



## Case 211

Decision No. 211 on Case No. 6087/2007

**Country:** Bulgaria

**Region:** Europe

**Year:** 2008

**Court:** Държавен съд за защита на конституцията (Vŭzrhoven kasatsionen sŭŭd) [Supreme Court]

**Health Topics:** Chronic and noncommunicable diseases, Health care and health services, Health systems and financing, Medical malpractice, Medicines

**Human Rights:** Right to health

### Facts

The Plaintiff, T.D.Z., complained that the Bulgarian Ministry of Health failed to carry out the necessary procurement procedure for Zoladex, a cancer medication, for the period of 1 January 2004 to 1 March 2005. During this period, the plaintiff, a high-risk cancer patient, was essentially deprived of a key part of her treatment. As a result, she developed severe symptoms and had to undergo an oophorectomy (removal of ovaries), which, according to her doctor, would have been unnecessary if she had had regular access to Zoladex.

The court of first instance found the Ministry of Health liable for the harm to the Plaintiff due to its omission in providing regular medicines and awarded the Plaintiff pecuniary and non-pecuniary damages. The court of appeal affirmed the judgment, increasing the amount awarded for non-pecuniary damage from BGN 80,000 to BGN 100,000. The Ministry appealed.

### Decision and Reasoning

The Court upheld the judgment of the lower courts. The Court found that the lowest court had correctly evaluated the case in accordance with the law and court procedure. The Court found that there was a causal relationship between the harm caused to the Plaintiff and the omission of the Ministry of Health officials, who were acting under official State authority. The Court found that the Ministry of Health was responsible on the basis of state responsibility, enshrined in Article 7 of the Bulgarian Constitution, as well as the Law on the Responsibility of the State and Municipalities for Damages (2006). Likewise, the Court found that the appellate court's increase in the non-pecuniary damages from BGN 80,000 to BGN 100,000 to be appropriate in line with the criteria of equity.

### Decision Excerpts

“The conduct of [the Ministry of Health] respective officials has been deliberated by the deciding court as causing delay and it is treated as an omission that there is a causal relationship with Plaintiff's damage because of discontinuation of Zoladex treatment that imposed the radiation oophorectomy procedure, with ensuing grave consequences.” (p. 5-6)

“By their omission, the respective officials who had not assured regular delivery of expensive medicines, have violated their duties towards the state body that appointed them and entered into legal relationship with citizens and in particular with patients suffering cancer, among them the injured Plaintiff, causing her immediate damage.” (p. 6)