderate, for the achievement of which lots of activities and legal regulations have been developed and issued in more than one branches of the legal field, medical support/assistance is undoubtedly the main activity the focus of which is on health. As a

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<sup>1</sup> For example, „EU Health programme 2014 – 2020”

consequence, the use of the term „health” as long as we refer to specific legislation, of public services or public policies, contains in itself the connection with the medical activity, though reflecting the purpose of the regulated activities, either developed or organized. We consider the purpose of primordial relevance against the means, therefore the terminology used for public services oriented to persons' condition should use the term corresponding to it.

From a legal point of view, the regime of contracts belonging to the contract class/category providing public health services is different. The main contract is therefore the contract entered between the state, bound to provide public health services, represented by the National Health Insurance House, on one hand, and by the natural person, beneficiary of the public service, on the other hand.

The services provided within the public service are though not delivered by the National Health Insurance House but by providers of various medical services.

Only those providers who develop contractual relationship with the National Health Insurance House relate to the achievement of the public health system. Therefore, contracts between the National Health Insurance House, by which medical service providers are authorized to develop services included in packages decided by normative deeds must be entered, while the services value is to be covered by the state. In case medical services are provided by such service providers, a contract between the medical service provider and its beneficiary is entered. Thus, the public health service is ensured by the state in the case of each natural person entitled to it.

## 2. LEGISLATIVE FRAMEWORK

The main special legal provisions regulating the contracts entered between county health insurance houses and medical service providers are given by Law no. 95/2006<sup>2</sup> for the health reform, by the Government Decision no. 161/2016<sup>3</sup> for the approval of services packs and also by the Frame-Contract which regulates medical assistance provision requirements, medicines and medical devices used by the social health insurance system for the years 2016-2017.

Based on the provisions of art. 255 of Law no. 95/2006 „The relationship between medical services, drugs and medical devices providers and insurance houses are of civil nature”. As a consequence, the common law in the matter is given by the regulations of the Civil Code.

The contract between CNAS<sup>4</sup> and medical services providers is an adhesion contract entered based on a framework-agreement. The framework agreement is a contract by which, in compliance with art. 1176 of the Civil Code<sup>5</sup>, the parties agree to negotiate, enter or maintain contractual reports/relations the essential elements of which are determined/established, whereas based on this contract, the framework-agreement

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<sup>2</sup> Law 95/2006 was published in the Official Gazette of Romania, No. 372 from April 28th 2006 and republished in the Official Gazette of Romania, No. 652 from August 28<sup>th</sup> 2015.

<sup>3</sup> Government Decision No. 161/2016 was published in the Official Gazette of Romania, No. 215 from March 23<sup>rd</sup> 2016.

<sup>4</sup> National Health Insurance House.

<sup>5</sup> Civil Code (Law No. 287/2009), published in the Official Gazette of Romania, No. 511 from July 24<sup>th</sup> 2009 and republished in the Official Gazette of Romania, No. 505 from July 15<sup>th</sup> 2011.

execution method, especially the term and the services volume, as well as, if required, their price are specified by subsequent conventions. A frame-contract is a contract that is executed successively, being the source of future contracts, a tool to simplify contractual relations. The frame-contract contains the limits for the future contracts and remains the main contract in relation with all the legal acts that will be concluded based on it (Pop, 2009, pp. 217-219). For the provision of public health services the framework-contract does not specify conditions or terms agreed on by the parties. The state unilaterally decides the content of such contract by normative deeds. At present, the framework-contract is regulated by the G.D. no. 161/2016. Considering that the conclusion of individual contracts between health insurance houses and medical services providers contain the framework-contract provisions, therefore their essential conditions are determined by the state and the individual provisions/specifications mainly refer to the contract amounts, such contracts are considered adhesion contracts, corresponding to the definition of this type of contract provided by art. 1175 of the Civil Code. The adhesion contract is not considered to limit the rights of the parties as they can decide to close it or not (Costin, 2004, p.271). If litigation occurs, the court will only verify if the provider of medical services had knowledge about the clause in conflict (Turcu, 1994, p. 180).

