

- ▶ Convention Concerning the Protection of Workers against Occupational Hazards in the Working Environment Due to Air Pollution, Noise and Vibration;
- ▶ Convention Concerning Occupational Safety and Health and the Working Environment;
- ▶ Convention Concerning Occupational Health Services;
- ▶ Convention Concerning Safety in the Use of Asbestos;
- ▶ Protocol No 8. of the Convention for the Protection of Human Rights and Fundamental Freedoms;
- ▶ Protocol No 7. of the Convention for the Protection of Human Rights and Fundamental Freedoms;
- ▶ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- ▶ Protocol No 1. to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- ▶ Protocol No 2. to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- ▶ Council of Europe Convention on Action against Trafficking in Human Beings.

The following treaties have been signed, but not ratified:

- ▶ Additional Protocol to the Convention on Human Rights and Biomedicine Concerning Transplantation of Organs and Tissues of Human Origin;
- ▶ Additional Protocol to the Convention on Human Rights and Biomedicine Concerning Biomedical Research;
- ▶ Protocol No 15 of the Convention for the Protection of Human rights and Fundamental Freedoms.

Additionally, Serbia has signed and ratified the majority of international and regional (European) legal instruments concerning health, biomedicine and human rights. For more information please refer to Chapter 1.

5.2. Status of Precedent

Since the Republic of Serbia belongs to the continental law system countries, a precedent, i.e. the case law, cannot be treated as formal legal source.

Despite precedent is not formal legal source, the jurisdiction of the Supreme Court of Cassation, established in 2010, was expanded by the amendments and supplements to the **Law on Organization of Courts**¹ and implemented on 21 May 2014. In order to ensure uniform application of law, the Court forms its jurisprudence presenting it through opinions expressed in its decisions, and through conclusions and sentences adopted at its departmental sessions and the session of all the Judges.

According to **Article 43** of the **Law on Organization of Courts**, the session of departments of the Supreme Court of Cassation deliberates issues from the scope of work of court departments. The session of departments shall also be convened due to incompatibilities between some chambers arising in respect of the application of regulations or if one chamber departs from a legal opinion adopted

¹ Official Gazette RS 16/2008, 104/2009, 101/2010, 31/2011, 78/2011, 101/2011 and 101/2013.

by its case law or a legal opinion accepted by all chambers. A legal opinion adopted at the session of departments is binding for all chambers comprising the departments.

Decisions of the Supreme Court of Cassation relevant to case law and all general legal views shall be published in a special collection of works.

5.3. Legal and Health System

LEGAL SYSTEM

The Republic of Serbia belongs to the continental law system countries according to its legal system structure. Legal norms are codified in relevant regulations, governing all aspects of social life. The Constitution of the Republic of Serbia, the most important and the supreme legal act, adopted in 2006², is based on the fundamental principle that the legal system is unique. It anticipates that all international and domestic regulations have to be in compliance with constitutional and law principles. According to Article 194 of the Constitution, all laws and other general acts enacted in the Republic of Serbia must be in compliance with the Constitution. Ratified international treaties also may not be in contradiction with the Constitution. The same article anticipates that laws and other general acts enacted in the Republic of Serbia may not be in contradiction with the ratified international treaties and generally accepted rules of the international laws, since they are also part of the Serbian legal system.

