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TRANSFER OF FOUNDING RIGHTS OVER GENERAL HOSPITALS TO THE REPUBLIC OF CROATIA: AN ECONOMIC AND LEGAL ANALYSIS

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Abstract The present analysis of the activity of healthcare institutions in recent years shows the fundamental problem of the Croatian healthcare system, which currently faces a deficit of almost two billion euros. The question, therefore, arises as to how the availability, continuity, completeness and solidarity of the healthcare system can be ensured (as the basic principles of the Healthcare Act), taking into account the obligations under the Act on the Execution of the State Budget and the Fiscal Responsibility Act. The aim of this paper is to find an answer to the question of whether the transfer of founding rights over general hospitals to the Republic of Croatia, which is regulated by the Healthcare Act, is constitutionally, legally, and economically justified. The analysis is based on the fact that the issue of healthcare and the organisation of the healthcare system is regulated independently by each country and that this autonomy of the Member States is limited by EU regulations.

Keywords
Healthcare Act, transfer of founding rights, doubts, healthcare system, Croatia

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1 A Framework for Discussion: Overview of Current Regulations and Contribution of This Paper

The organisation of healthcare in the Republic of Croatia involves numerous actors, the most important of which is the Ministry of Health. Healthcare in the Republic of Croatia is divided into three levels: Primary, secondary and tertiary care. The Republic of Croatia has a large number of healthcare facilities, most of which are state-owned (clinical hospital centres, clinical hospitals and clinics) or regionally and locally owned (general and special hospitals at the county level, health centres and polyclinics), while a smaller part is privately owned.

In order to address the weaknesses of the healthcare financing model and to make the healthcare system more efficient and financially sustainable, both academia and practice have analysed a whole range of measures that have ultimately contributed to and led to a number of changes in the relevant legislation and financial savings. Everyone agrees that the financing of the healthcare system is of central importance for its functioning. There is no country in the world that can provide all its inhabitants with all the services that modern medicine makes possible. The doctrine states that the general lack of financial resources, along with the increasing expenditure on healthcare, is considered a difficult problem to solve (even) in Croatia. They point out that we are in a time of major social changes where new issues overtake old problems, and together, they form extremely complex challenges that the state should face in order to protect the rights of patients. The analysed authors point out that healthcare financing is a complex issue, so the statement about the existence of a crisis in terms of the need for changes to the existing model is still relevant. They point out that the Croatian healthcare system has undergone numerous reforms in the past period of independence of the Croatian state, the main goal of which was to optimise the level of healthcare service provision within the real financial possibilities of the Croatian economy. The goals of each reform measure have been partially achieved, and the solutions offered so far, i.e. the renovations carried out over the last three decades, were necessary but did not lead to an improvement in economic conditions. The problem of the lack of revenue from previous years remained unresolved, i.e., the problem of outstanding liabilities remained the highest in the last ten years (CIHI, 2023; Ostojić, 2012). From a research perspective, the literature is (to some extent) unanimous in reporting on the positive effects of the legislative reforms to date, but also on the problems and

limitations of the functioning of the existing legal framework. However, it should be noted that the economic and legal literature, although very extensive, is sometimes unable to provide answers as well as valuable explanations and appropriate approaches to the successful reorganisation of the healthcare system and the existence of an appropriate financing model, as constant changes are to be expected. It is a fact that the healthcare system of the Republic of Croatia can be "improved" at the level of organisation, management, finances and human resources. However, the claim remains that the adoption of this (amended) Healthcare Act (hereinafter: HCA)[1] is an important step, but only its application in practice will be a true indicator of its importance. This paper represents the first economic and legal analysis of the issue in question.

2 State of the Health System in Croatia: An Economic Analysis

Within the Croatian mandatory health insurance system, the Croatian Health Insurance Fund (hereinafter: CHIF) is the sole insurer and main purchaser of health services. It also offers supplementary insurance, primarily to cover co-payments for services from the benefits package. More than 60 per cent of the population has such voluntary health insurance (hereinafter: VHI), which is taken out either by the CHIF (the main provider) or by private insurers. The Ministry of Health is the main government agency responsible for health system governance, health policy development, planning and evaluation, public health, regulatory standards and training of health professionals.