Moreover, the individual contract entered between county health houses and medical services providers is a contract entered between professionals. Based on art. 3 of the Civil Code, professionals shall be considered all those who exploit an enterprise. We consider the exploitation of an enterprise and its systematic exercise, by one or more persons, of an organized activity consisting of the *alienation of goods or services*, regardless of whether or not it has a lucrative purpose, as the European Court of Justice, in the *Höfner* judgement, has taken a broad view regarding the concept of undertaking as encompassing every entity engaged in an economic activity regardless of the legal status of the entity or the way in which it is financed (Lorenz, 2013, p. 67).

By virtue of the former civil code provisions, which referred to traders, it was acknowledged by the High Court of Cassation and Justice the fact that a litigation for the execution of the obligations of one of the parties in the contract entered between the county health insurance house and a drug provider is a litigation subject to the provisions of the Trade Code<sup>6</sup>, at the time in force<sup>7</sup>, considering the trader quality of the drug provider. In exchange, in relation with hospital services provision contracts, the courts of law have qualified such litigation as being a civil one<sup>8</sup>. Once the Civil Code<sup>9</sup> and the Trade Code 1865 were abrogated and the professional notion was therefore introduced, the legal settlement competence shall go to the courts of law specialized in litigations with professionals regardless the type of the medical services provider.

As for the unilateral deeds issued by county health insurance houses, such as control reports covering control results for the enforcement of the conditions specified under the

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<sup>6</sup> The Trade Code of the Romanian Kingdom, published in the Official Gazette No. 31 from May 10<sup>th</sup>, 1887 and republished in Official Gazette of Romania, No. 133 from June 27<sup>th</sup> 1997.

<sup>7</sup> High Court of Cassation and Justice. Section II civil, Decision no. 4084/2013, <http://idrept.ro/DocumentView.aspx?DocumentId=17396400>, accessed on 09.04.2017.

<sup>8</sup> Galați Court of Appeal, Section I civil, Decision no. 151/A/2014, <http://idrept.ro/DocumentView.aspx?DocumentId=77932317>, accessed on 09.04.2017.

<sup>9</sup> The Civil Code of the Romanian United Principates, published in the Official Gazette, No. 271 from December 4<sup>th</sup> 1864, republished after amendments in the Brochure of January 1<sup>st</sup> 1997.

contracts entered between these houses and the medical services providers, as well as for the corresponding sanctions, we shall specify that the legal practice has classified them as unilateral administrative deeds and the legal settlement competence for their annulment requests goes to the contentious administrative tribunals<sup>10</sup>.

In case by government decisions, amendments of the mandatory conditions of framework-agreements are brought forward, possible litigations for the legality of such decisions fall within the legal settlement competence of the contentious-administrative courts of law.

### 3. CONTRACTS EXECUTION

#### 3.1. The force of the contract and liabilities

Being considered legal contracts governed by the rules of private law, they are characterized by the contracting parties' equality in enforcing the contract, as their provisions become therefore mandatory.

The legal practice has pointed as justified the request formulated by a trade company whose activity object was the selling of pharmaceutical products by which it requested the county Health Insurance House to be ordered to pay the value of the drugs used for the treatment of oncologic diseases and of diabetes, commercialized within the limit of the contracted amounts. The Court of Law rejected the defense formulated by the county Health Insurance House for the late assignment/payment in its budget of the contracted amounts, noting that the claimant company was not informed on the lack of funds of its budget. We have considered this last argument/note from the Court of Appeal Oradea, maintained by the High Court of Cassation and Justice in settling the appeal<sup>11</sup>. In our opinion, the trade company's notification in relation with the lack of funds from the budget of the county Health Insurance House would have been completely irrelevant. Had such notification been formulated, the patients would have been entitled to obtain the drugs, therefore the drugs providers themselves would have been entitled to be paid the drugs price under the provisions of the contract entered with the county Health Insurance House. The existence of some difficulty from one of the parties to meet the contract requirements does not exonerate the party in question from fulfilling its obligations under the contract or, on the contrary, from paying the corresponding damage interests.

