Case 42755708

A02405-10/18

Country: Latvia
Region: Europe
Year: 2010
Court: District Court of Administrative Cases
Health Topics: Health care and health services, Health systems and financing, Medicines
Human Rights: Right to health, Right to life

Facts

The Plaintiff bought 13 packs of Sprycel, also known as desatinib, during the year and sought reimbursement for their costs. A local university hospital doctors council concluded that the Plaintiff would not survive without Sprycel treatment. According to the law of Latvia, the Plaintiff was reimbursed up to LVL 10 000 for his purchase of Sprycel, but not for any amount above that. Article 111 of the Constitution of the Republic of Latvia establishes that a fixed amount of health care services must be paid by the State.Â Regulation No. 899 apportions the reimbursement amount for medicines on the reimbursable medication list, with those patients facing life-threatening illness receiving full compensation for medicines on that list. For medicines not on the list, the regulation sets a cap of up to LVL 10 000 for 12 months.Â This compensation cap applies to Sprycel, since it is not included on the list. Â One package of Sprycel sold at a pharmacy costs approximately LVL 5 493.48.

The Plaintiff filed a claim with the District Court of Administrative Cases to issue an administrative act that would require the Ministry of Health to fully compensate him for the purchase costs of 13 packs of Sprycel.

Decision and Reasoning

The Court declined the Plaintiffâ€™s application.Â The Court noted that Resolution No. 899 is in compliance with the Constitution.Â As such, the Court found that the Republic of Latvia acted legally and reasonably, based on legal norms established by Resolution No. 899, in calculating and estimating the amount of compensation the Plaintiff would receive.

However, the Court explained that if an institution applies correct legal norms, but the result of this application is a restriction on an individual that is too severe when compared with the benefit society will gain, then the fault lies with the legislation.Â This is a violation of the proportionality principle.Â According to the Latvian judicial system, such a violation can be corrected by the Constitutional Court or the Administrative Court if the case is atypical.Â The Court defines an atypical case as a case that wasnâ€™t considered by the legislators, and identifies those cases as those that â€œcompl[y] with all judicial requirements for legal norms, however, additional circumstances are indissolubly related to it . . . [that] significantly alter[] the character of that case.â€•Â Â Lack of money, different age groups afflicted with life-threatening diseases, and cases where LVL 10,000 compensation does not fully cover the medication price are considered typical cases as legislators considered those situations.Â As such, the Court found that the Plaintiffâ€™s case was not atypical.

Additionally, the Court noted that the LVL 10,000 amount established by the State was based on the Stateâ€™s budget.Â In establishing this cap, the State aimed to allocate its money to provide the right to health to the largest part of society. In aiming to achieve the most efficient allocation of its budget, the State has tried to provide to as much of society as possible a right to health. The Court noted that the right to health imposed a positive obligation on the state to protect people from State actions and from criminal intentions. The obligation does not include when life is threatened by external circumstances, e.g. illness. The only legal obligation on the State is when the threat is urgent and specific and thus would violate the right to life included in Article 2 of the European Convention of Human Rights. Thus, the Court found that the State has no legal obligation to provide medication to guarantee extra years in a personâ€™s life.

Finally, the Court concluded that although the State does not cover the entire cost of the drugs, the Plaintiff has alternative avenues to cover the drug cost.Â For example, the Plaintiff could attempt to seek reimbursement from the drug manufacturer or from a public benefit organization.Â In this case, the Court found that there was no evidence the Plaintiff did this.

Decision Excerpts

â€œIn the legal literature, commenting on Constitutional Court decision in case No. 2006-41-01 of 28 February, 2007, that confers a right for district courts to review the suitability of issuing compulsory administrative act in case of untypical cases, is stated that if an institution does not have a right to act freely and shall issue a compulsory administrative act, and an institution has formally and correctly applied legal norms and issued such administrative act that is in compliance with legal norms, but it is disproportionate, i.e., the restriction for an individual is too severe in comparison with the benefit society will gain from, then it is the fault of Legislator not the institution. (Egils Levits, Prof. Dr. ju. h. c. Ass. jur. Dipl.Pol., European Community judge. Proportionality principle and mandatory administrative act, published in â€œJurista VÄ•rdsâ€•, 27th March, 2007, issue No 13).â€• (Para. 13)

â€œWherewith the particular circumstances cannot be outside Legislatorâ€™s scope, therefore, it is unfounded to assume that the particular case is typical and judicial composition of Clause 100 and 1001 of the Regulations No. 899 does not cover it. Namely, the Cabinet could anticipate, while adopting the Regulations No. 899, that with 10Â 000 LVL compensation might not be sufficient to fully cover medicament purchase costs for all patients requiring special medication that are not included in the reimbursable medicament list. On the contrary, the Cabinet has anticipated it and acted accordingly its competence in budget planning and allocation referable to health protection field, taking into account State funding allocation that so they would most used most efficiently â€“ would be sufficient enough for the largest number of patients possible requiring medication purchase costs compensation.â€• (Para. 15)

â€œAt the same time the Court holds that the patientâ€™s ability to cover the required amount of medicament purchase costs depends on the personâ€™s financial status. It also should be taken into account that the State has established the 10 000 LVL for 12 month period compensation amount limit on the grounds of its budget options not on patientâ€™s financial status, but by evaluating the budget options it aimed to achieve the most efficient way of allocating budget for medicament compensation system in order to provide as large part of society as possible right to health.â€• (Para. 18)