Almost the entire population is covered by mandatory health insurance. Contributions for dependents are paid by working family members, while non-working people (e.g., pensioners and the unemployed) and vulnerable groups (e.g., people with disabilities and people on low incomes) are exempt from contributions and are covered by state transfers. The benefits package covers a wide range of preventive and curative healthcare services. Most healthcare providers (especially in secondary and tertiary care) are still publicly owned, but the number of private providers, especially in primary care, is increasing. Primary care physicians (e.g., general practitioners, paediatricians and gynaecologists) are usually patients' first point of contact with the healthcare system and act as gatekeepers to specialist and

[1] Healthcare Act (Official Gazette – hereinafter: OG, No. 100/18, 125/19, 147/20, 119/22, 156/22, 33/23).

hospital care. Healthcare expenditure as a percentage of GDP amounted to 8.1 per cent in 2021, compared to an EU average of 11.0 per cent. Overall, current healthcare expenditure increased by 18 per cent in 2020-21 as part of Croatia's response to the COVID-19 pandemic. Nevertheless, Croatia spends less per capita on health than most other EU countries (Figure 1), reaching EUR 1 787 per capita in 2021 (adjusted for differences in purchasing power), where the EU average is EUR 4 028. Croatia spends a higher proportion of public funds on health than most countries with comparable spending levels, namely 85.5 per cent in 2021. Out-of-pocket (hereinafter: OOP) payments account for only 9 per cent of health expenditure, well below the EU average of 15 per cent, while the share of the VHI component in health expenditure (5.1 per cent in 2021) is slightly above the EU average (4.4 per cent).

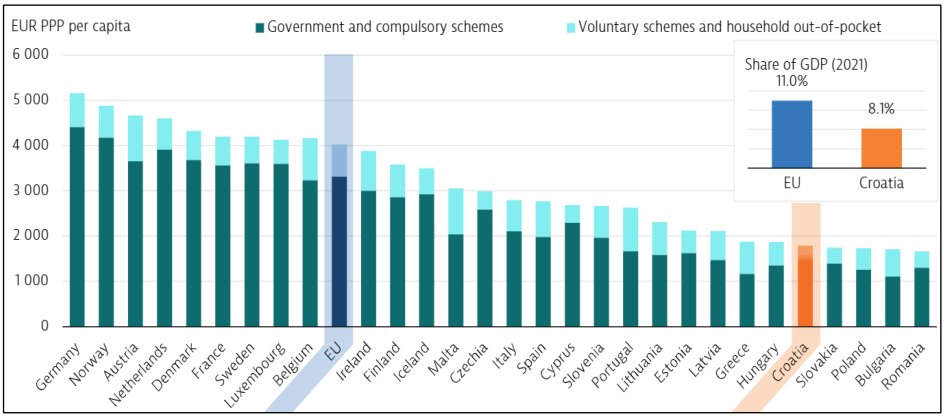

Figure 1: Public healthcare funding in Croatia and EU countries in 2021
Source: OECD (2023, p. 9)

Approximately 37 per cent of current healthcare expenditure in Croatia is spent on outpatient (or ambulatory) services, which consist of primary care and outpatient care provided by specialists (mostly through hospital outpatient departments). Croatia spends a larger proportion of its healthcare expenditure (20.1 per cent in 2021) on medicines and medical devices in the outpatient sector than many other EU countries (with an EU average of 17.4 per cent), although in absolute terms (EUR 360 per person), it is well below the EU average (Figure 2).

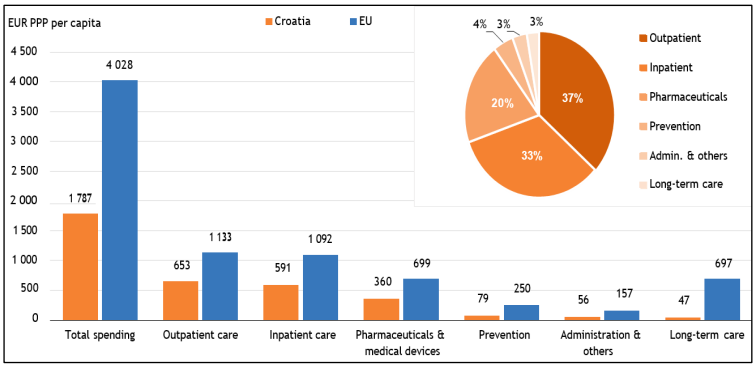

Figure 2: Per capita healthcare spending in Croatia and the EU in 2021
Source: OECD (2023, p. 10)