Based on the provisions of art. 1516 of the Civil Code, the creditor is entitled to precise, timely fulfillment of its liabilities, whereas based on art. 1530 of the Civil Code the creditor is entitled to receiving damage interests in order to repair the prejudice which the debtor has created, and which is the direct consequence enforceable for failure to execute, with no reasonable justification, or in bad faith the undertaken contractual obligations. The tierce's deed (respectively the lack of bank transfer of the required funds from the state budget into the budget of the county Health Insurance House) is far from being a justification, under the meaning of art. 1530 of the civil Code. To this effect, we could consider only cases of force majeure or of the fortuitous case<sup>12</sup>. The force majeure is

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<sup>10</sup> Galați Court of Appeal, Section Contentious administrative and fiscal, Decision no. 8233/2014, <http://idrept.ro/DocumentView.aspx?DocumentId=77931997>, accessed 09.04.2017.

<sup>11</sup> High Court of Cassation and Justice, Civil Decision no. 4084/2013, <http://legeaz.net/spete-civil-iccj-2013/decizia-4084-2013>, accessed 09.04.2017.

<sup>12</sup> High Court of Cassation and Justice, Civil Decision no. 758/2015.

defined under the civil Code as external events, unpredictable, absolutely invincible and unavoidable (art. 1351 paragraph 2) whereas the fortuitous case is defined as events which cannot be either foreseen or prevented by the person which would have been considered liable should the event had not occurred (art. 1351 paragraph 3). We could argue that it does not depend on a county health insurance house to find methods to provide the budget required to honor the contracts entered with providers of medical services, drugs and medical devices. Nonetheless, there is the state obligation to provide the budgets required to implement the national health programs based on art. 53 of Law no. 95/2006. Therefore, indirectly, the state guilty of the inexistence of the funds necessary for the implementation of the health legislation in force, shall have to bear/pay deferred damages-interests, by payment of the interests which were calculated as obligation of the county health insurance house in the budget of which the amounts required to execute the contracts entered for the public health policies implementation were not yet transferred. No other public authority except county health insurance houses, and neither the state can be held liable for failure to meet the undertaken contractual obligations, as they are not part of the contract entered with medical services, drugs and medical devices providers.

The courts of law practice has established that the Ministry of Health is not attributed any active procedural quality in cases having as object claims for medical services payment, as based on art. 2 para. 5 of Law no. 95/2006 for the health reform, The Ministry of Health represents the central authority in the health field, whereas based on art. 9 of the same law the national health programs represent the frame of the implementation of the public health strategies and policy objectives by the Ministry of Health, in its position of central authority of the public health field, they are financed by the state budget and from the national unique social health insurances fund, as well as from other incomes under the law<sup>13</sup>.

Deferred interests are presumed by the civil law. Art. 1535 of the civil Code provides that in case some amount of money is still unpaid up to its due date, the creditor is entitled to claim deferred interests, from the due date to the payment moment, in the amount agreed by the parties, or, if the issue is unsettled, in the amount provided under the law, with no need to prove some prejudice whatsoever, whereas the debtor is not entitled to prove that the prejudice suffered by the creditor subsequent to late payment would be less than that. Based on the provisions under the enforcement regulations of the GD 161/2016 for the framework-agreement, in case of failure to meet the contractual liabilities the party in default must pay the other party damages-interests (for example art. 11 of Addendum no. 3: Contract for the provision of medical services of primary medical support, by Order of the Health Ministry no. 763 dated 22 June 2016 for the approval of the Implementation Methodological Regulations issued in year 2016, of the Government Decision no. 161/2016 for the approval of the services packs and of the Framework-Contract regulating medical assistance, drugs and medical devices granting requirements, within the health social insurance services for years 2016-2017).