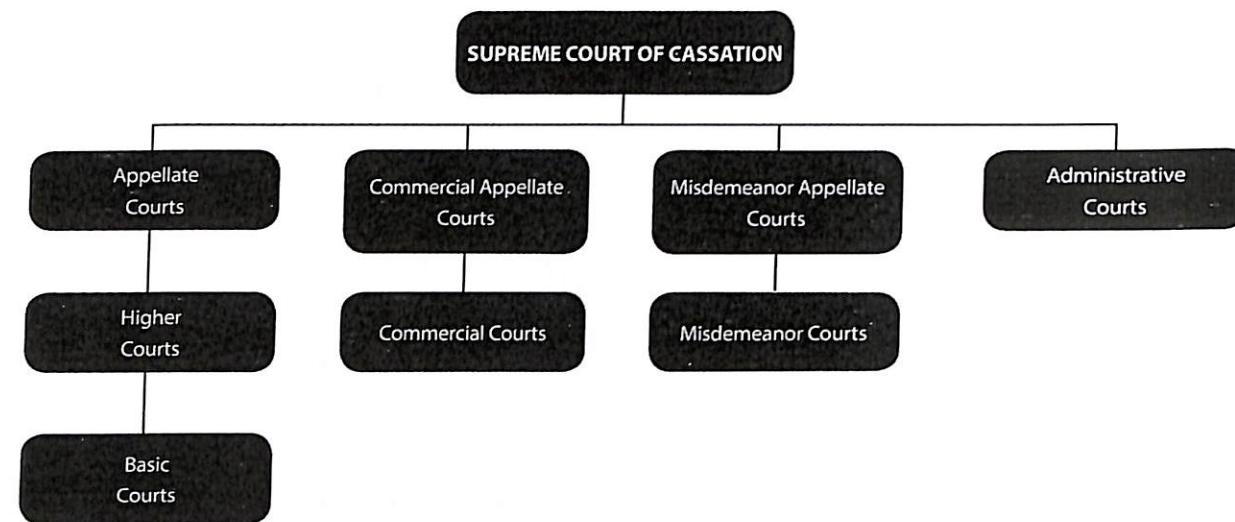
Article 195 of the Constitution specially regulates the hierarchy of domestic legal acts. This article anticipates that all of the following must be in compliance with the law: bylaws of the Republic of Serbia; general acts of organizations with delegated public powers; political parties, trade unions and civic associations and collective agreements; statutes, decisions and other general acts of autonomous provinces and local self-government units.. Article 197 of the Constitution, being in compliance with the principles of legal safety and the rule of law, explicitly forbids retroactive effects of laws and legal acts. The exceptions are allowed in special circumstances only, as established in the procedure of adopting the Law. Article 1 of the Constitution explicitly specifies that Serbia is a republic, based on constitutional principles, such as the rule of law (authority within the limits of the governmental power and distribution of authority); social justice (socially responsible state managing the politics of equality); principles of civil democracy (sovereign citizens exercise their will through free elections); human and minority rights and freedoms in compliance with generally accepted rules of international law; and commitment to European principles and values.

The government system power is divided among legislative, executive and judiciary authority. The National Assembly is the holder of legislative power, the President and the Government are holders of executive power, while courts of both general and special jurisdiction are holders of judiciary authority. Courts of general jurisdiction include basic courts, high courts, appellate courts and the Supreme Court of Cassation – the highest court in the country, and special jurisdiction courts include commercial courts, the Commercial Appellate Court, minor offences courts, the High Minor Offences Court, and the Administrative Court).

Organizational structure of the legal system in Serbia is shown on Scheme 1.

² Official Gazette of RS 98/2006.

SCHEME 1. ORGANIZATIONAL STRUCTURE OF THE HEALTH CARE SYSTEM IN SERBIA



Source: Republic of Serbia. Supreme Court of Cassation. <http://www.vk.sud.rs/en> (assessed January 28, 2015)

HEALTH SYSTEM

In accordance with Article 1 of the Constitution, the Republic of Serbia is based on the rule of law, social justice and European principles and values. Health care is guaranteed by the Constitution, which anticipates that health insurance, health care and establishing of the health insurance fund are regulated by the republic laws³. Articles 68 and 97, paragraph 1/10 of the Constitution guarantee the right to health and provide for a health care system through compulsory health insurance.

The health care system, together with the health insurance, makes the unique health care system of the Republic of Serbia. It means that every citizen of Serbia, as well as persons with permanent or temporary residence in the territory of Serbia have the right to access health care services. Fundamental laws regulating health in Serbia are: Health Care Law⁴ and Health Insurance Law⁵. Besides that, there are many other regulations, general acts, strategic documents and national programs.

The Ministry of Health is in charge for designing and implementation of health politics. The Institute of Public Health of Serbia "Dr Milan Jovanović - Batut", and the National Health Insurance Fund⁶ also have significant levels of competence on this matter. The competence level of the National Health Insurance Fund is governed by Articles 208-210 of the Health Insurance Law. The Institute of Public Health of Serbia gathers and analyses information on population health and performance of health care institutions and suggests measures for improvement of public health. The National Health Insurance Fund is a national, autonomous public organization which signs agreements with the public and private health care providers. Payments for health care services are made on the basis of those agreements. Besides that, another important role of the Fund is defining the compulsory health care package.

³ Official Gazette of RS 98/2006.

⁴ Official Gazette of RS 107/2005, 72/2009, 88/2010, 99/2010, 57/2011, 119/2912 and 45/2013.

⁵ Official Gazette of RS 107/2005, 109/2005, 57/2011, 110/2012, 119/2012, 99/2014, 123/2014 and 126/2014.

⁶ Official Gazette of RS 107/2005, 109/2005, 57/2011, 110/2012.

Health care institutions, both public and private, are within the health care system in Serbia. Organizational structure of the health care system in Serbia is shown in Scheme 2.