In contrast, due to the country's underdeveloped formal long-term care system, only 2.6 per cent of healthcare expenditure in Croatia is on long-term care (compared to an EU average of 17.3 per cent). Per capita expenditure on prevention is less than a third of the EU average and, at 4.4 per cent of expenditure, is below the EU average of 6.2 per cent. The global economic crisis led to sharp fluctuations in Croatia's public healthcare expenditure in the early 2010s, with slight falls in GDP accompanied by sharp falls in healthcare expenditure (Figure 3). Since 2013, the country's public healthcare expenditure has risen steadily year-on-year, mirroring the increase in GDP; the share of public funds allocated to healthcare is one of the highest among EU member states (see section 4). The COVID-19 pandemic was a major shock for the Croatian healthcare system. The increase in public healthcare spending has accelerated in 2020 and 2021 to counter the pandemic, despite a massive 8.5 per cent decline in GDP in 2019/20.

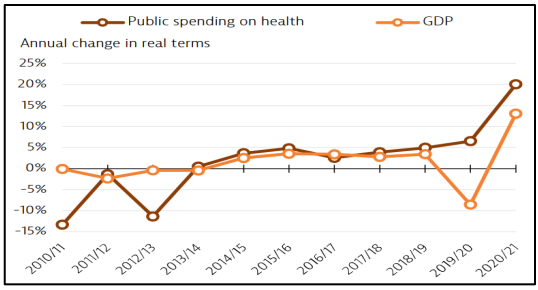

Figure 3: Public healthcare spending in Croatia during the COVID-19 pandemic
Source: OECD (2023, p. 17)

At the same time, Croatia has drawn up a National Recovery and Resilience Plan for 2021-26 as part of the EU Recovery and Resilience Mechanism to mitigate the economic and social consequences of the COVID-19 pandemic. The idea is to boost investment in the healthcare sector, including cancer treatment, hospital infrastructure, improving the quality of hospital care, and the digital transformation of the healthcare system. Croatia is also working on improving the integration of care and workforce planning to be better prepared for future shocks to its healthcare system. Of the total funds earmarked in the National Recovery Plan, 5.6 per cent is earmarked for investments in the healthcare system (EUR 354 million in total). These investments are complemented by the implementation of the EU Cohesion Policy 2021-27, under which Croatia will invest a total of EUR 226 million in its healthcare system. More than four-fifths (85 per cent) of this amount will be co-financed by the EU. Around EUR 140 million from the European Regional Development Fund (ERDF) will be used for the expansion and renovation of healthcare infrastructure as well as for equipment, mobile healthcare devices and digitalisation in the healthcare sector. In addition, EUR 62 million from the European Social Fund Plus (ESF+) is earmarked for financing various measures to improve the accessibility, effectiveness and resilience of the healthcare system (OECD, 2023, p. 22).

Croatia has implemented a number of healthcare reforms in recent years. The healthcare financing system in Croatia has obvious problems, which manifest themselves above all in the frequent restructuring of hospital debts, primarily for medicines. Debts to wholesalers and pharmacies are regularly rehabilitated following threats to stop the supply of medicines and other medical goods. Despite numerous reorganisations and reforms of the healthcare system, healthcare debt continues to grow. Almost every year, the government is forced to rehabilitate part of the hospitals' debt, and so far, there have been more than 20 such rehabilitations (Jurković, 2018) and a staggering sum of 17,7 billion kuna (i.e., around EUR 2,4 billion; COVID-19 costs not included) for the period 1994-2018 (Laušić, 2018; Bušić et al., 2021). The aforementioned facts point to the problem of the (long-term) financial (un)sustainability of the healthcare system. Obviously, the system of monitoring, cost management, and planning (budgeting) for revenues and expenditures is failing.

The Croatian healthcare system generates around HRK 220 million (i.e., EUR 29,2 million) in additional obligations per month (Government of the Republic of Croatia, 2020). According to the State Audit Office (2023), at the end of 2022, the total debt of the healthcare system amounted to 14.67 billion kuna (i.e., EUR 1,9 billion).