The contractual terms observance is nevertheless equally mandatory in the case of medical services providers, of providers of drugs or of medical devices as well. The legal practice has constantly proved/decided that the providers of medical services, drugs and

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<sup>13</sup> Idem.

medical devices are not entitled to be reimbursed certain amounts of money over the contracted value or stipulated in various addenda<sup>14</sup>. It was a decision also formulated and applied in the case of emergency medical services providers.

### 3.2. The force of the contract and the citizens' right to medical care

If we are though to follow the course of the liabilities generated by the main contract by which the state agrees to provide medical services to which citizens are entitled by virtue of law no. 95/2006, we shall notice the following issues. Any citizen is entitled to be granted medical services of the basic medical pack, provided that they covered by medical insurances, or medical services included into the minimal medical services pack, based on the provisions of art. 221 of law no. 95/2006. Moreover, based on art. 230 paragraph (2) of law no. 95/2006, the insured persons have the right to choose their medical services providers, and the health insurance house for their medical coverage, under the law and under the framework-agreement. They are entitled to benefit from the basic medical pack in a non-discriminating manner, based on the law. The medically insured persons are also entitled to be reimbursed all the expenses incurred during their hospitalization on drugs, sanitary materials and para-clinical investigations to which they were entitled without personal contribution, under the terms established by the framework-contract; they can undergo prophylactic controls, under the terms established by the framework-contract; they are entitled to health promoting and preventive medical assistance and services, inclusively for an early detection of diseases; they are entitled to medical services in the ambulatory and in hospitals developing contractual relations with health insurance houses; they are entitled to get medical emergency services; they are entitled to get certain dentistry services; they are entitled to get physical and recovery therapies; they are entitled to get medical devices; they are entitled to medical assistance at home (art. 230 paragraph (2) lett. d) – m) of Law no. 95/2006).

According to these law texts, in case providers of medical services which insured persons choose refuse to perform and deliver medical services which the insured person is entitled to motivating that the service provision contractual funds have finished, the insured person may be asked to bear the costs of the required medical service and then to turn against the health insurance house which he has a contract with to recover the prejudice. Therefore, based on jurisprudence *„According to art. 302 of Law 95/2006 the insurance houses have the obligation to reimburse the suppliers the value of the medical services provided to the insured persons. In case certain amounts of money cannot be reimbursed as they exceed the limit of the contractual value, based on the legal liabilities generated by their obligation to insure public health for the achievement of the objective provided under Law 95/2006 health insurance houses have the obligation to reimburse the persons covered by medical insurances the expenses thus incurred, as the person is insured universally, in a fair and non-discriminatory manner, provided that the social health insurances National unique fund is efficiently used”*<sup>15</sup>. In the given case, the patient

<sup>14</sup> High Court of Cassation and Justice, Decision no. 3307/2011, <http://legeaz.net/spete-civil-iccj-2011/decizia-3307-2011>, accessed 26.04.2017; Timișoara Court of Appeal, Decision no. 1669/15.12.2009, <https://legeaz.net/spete-drept-comercial-jurindex/actiune-in-anularea-hotararilor-1669-2009-el4>, accessed 26.04.2017.

<sup>15</sup> Timiș Court of Law (Tribunalul Timiș), Civil Decision no. 196/2016, <http://idrept.ro/DocumentView.aspx?DocumentId=81411218>, accessed 26.04.2017.

was informed by the Cardio-Vascular Diseases Institute of Timișoara on the institution's impossibility of purchasing at that moment an active pharmacological stent, as the institute purchases sanitary materials in the limit of its financing and by applying the procurement legislation, and, at that specific moment it could not finance such a material. Given the context the patient was proposed to bear the cost of the sanitary material. In case the patient would have refused the doctor's proposal, she could have discharged herself from the hospital and she could have addressed to any other Cardiologic Institute or hospital. The patient chose instead to pay from her own resources the required medical material and then addressed to the court of law, asking for the reimbursement of the costs of the medical device in question in contradiction with the cardio-vascular diseases Institute of Timișoara and with the county Health Insurance House Timiș. The defendants formulated their defense, among others, by specifying that in case patients refuse to go on the waiting list (as the intervention cannot be achieved immediately by lack of funds) by signing the required affidavit – the medical act becomes a medical act by request in the meaning of art. 237 paragraph 1 lett. j)<sup>16</sup> of Law 95/2006 and are not reimbursed from the National Unique Health Insurance Fund. The Timiș Court of Law (*Tribunalul Timiș*) did not agree though with this hypothesis, appreciating as priority the provisions of art. 302 of the same law.

