



Case 209

Decision No. 209 on Case No. 161/2007

Country: Bulgaria

Region: Europe

Year: 2007

Court: Sofia Court of Appeal

Health Topics: Chronic and noncommunicable diseases, Diet and nutrition, Health care and health services, Health systems and financing, Medicines, Mental health, Sexual and reproductive health

Human Rights: Right to health

Facts

This case has been affirmed on appeal to the Supreme Court of Cassation.

The Plaintiff was diagnosed with breast cancer in 1998. As part of her treatment, she was prescribed hormone medication and received a mastectomy. At one point, she was prescribed Zoladex, which causes temporary cessation of ovarian function. Although prescribed this medication, she was frequently not able to procure her medication from the Ministry of Health. Oftentimes, she and her sibling would try and procure the medicines on their own.

As a result of the irregularities in supply, her physician conducted a radiation ovariectomy, which was a treatment not regularly practiced in Europe. After the cessation of ovarian function, the Plaintiff was prescribed Femara, which is a hormone therapy to be administered after the cessation of functioning.

The irregular supply of both Zoladex and Femara caused much stress for the Plaintiff. The search for medications became an all-consuming task, caused feelings of suicide, and resulted in the Plaintiff pursuing a hunger strike. In 2004 and 2005, the Plaintiff purchased doses of these medications herself as she was aware of the likelihood that they would not be available to her under the normal scheme. In early 2005, the plaintiff ceased work activity because all of her time was dedicated to medicine procurement. In March of 2005, the Plaintiff was diagnosed with a liver metastasis, an extension of the original cancer and was not curable.

The irregular supply of medications was due to failures on the part of the Ministry of Health. The Ministry of Health had failed to keep track of the increasing number of people taking expensive medications, especially those taking them as a form of cancer treatment. The Ministry of Health also failed to enter adequate supply contracts that would be able to provide the quantities of medications required in treatment practice.

The Sofia City Court found the Ministry liable for not providing a regular supply of medication. It ordered the Ministry to pay the plaintiff a small amount to compensate for the medicine purchased privately and BGN 80,000 for non-pecuniary damages, less than the 398,500 that the plaintiff wanted. Both parties appealed.

Decision and Reasoning

The Court upheld the decision of the lower court in favor of the Plaintiff in finding that the Ministry of Health had failed to provide treatment and the State was therefore liable under Article 1 of SMRDA. The non-pecuniary damages claim was annulled in part, with the Court increasing the amount of the award from BGN 80,000 to BGN 100,000 in non-pecuniary damages.

The Court found that the failure of the Ministry of Health to keep records of increasing dependence on expensive treatments to be provided by them under Article 3 of the Public Health Act, and the subsequent failure to procure supply contracts sufficient to provide the quantity of drugs required, resulted in irregular provisions of treatment. The irregular supply of treatment led to the worsening of the Plaintiff's condition and caused additional mental suffering. Under the SMRDA, the State is liable for the acts of its organs and injured parties can seek damages from the State. In the present case, the amount of non-pecuniary damages to be awarded was based on a unique situation. The Plaintiff not only suffered from pain and malady, but the situation was also aggravated by her concerns over irregular availability of treatment and the need to interact with officials from the Ministry of Health. The Court therefore found that the amount of non-pecuniary

damages awarded by the Sofia City Court was insufficient and increased the award.

Decision Excerpts

“From collected ample evidence in this case, the Court accepts that there was Ministry of Health omission, resulting in improper conduct of contracting and delivery of expensive drugs, namely: lack of a basic procurement procedure implemented at the end of the year, covering the next one, based on the approved specification for annual needs, delayed and unrealized procedures under the PPA, contracting for partial quantities of drugs and irregular and chaotic supply of medicament quantities that do not cover the number of cancer patients, for the period January 1st, 2004 - March 1st, 2005.” (p. 17)

“Non-pecuniary damages compensation is aimed to repair in a reflectively full way pain and malady suffered by Plaintiff. The content of the concept “non-pecuniary damage” is defined by case law and the unwritten rules of morality. This particular case has to do with non-pecuniary damages of a peculiar character and nature, much different from the concept of non-pecuniary damages with the already adopted content “suffered pain and malady. Indeed the Plaintiff-Applicant has suffered and is suffering now pain and malady, but among them are superimposed also all the negative experiences, stress and discomfort that go along with the daily worry for her physical survival. Also all the inconveniences of contacts with relevant officials in the system of Ministry of Health, concerning the search for the necessary medicaments in order to fulfill an adequate treatment should be added.” (pp. 17-18).

Copyright © 2015 www.GlobalHealthRights.org