Despite numerous reforms and renovations, the healthcare system is in constant financial difficulties (Vončina et al., 2007, p. 144; Švaljek, 2014, p. 36; Broz & Švaljek, 2014, p. 51). The reforms implemented over the last 25-30 years have focused mainly on containing healthcare costs rather than inefficiencies that cause financial problems (Šimović & Primorac, 2021, p. 3; Bubas, 2022, p. 612). With the amendment of the Healthcare Act in March 2023, a new focus was placed on strengthening primary and outpatient care and improving the coordination and integration of care. However, key indicators for the quality of care are still missing, which undermines efforts to monitor the performance of the healthcare system. Still, Croatia wants to establish a comprehensive national system for quality and safety in healthcare. Good organisation of health services, an efficient system and availability to all citizens under equal conditions is (or should be) the basis for the healthcare system's financial sustainability, and that system requires modernisation. One of the questions that are (to be) tackled within the amended Healthcare Act is the transfer of founding rights over general hospitals to the Republic of Croatia. It remains to see whether central administration and planning of this part of the system would improve (at least part of) its (financial) functionality.

3 Legal Source(s) and Disputed Legal Provision

Health and healthcare form a very complex and broad field. There are several legal regulations on this subject in the Republic of Croatia. The starting point are the principles guaranteed in the Constitution of the Republic of Croatia. Laws and regulations, such as ordinances and codes, concretise these principles. The Republic of Croatia is also a signatory to international legal acts that regulate the rights and obligations of healthcare workers and patients. However, the HCA is a basic regulation that governs healthcare and healthcare activities.

Along with a number of new amendments to the HCA (which came into force on April 1st, 2023), the transitional and final provisions detailed the deadlines for the application of certain provisions of the Act, explicitly mentioning the date of January 1st, 2024. This date is important because the Act changes the founder[2] of the general hospital, which is established exclusively by the Republic of Croatia.[3] The units of local (regional) self-government and the City of Zagreb will no longer be the founders of general hospitals as of January 1st, 2024; the Republic of Croatia will become the founder.[4] According to the transitional and final provision (Article 86) of the amended HCA, the founding rights are transferred free of charge.

4 Setting up the Problem(s)

Does the transfer without compensation lead to an unconstitutional restriction of the ability to act at the local level, and do the local and regional self-government units become incapable of exercising their constitutional powers? Since the transfer of the founding rights is undoubtedly an "interference" with the local (regional) self-government units' property rights, it is quite legitimate and justified from a practical point of view to analyse this issue in regard to the violation of the right to peaceful enjoyment of property. In other words, to examine whether the above-mentioned is in accordance with the procedures under Article 1 Protocol No. 1 of the European Convention for the Protection of Human Rights (European Court for Human Rights – hereinafter: ECHR, 2021, p. 6). The question also arises as to whether the consent of the local (regional) self-government units is required for the acquisition of the founding rights.[5] We refer to the provision of Article 78(3) of the Institutions Act[6]: *"The founding rights from paragraph 3 of this Article may be transferred to another legal*

[2] Pursuant to the provisions of Article 3(1)(2) of the State Property Management Act (OG, No. 52/18), "*the term state property used in this Act includes, in particular, the following property: founding rights to legal entities whose founder is the Republic of Croatia (...).*" If the unit of local (regional) self-government is the owner of the founding rights, then it is their property.

[3] In order for the local (regional) self-government units to be able to influence decisions that are important for the operation of general hospitals, it is provided that the director of the general hospital is appointed and dismissed by the Governing Council, but with the prior opinion of the competent prefect or the Mayor of the City of Zagreb and with the consent of the Minister of Health.

[4] It is important to note that general hospitals become responsible for joint public procurement on the day of the transfer of the founding rights.

[5] In the Decision on the Acquisition of the Founding Rights over Health Centres of the Republic of Serbia, the Government of the Republic of Serbia (Official Gazette of the Republic of Serbia, No. 21/20) states that *"The Republic of Serbia is acquiring the founding rights over healthcare centres established by the Republic of Serbia in accordance with the Healthcare Act (Official Gazette of the Republic of Serbia, No. 25/19), over which the unit of local self-government exercised the founding rights, on the basis of the decision of the competent body of the unit of local self-government (underlined by the authors)."*

[6] Institutions Act (OG, No. 76/93, 29/97, 47/99, 25/08, 127/19, 151/22).

entity by the Government of the Republic of Croatia or a ministry authorised by it only with the consent of that legal entity (underlined by the authors). A special contract shall be concluded on the transfer of the founding rights."[7] *Argumentum a contrario*: if the Republic of Croatia takes over founding rights in entities in which a local (regional) self-government unit has founding rights, the consent of that particular unit is required for this takeover. A more detailed elaboration of this position is beyond the scope of this paper (Tolo, 2020, p. 13).