The insured person's entitlement to choose their medical services providers is one of the rights acknowledged at the level of the European Union. But, based on the national legislation, any person insured in Romania is entitled to be reimbursed the medical expenses incurred for medical expenses abroad only whether they have previously got the approval of the National Health Insurance House for the medical services performance by the selected medical services provider abroad. As for the nature of this agreement, it was decided to be compulsory (Ungur, 2016, p. 293). Moreover, The European Court for Human Rights and the European Court of Justice have acknowledged the states' right to condition the reimbursement of such expenses by prior agreements issued by the competent institutions; the position of the European Court of Justice was nuanced (with reference to the *Elchinov* C-173/09 case), meaning that, although in compliance with art. 49 of the European Regulations no. 1408/71, the requirement of the competent authority's prior consent or a possible refusal must be justified by referring to legal regulations of public interest, proportionate to the purpose of such regulations, in compliance with objective, non-discriminating criteria, which may be studied/communicated in advance, to avoid arbitrary conduct of the state (Ungur, 2016, pp. 296-297). Thus, by the Decision of the European Court of Justice in the case *Elena Petru* C-268/13, it was decided that the authorization for the reimbursement of the medical expenses from abroad cannot be refused as long as the absence of drugs and emergency medical supplies prevents the insured person from receiving hospital medical care in a timely manner in their residence member state. Such impossibility must be appreciated both at the level of the hospitals of this member state able to provide the medical treatment in question and also in relation with the time period in which such treatment can be obtained in due time.

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<sup>16</sup> The legal judgment was pronounced related to a situation occurred at the moment in which the legal form of Law no. 95/2006, published by the Official Gazette of Romania, Part I, number 372 dated 28 April 2006. At present, the same text is found in art. 248 paragraph (1) lett. i) of Law 95/2006 republished by Official Gazette of Romania, Part I, number 652 dated 28 August 2015.

It is therefore obvious that at a national level, by virtue of the provisions of Law no. 95/2006, the right to get certain medical services and to choose the medical services provider, lead to the right of getting medical services free of charge regardless whether the medical services provider has finished the amounts contracted with the county health insurances house. The contracts group insuring public health service focuses on the natural person's right to get such services under the law. The refuse to offer a certain medical service motivating that the amounts contracted with the medical services provider are exhausted/spent determines the person entitled to receive public health services under the law to incur expenses which they might not bear in connection with the medical service, further on to incur other expenses in connection with the legal settlement for the recovery of the amounts in question. The same reasoning is valid in the case of suppliers of drugs or medical devices.

We therefore consider the resolution issued by the court of law justified, as it considered the above-mentioned issues and issued a settlement that would relieve the citizen of expenses which they should not, or maybe would not be able to incur<sup>17</sup>. The Bucharest Court of Appeal (*Curtea de Apel București*) admitted the appeal against a decision issued by the Central Arbitration Commission within the National Health Insurance House, the Doctors' College of Romania, the Order of the Medical Nurses, Midwives and Nurses of Romania, a decision which denied the request formulated by SC U.F. SRL against the defendant The Health Insurance House of the Ministry of Transports, Constructions and Tourism to pay an amount of money over the amount agreed with the defendant under their drugs distribution contract.