There are three levels of the health care system:

- ▶ Primary health care consists of a well-developed network of primary health care centers (outpatient departments) founded by the state (on municipality level) or individual practitioners (in private practice). Primary health care founded by the state represent the first level of people's connection to health care services. They consist of teams of chosen physicians: general practitioner, gynecologist, pediatrician and dentist, as well as other specialists (in internal medicine, radiology, physical therapy, psychology, etc);
- ▶ Secondary health care activities comprise of different specialist services in general and special hospitals. This level of health care usually represents the continuation of diagnostic, therapeutic and rehabilitation activities, initiated at the primary health care level; and
- ▶ Tertiary health care activities are carried out at clinics, clinical hospitals and clinical centers, representing the highly specialized (subspecialized) level of health care.

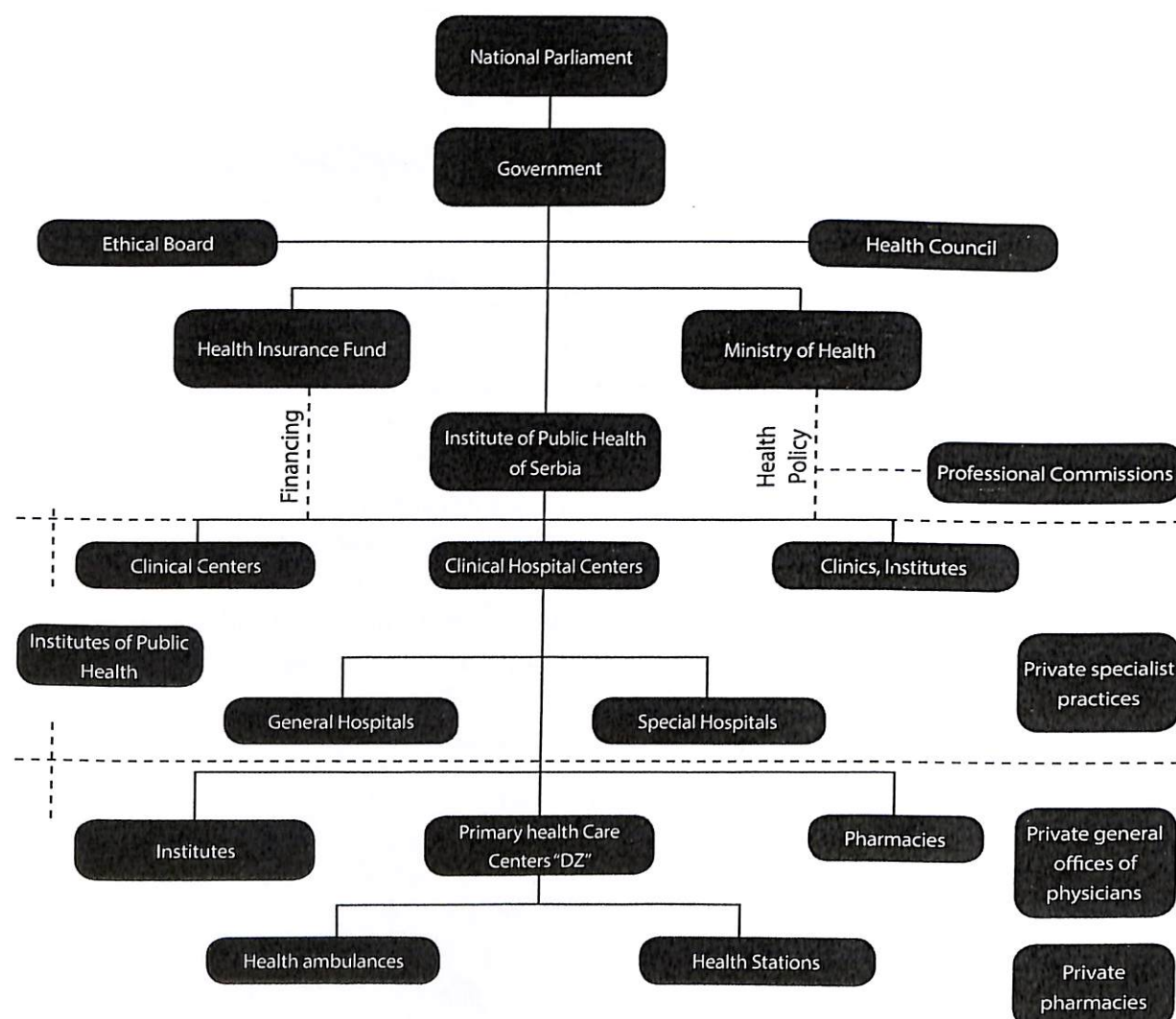
Besides the above-mentioned facilities, pharmacies, institutes of public health, the Blood Transfusion Institute and other institutes can also be parts of either the primary or tertiary health care level. Institutes of public health are founded for the territory of several municipalities and are in charge of activities of public health at all three levels of the administrative organization of the health care system in Serbia (Scheme 2).