5 Problem Analysis

The aim is to clarify the legal institutions that have developed over many years of practice and to gain insight into the legal-logical decision-making mechanism of the Constitutional Court of the Republic of Croatia and the ECHR by examining their mutual relations. In addition, the aim is to gain insight into the question of whether the transfer of founding rights constitutes a violation of the right to local and regional self-government and a violation of the right to peaceful enjoyment of property.

5.1. On the Possible Violation of the Right to Local and Regional Self-Government

Article 20 of the Act on Local (Regional) Self-Government[8] provides that the county shall perform tasks related to healthcare within its self-government area, and a special law regulating certain activities (including healthcare) specifies which tasks the county must organise and which it may perform. The HCA is a special law within the meaning of the provisions of Article 129a of the Constitution of the Republic of Croatia[9] and Article 20(2) of the Act on Local (Regional) Self-Government, as it is a law that constitutes the *lex specialis* for regulating the content and manner of performing the activities in the healthcare sector. The HCA explicitly prescribes the rights, duties and tasks of the local (regional) self-government units in the field of healthcare. Taking into account the analysis of the health status and needs of the

[7] "The Government of the Republic of Croatia may, within six months of the entry into force of this Act, adopt a decision on the transfer of founding rights over certain institutions or types of institutions to units of local (regional) self-government or another legal entity, or authorise the competent ministry to transfer the founding rights to the unit of local (regional) self-government."
[8] Act on Local (Regional) Self-Government (OG, No. 33/01-144/20).
[9] Constitution of the Republic of Croatia (OG, No. 56/90-5/14).

population, the available resources and personnel and other possibilities, and ensuring a reasonable division of labour, the transfer of the founding rights was carried out under the aspects set out in the Decision of the Constitutional Court of the Republic of Croatia of March 6, 2012,[10] that states, inter alia… "*Healthcare is of interest to the Republic of Croatia and is provided as a public service. For this reason, the legislator is obliged to set the organisation and normative regulation of healthcare on the fundamental principles on which it must be based. These are the principle of comprehensiveness (healthcare covers the entire population of the Republic of Croatia), the principle of continuity (healthcare must be continuous for the population of all age groups, and the healthcare system must be functionally interconnected and harmonised), the principle of availability (the list of healthcare facilities, companies performing healthcare activities and healthcare workers on the territory of the Republic of Croatia must provide the population with equal conditions for healthcare, especially at the primary level of healthcare), the principle of comprehensive access to primary healthcare (measures to improve health and disease prevention, treatment and rehabilitation must be combined) and the principle of specialisation in specialist-consultative and inpatient healthcare (obligation to organise and develop special clinical and health policy achievements and knowledge and their application in practice."* From Article 129a(2) of the Constitution of the Republic of Croatia, the local (regional) self-government units derive the right to care for the health of citizens in their area, as they are closest to the citizens in their area. Although the aim is to transfer the founding rights over general hospitals to the Republic of Croatia, and in order for the local (regional) self-government units to be able to influence decisions that are important for the operation of the general hospitals within the scope of their constitutional powers, it is stipulated that the director of the general hospital is appointed and dismissed by the Governing Council, but with the prior opinion of the competent prefect, or mayor of the City of Zagreb and with the consent of the Minister of Health (Article 86a of the HCA).[11] Although the amendments led to a disruption of competences between the local (regional) self-government units and the state in the field of health and health policy, they did not lead to an unconstitutional restriction of the right to local (regional) self-government under Article 128(1) of the Constitution of the Republic of Croatia. In addition, it represents the revival of the constitutional definition of the Republic of Croatia as a democratic, social and decentralised state and, at the same time, implements the

[10] Decision of the Constitutional Court of the Republic of Croatia of March 6, 2012 (OG, No. 35/12).
[11] Would it not then at least be logical to ask the local (regional) self-government units to agree with taking over the founding rights?

principles of Article 4 and Article 9 of the European Charter of Local Self-Government (Council of Europe, 1985, p. 2-4).