To issue such a decision, the Bucharest Court of Appeal appreciated that based on the provisions of art. 34 of Romania's Constitution, the Romanian citizens' right to protected health is guaranteed, the Romanian state assuming, by the same constitutional text, the obligation to provide and insure public health and sanitation but also to regulate by specific laws the enforcement of the fundamental law whereas, based on art. 231 and 232 of the same law for the health reform, „*the insured persons are entitled to drugs/medicine, with or without personal contributions, based on medical prescriptions for the drugs covered by the drugs list issued by the Ministry of Health, the Social Insurances House and the Pharmacists' College of Romania*”.

As for the contract entered between the drugs supplier and the health insurance house, the Bucharest Court of Appeal noted that, on one hand the final beneficiary of the public health services meets all the requirements for the provision of a certain service, it is not part of the contract entered between the drugs supplier and the health insurance house, therefore it cannot be opposed the provisions in relation with the contracted amount of money. On the other hand, the court of law appreciated that the value decided by the parties (the drugs supplier and the health insurance house), under the contract can be qualified only as an „estimated value, the exceeding of which cannot be retained as a violation of the contract terms, but only as an exceeding of an initial estimation”. Such reasoning was considered justified also by an interpretation *per a contrario* of the present

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<sup>17</sup> Bucharest Court of Appeal (*Curtea de Apel București*), Section IV Civil, Judgment no. 13F/2011, <http://idrept.ro/DocumentView.aspx?DocumentId=11011384&Info=RG9jSWQ9OTYxMiZJbmRleD1EJTNhJTJmJTVMY2FiaW5ldCUyZnJldmlzdGUlMmZpbmRleCZlZXRD3VudD02JmhpdmHM9NjFkKzYxZSs3NGYrNzUwKzc1MSs3NTlr>, accessed on 26.04.2017.

term/provision, respectively, should the agreed amount be interpreted as unchangeable and mandatory, we could interpret not only the supplier's obligation to exceed it but also its obligation to meet it, to get that value threshold which was not obviously aimed at by entering the contract. The contracted amount estimation method was also sustained by the court of law through the conclusion of certain addenda and by the customary accepting of certain payments of the amounts for drugs issued by pharmacies over the contract value. Such reasoning can be generally sustained by the method of settlement applied in the first semester of each year, based on addenda to the contract of the previous year, considered retroactively effective. It was concluded that the Romanian state cannot refuse to provide the citizen's constitutional right to a healthy life by invoking the lack of funds, as long as we consider the citizen's correlative obligation to unconditionally pay the health insurance amount to the state budget, and notwithstanding the provision according to which the citizens cannot be discriminated in their possibility of using their right to get public health services, depending on the moment of their illness, by refusing the right of those who „*did not have « the chance » to get ill during the period and the limits accepted by the funds settlement*”. Such discrimination would be contrary to art. 16 of Romania's Constitution, and also to art. 7 of the Universal Declaration of Human Rights and to art. 14 of the European Convention of the Human Rights.

We consider to be justified the vision expressed by the decision of the Bucharest Court of Appeal, not only by the arguments brought forth in its content, but also by the specificity of the contract in question. The belonging of the contract entered between the health insurance house and the providers of medical services, drugs and medical devices to a group of contracts, makes its execution method dependable on the terms of the main contract. It is not an isolated contract, strictly subject to the provisions of the civil Code. The interpretation of its terms, even regulated by law, must consider the main contract finality. Another interpretation breaks the coherence usually existing between the contracts of the group, the incoherence thus created generating a violation of the citizen's rights. Even though the law provides remedies for the person whose rights were violated, the effort and the responsibility of the contract correlation are against the constitutional provisions. Moreover, the law expenses which the citizen has the right to recover shall only place new burdens on the state budget which refused the correlation of contracts the purpose of which is to provide public health services.