Serbia decided to apply the so-called Bismarck model regarding the financing, ownership, organization and management of the health care system. This means that the health care system in Serbia is primarily financed from compulsory health insurance contributions paid by employees and employers, as well as by other citizens with other types of income (business companies' founders, private entrepreneurs, pensioners, farmers). The National Health Insurance Fund collects and manages the health insurance funds. The health care system is additionally financed from other sources, public or private. Public sources are provided from the state budget mostly, sometimes with copayment for certain health services and for drugs as a percentage of the cost of prescribed drugs, while private sources are provided by health care system users by direct payment for health care services, voluntary health insurance and sometimes with copayment by health insurance, etc.

Health insurance in Serbia can be compulsory and voluntary. Compulsory health insurance includes insurance covering diseases and injuries not related to work, as well as insurance covering work-related injuries or diseases. It guarantees the right to health care and right to salary benefit for the period of temporary inability to work, as well as the right to transportation benefit relating to the use of health care services. Compulsory health insurance is to be provided for: insured persons and members of their families, persons who are to be included into compulsory health insurance (pensioners, vulnerable groups – Roma, poor people, unemployed), persons provided with entitlements deriving from compulsory health insurance in particular circumstances (such as Roma without birth certificate number), as well as foreign citizens with whose countries an international agreement on social insurance has been signed.

Voluntary health insurance can be organized and carried out by the National Health Insurance Fund and legal entities dealing in insurance activities in accordance with the Health Insurance Law⁷, as well as investment funds for the voluntary health insurance, in accordance with the special Act of Voluntary Health Insurance⁸. Voluntary health insurance provides the insured persons the possibility of being insured against the risks of copayment for the cost of health care provided in the compulsory package of health services (health insurance complementary role). Besides that, persons not included in compulsory health insurance can take voluntary health insurance (alternative role of health insurance, solely within the competence of private insurers for now), as well as persons who want a wider range and standard of health care than compulsory health insurance can provide (additional health insurance).

SCHEME 2. ORGANIZATIONAL STRUCTURE OF THE HEALTH CARE SYSTEM IN SERBIA



Source: Compiled from the Health Care Law (Official Gazette of RS 107/2005, 72/2009, 88/2010, 99/2010, 57/2011, 119/2912 and 45/2013)

The compulsory package of health services is basically determined by the Health Insurance Law (Article 34) and includes: 1) prevention and pre-stage diagnosis of disease; 2) medical examinations and treatment of women relating to family planning, pregnancy, delivery and postnatal period up to 12 months after delivery; 3) medical examination and treatment in case of sickness and injury; 4) medical examination and treatment of dental diseases; 5) rehabilitation in case of sickness or injury; 6) medicines and medical supplies, and 7) prosthetics, orthotics and other devices for movement, standing and sitting, sight, hearing and speech, dentures and other auxiliary and sanitary devices (medical-technical devices). In accordance with the authorization from Article 47 of the Health Insurance Law, the final list of compulsory health insurance package services is determined by the National Health Insurance Fund in the general by-law adopted for each calendar year (Rule of the range and scope of the right to health care deriving from compulsory health insurance and of copayment for 2014)⁹.

In case a health care institution is not able to provide a health service covered by the compulsory health insurance package within a period of 30 days, an insured person can "seek" this service in another health care institution. All costs will be reimbursed by the respective health insurance branch. The requirement for reimbursement is official confirmation that the health care institution in charge was not able to provide the necessary health service within the stated period.

For certain types of health care services which are not urgent, an order of use may be established depending on medical indications and health status of the insured, whereas the waiting time cannot be such to endanger health or life of the insured. The National Health Insurance Fund establishes types of health care services for which the waiting lists are to be made, as well as criteria for standardized measures for the patient's health status evaluation, for putting patients on waiting lists and for determining the longest waiting time for health care services to be delivered.

7 Official Gazette of RS 55/2004, 70/2004 - corr., 61/2005, 61/2005 - etc. law, 85/2002 - etc. law, 101/07, 63/09.

8 Official Gazette of RS 108/2008 and 49/2009.

9 Official Gazette of RS 3/2014, available at http://www.rfzo.rs/download/pravilnici/participacija/Pravilnik_obimsadrzaj16012014.pdf (accessed September 11, 2015).