5.2 On the Possible Violation of the Right to Peaceful Enjoyment of Property (under the Constitution of the Republic of Croatia and Article 1 of Protocol No. 1 of the European Convention)

The Constitution of the Republic of Croatia has enshrined the inviolability of property as one of the highest values of the constitutional order (Article 3), guaranteed the right to property as one of the human rights and fundamental freedoms (Article 48(1)) and "ensures" its constitutional protection before the Constitutional Court (Article 128). In accordance with the practice of the ECHR (which has been established in the application of Article 1 of Protocol No. 1 of the European Convention), in particular in relation to the Republic of Croatia, and in line with the practice of the Constitutional Court, the coherence between the position on the protection of the constitutional guarantee of property and the case law of the ECHR can be observed (Omejec, 2014, p. 957). Article 1 of Protocol No. 1 (hereinafter: P1-1) of the European Convention stipulates: *"Every natural or legal person has the right to enjoy his property in peace. No one shall be deprived of his property except in the public interest and under the conditions established by law and by general principles of international law. These provisions shall not, therefore, in any way limit the right of the state to apply such laws as it deems necessary to regulate the use of property in accordance with the public interest or to ensure the payment of taxes or other duties or penalties."*

The above text gives rise to the following relevant questions to be asked when considering whether there is a breach of the property right secured by P1-1 in the provisions on the transfer of acquired/founding rights:

> (a) Is there a right to property in proceedings for the transfer of acquired rights within the meaning of Article 1?

This is undoubtedly the case. As legally authorised founders of healthcare facilities, the local (regional) self-government units have the right to arise from their status. In addition to these founding rights to the healthcare facilities, of which the local (regional) self-government units are the founders, the funds for the operation of the healthcare facilities, including the income generated are also available, are to be

regarded as assets of the local (regional) self-government units to which the constitutional guarantee of property refers. It should be noted that these assets cannot be fully subsumed under the concept of property rights within the meaning of private law regulations. The founding rights of the City of Zagreb over healthcare facilities, of which it is the founder, constitute *exempli gratia* assets that pursue a special purpose and a specific public law objective as they ensure the permanent, smooth and proper functioning of the healthcare system as a public service. It is, therefore, subject to special public law regulation as long as it serves this purpose.[12] Although it has a specific public law character and is connected to a specific public law authority, it is, in principle, covered by the constitutional guarantee of the right to property. However, when examining possible violations of this right, various factors must be taken into account that are not present in cases of protection of the constitutionally guaranteed property rights of private individuals under the rules of private law.[13]

(b) Has this right to property been infringed?

The legal regulation that provides for the transfer of founding rights over general hospitals has undoubtedly led to significant interference with the property of the local (regional) self-government units.

In view of this, it must be examined whether the interference with property was justified. This can only be the case if the interference is: (a) provided by law, (b) in the public interest and (c) complies with the principle of proportionality.

In this particular case, the phrase "provided by law" requires that the measures provided by law must have a basis in positive law. We consider that the relevant provisions of the HCA are clear and precise, in accordance with the specific nature of the matter they normatively regulate, thus preventing any arbitrariness in the interpretation and application of the law. We recall here the Decision of the Constitutional Court of the Republic of Croatia on the quality of legal norms in the light of the rule of law,[14] which states that *"5 (...) the requirements of legal certainty and the*

[12] The position taken in connection with the Pharmacy Act (OG, No. 121/03-117/08) and the Decision of the Constitutional Court of the Republic of Croatia No.: U-I-2643/07 (OG, No. 4/10).
[13] Decision of the Constitutional Court of the Republic of Croatia of March 6, 2012 (OG, No. 35/12).
[14] Decision of the Constitutional Court of the Republic of Croatia (OG, No. 44/11).

rule of law arising from Article 3 of the Constitution require that the legal norm be accessible to the addressees and foreseeable for them in such a way that they can actually and concretely know their rights and obligations in order to be able to behave towards them. (...) 5.1 The Constitutional Court considers it undisputed that the addressees of a legal provision do not specifically know their rights and obligations and cannot foresee the consequences of their conduct if the legal provision is not sufficiently specific and precise. The requirement of certainty and precision of the legal norm represents one of the fundamental elements of the principle of the rule of law (...) and is of decisive importance for the creation and maintenance of the legitimacy of the legal order (...).”

The analysis of the concept of "public interest"[15] in the case law of the ECHR shows that it must be interpreted broadly since the national legislature has a wide margin of appreciation for this concept, which is the expression of a particular economic policy pursued by the state. At the same time, the Republic of Croatia is authorised (through economic and social policy measures) to create the conditions for the implementation of healthcare and the conditions for the protection, preservation and improvement of the health of its population. The Republic of Croatia realises its rights, duties, tasks and objectives in the field of healthcare by planning the healthcare system and defining the strategy for the development of the healthcare system and by creating a legal basis for the realisation of the objectives of the healthcare system. In other words, the Republic of Croatia has a certain margin of discretion in the application of measures in this area, as well as in the application of measures in other areas of the country's social, financial or economic policy. Notwithstanding this greater discretion in regulating the conditions of healthcare, it is only constitutionally permissible for the local (regional) self-government units to fulfil their obligation under Article 129a(2) of the Constitution of the Republic of Croatia to perform tasks in the field of healthcare that must be fully or partially financed. This is because healthcare is of interest to the Republic of Croatia and is provided as a public service.