On the other hand though, the provisions of Law no. 95/2006 by art. 230 paragraph (2) lett. e) which focus on the patients' rights to get back the expenses incurred during the hospitalization period on drugs, sanitation materials and para-clinical investigations which they would have been entitled to with no personal contribution, lead to a majority practice reasoning by the courts of law, which reject money reimbursement requests registered by suppliers of medical services, drugs and medical devices over the contract values, in the absence of addenda, thus forcing the patient to use these legal provisions. The courts of law are called to interpret the law harmonizing it to its purpose, to the Constitution and to the general principles of law. They have to consider that the state budget is limited as well, that it is constructed to provide a large number of liabilities which the state has to undertake. The courts of law are therefore summoned to consider, based on the normative provisions of the various levels of the legal regulations hierarchy, the rights of each subject. It is doubtless that the diligence of medical services, drugs and medical devices providers for the timely conclusion of the addenda required to estimate contract amounts

exceeding, based on the Health Insurance House availability, reported to the allocated budgets, would finally help the citizens to have their rights observed, protecting at the same time the budgets of these providers against resolutions which might interpret the legal provisions from the above-introduced perspective. Unfortunately, the local population's life style and level does not allow resolutions by which the insured person advances medical services expenses which are to be subsequently settled during a period which takes into account the state budgetary capacity as well.

### 3.3. Litigations

Litigations in connection with contracts execution methods fall under the competence of civil courts of law, except for control deeds used to enforce disciplinary sanctions (advertisement, diminution of the settlement reference values), which fall, as already indicated, under the competence of contentious administrative courts of law. In case of contravention sanctions, provided by special laws, the appeal judgment/procedure is the one specified for contraventions, regulated by the G.O. no. 2/2001<sup>18</sup>, provided that no other procedure is provided by special normative deeds.

Based on art. 1873 of the framework-Contract regulated by the G.D. 161/2016, legal litigations generated by the conclusion, execution and termination of contracts by and between providers and health insurance houses /the National Health Insurance House, whichever the case, are settled by the *Arbitration Commission functioning within the National health Insurance House*, organized in compliance with the legal provisions in force, *or by the courts of justice, whichever the case*, provision also reiterated by the enforcement regulations of the contract drafts/models. Arbitration is an alternative jurisdiction of private nature. The procedure rules are similar with the ones of the judicial procedure, except the rule of publicity which is replaced with the rule of confidentiality of the procedure (Viorel Mihai, et al., 2013, p. 598). The mention insertion in contracts related to the settlement of litigations by arbitration is called arbitration clause/condition. Such arbitration clause/condition must be mentioned in writing under penalty of nullity (art. 548 Civil procedure code<sup>19</sup>). The arbitration convention conclusion excludes, for the litigation considered its object, the competence of the courts of justice (art. 553 Civil procedure code.). Therefore, based on the practice of the courts, in a dispute arising from the notice of termination of the contract (Șandru, 2016, p. 3), it was specified that *„by the contract entered between them, the parties agreed, based on, art. 22 that, in case of litigations generated by its conclusion, execution and termination, litigations unsettled amicably are to be settled by the Arbitration Commission functioning within CNAS<sup>20</sup>, and, as by their convention the parties may choose the jurisdiction court or organism to settle the litigations between them, provided that such an option be expressed in writing, and that the jurisdiction court or organism not be abstractly incompetent, we shall therefore point out as grounded the general incompetence exception invoked by the defendant, in compliance with the provisions of art. 22 of the contract no. (...), and based on the provisions of art. 1270 of the Civil Code, with the consequence of admitting it, of*

<sup>18</sup> Government Ordinance No. 2/2001 regarding the legal frame of contraventions, published in the Official Gazette of Romania No. 410 from July 25<sup>th</sup> 2001, amended.

<sup>19</sup> Civil procedure code (Law No. 134/2010), published in the Official Gazette of Romania, No. 485 from July 15<sup>th</sup> 2010 and republished in the Official Gazette of Romania, No. 247 from April 10<sup>th</sup> 2015.

<sup>20</sup> National Health Insurance House

declining the case settlement competence, according to the provisions of art. 129 paragraph 2 pct. 1 of the civil procedure Code, in favor of the jurisdiction organism chosen by the parties, respectively of the Arbitration Commission which functions within CNAS<sup>21</sup>. Moreover, it was indicated that „litigations unsettled in an amicable manner between providers and health insurance houses be settled by the Arbitration Commission functioning within CNAS organized based on the legal regulations in force or by the courts of justice, whichever the case. By law, based on art.553 NCPC<sup>22</sup>, the arbitral convention conclusion excludes, for the litigation considered its object, the competence of the courts of justice,<sup>23</sup>”.

The arbitral award may be terminated by an *action for annulment*, registered for the reasons provided by art. 608 paragraph 1, of the civil procedure Code by the court of appeal in which the arbitration took place (Roșu, 2016, pp. 101-105).

Being an organism of jurisdictional attributions, the Arbitration Commission which functions within the National Health Insurance House has to investigate the case on the merits and state the pronounced judgment grounds. The lack of grounds is considered a reason of annulment of the arbitral decision, based on art. 608 of the civil procedure Code. Therefore, based on legal practice, art. of the civil procedure Code stipulates as reasons for actions in annulment: the fact that the arbitration award does not include the statement and reasons, does not indicate the date and place of the ruling or is not signed by the arbitrators, the fact that the arbitration award violates public policy, good morals or mandatory provisions of the law. Thus, the court can no longer rule on the state of facts in the application for annulment of the arbitration award<sup>24</sup>.

However, in case the arbitral award reasoning does not assess the state of the case (it is a legal requirement regarding the role of the arbitral tribunal), providing solely and exclusively grounds of lawfulness, it is for the invested court to settle the request for annulment to investigate the state of affairs, in such a situation, arguing that "*The court has wrongly settled the action for annulment without investigating its substance and, therefore, on the basis of Art. 312 of the Civil Procedure Code<sup>25</sup>, the ruling under appeal will be written off and the case will be referred back to the same tribunal*"<sup>26</sup>.

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<sup>21</sup>Dolj Court of Law (*Tribunalul Dolj*), Section contentious administrative and fiscal, Civil Judgment no. 526/2015, ROLII -

<http://www.rolii.ro/hotarari/56b600b685641f16fcb78d15>, accessed on 26.04.2017.

<sup>22</sup>New Civil procedure code

<sup>23</sup>Bucharest Court of Law (*Tribunalul București*), Section II contentious administrative and fiscal, Civil Judgment. 7469/2014, <http://www.rolii.ro/>, accessed on 27.04.2017.

<sup>24</sup>High Court of Cassation and Justice, Section II Civil, Decision no. 90/2014, [www.juridice.ro/328544/icej-limitele-controlului-judecatoresc-cu-privire-la-hotararea-arbitrala.html](http://www.juridice.ro/328544/icej-limitele-controlului-judecatoresc-cu-privire-la-hotararea-arbitrala.html), accessed on 27.04.2017.

<sup>25</sup>The reference is made to the Civil procedure code 1865, published in the Official Gazette no. 200 from September 11th 1865, republished in the Official Gazette of Romania no. 177 from July 26th 1993 and republished with amendments in the Brochure 1 from August 15<sup>th</sup> 2002.

<sup>26</sup>Bucharest Court of Appeal (*Curtea de Apel București*), Section IV civil, Decision no. 1898/R/2014, [legeaz.net/spete-civil-curtea-de-apel-bucuresti-2014/actiunea-in-anularea-hotararii-arbitrale-09-12-2014-i7c](http://legeaz.net/spete-civil-curtea-de-apel-bucuresti-2014/actiunea-in-anularea-hotararii-arbitrale-09-12-2014-i7c), accessed on 27.04.2017.

#### 4. CONCLUSIONS

Although expressly defined by law as civil contracts, the contracts between health insurance houses and medical service providers contain certain particularities given by their tight connection with the achievement of the public health service. Their execution involves principles which govern the civil conventions, such as the mandatory force of the contract and the right to obtain damages-interests in case of failure to execute them or in case of late wrongful execution. The effects of such principles implementation over the insured persons must be considered a topic of reflection for the legislator from the perspective of improving legislation in the field of public health service.

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