[15] The question of the distinction between the concepts of "general interest" and "public interest" also arose before the ECHR, which in its judgment in the case of *James and Others v. the United Kingdom* (1986) stated that *"even if there could be a difference between the concepts of "public interest" and "general interest" in Article 1 (P1-1), the Court considers that in the present case no fundamental difference between those two concepts can be established, which the applicants allege."* Therefore, it can be inferred that the ECHR considers that there is no fundamental difference between these two concepts ("even if there could be a difference...").

Specific measures taken by the state must also satisfy the criterion of "proportionality". This presupposes that the measures taken through the transfer of founding rights are necessary in the sense that there are no other alternative(s), more favourable ways to achieve a certain goal —namely, better organisation of healthcare, better accessibility, higher efficiency and financial sustainability, since general hospitals are subject to joint public procurement. The question of whether an appropriate balance has been achieved only becomes relevant once it has been established that the intervention in question was in the public interest, that it complied with the requirement of legality and that it was not arbitrary. In similar cases where the interference did not involve expropriation, the ECHR will also consider whether the laws provide for some form of compensation for restrictions that continue over a period of time. The conditions for compensation are essential for the assessment of just compensation and, in particular, whether the contested measure constitutes a disproportionate burden on the claimants. The taking of property without payment of a reasonable amount in relation to its value generally constitutes a disproportionate interference and the total absence of consideration can only be considered justified under P1-1 in exceptional circumstances. In analysing the practice, we consider that the situation in question constitutes exceptional circumstances.

6 In Lieu of a Conclusion

It is clear from the doctrinal discussions that different models of healthcare are applied in the world, depending on the needs, the degree of economic growth and the lifestyle of the inhabitants. The models differ mainly in terms of the availability of services and the way in which healthcare costs are financed. New problems are constantly arising in the healthcare system that cannot be solved because there is no uniform solution due to the development of countries and changes in the social environment. The models of the healthcare system must be partially adapted to the changes in the factors influencing health. The analysis of the healthcare system in the Republic of Croatia shows that it has undergone numerous reforms, the primary aim of which was to optimise the level of healthcare with the actual financial possibilities of the Croatian economy. The decision for or against each solution is by no means easy; otherwise, their coexistence would not be possible, and one would have long since supplanted the other.

As for the determination of one position or the other, a stand taken here is in favour of the legality of the transfer of the acquired rights. In addition, we need to take into account the extreme and notorious complexity of this choice and the recognised fact that in such complex and multifaceted matters there are (sound) arguments for both options. The final determination, however, depends on the factors assigned to both groups, while it cannot be denied that the determination of these factors is a subjective and obviously arbitrary act. This is not to be understood as condescending because the existence of value distributions, even if they are not sufficiently visible, has been recognised in a very authoritative way as a component that belongs to the foundation of the social sciences.

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Povzetek v slovenskem jeziku

Predstavljena analiza o delovanju zdravstvenih ustanov v zadnjih letih kaže osnovni problem hrvaškega zdravstvenega sistema, ki danes predstavlja "luknjo" v višini skoraj dveh milijard evrov. Zato se postavlja vprašanje, kako je mogoče zagotoviti razpoložljivost, kontinuiteto, popolnost in solidarnost zdravstvenega sistema (kot temeljna načela Zakona o zdravstvenem varstvu) ob upoštevanju obveznosti iz Zakona o izvrševanju državnega proračuna in Zakona o fiskalni odgovornosti. Namen članka je poiskati odgovor na vprašanje, ali je prenos upravljavskih pravic nad splošnimi bolnišnicami na Republiko Hrvaško, ki ga ureja Zakon o zdravstvenem varstvu, ustavno, pravno in ekonomsko upravičen. Analiza temelji na dejstvu, da vprašanje zdravstvenega varstva in organizacije zdravstvenega sistema ureja vsaka država samostojno in da je ta avtonomija držav članic omejena s predpisi EU.