



Case 2009-12-03

Country: Latvia

Region: Europe

Year: 2010

Court: Constitutional Court

Health Topics: Child and adolescent health, Chronic and noncommunicable diseases, Disabilities, Health care and health services, Health systems and financing, Medicines

Human Rights: Right to health, Right to life

Facts

The applicant, G.Z. was diagnosed with Gaucher's disease at the age of three. Gaucher's disease was a rare disease which can only be successfully treated with the drug Cerezyme. If the disease was not treated, it could result in early death.

G.Z.'s parents claimed 100% reimbursement of the purchase costs of Cerezyme on G.Z.'s behalf. However, according to Regulation 899 (hereinafter referred to as 'the impugned regulations'), which governed the procedures for compensating purchase costs of medication, Cerezyme was not included in the Medication Register of Latvia, so the applicant was only able to limited recover a limited amount of the drug cost.

An application submitted to the Regional Court of Administrative Cases by G.Z. praying for full reimbursement of medication costs of Cerezyme was rejected. G.Z. then submitted a cassation complaint over the rejected application to the Department of Civil Cases of the Senate of the Supreme Court, which in turn submitted the application to the Constitutional Court.

The applicants alleged that refusal of full reimbursement of the required medication, was contrary to justice and proportionality principles and amounted to discrimination against G.Z. in his/her right to medical treatment free of charge. The applicants argued that the impugned regulations violated the constitutional guarantees of life and the provision of basic health care under Articles 93 and 110 respectively of the Constitution of Latvia (the 'Constitution').

Decision and Reasoning

The Court found that the impugned regulations complied with Articles 93 (guaranteeing the right to life), 110 (requiring the State to provide special protection to disabled children) and 111 (guaranteeing the right to health) of the Constitution.

In finding that the impugned regulations complied with Article 93, the Court interpreted the constitutional guarantees within international human right obligations binding on Latvia. The Court referred to Article 2 of the European Convention on Human Rights and Fundamental Freedoms, 1950 ('ECHR') which guaranteed the right to life. Referring to the jurisprudence of the European Court of Human Rights at Strasbourg ('ECtHR') on Article 2, the Court held that the State's obligation to implement actions regarding Article 2 of the ECHR existed only where life endangerment was immediate and specific. The Court determined that a difference exists between the interpretation of 'life support' in the impugned regulations and the interpretation of 'immediate' and 'specific' endangerment of life in Article 2 of the ECHR. The Court held that the State obligation to ensure maximum lifespan.

The Court found that the impugned regulations regulated only reimbursement of medication purchase costs for out-patient treatment, which was not related to immediate and specific endangerment of life. The Court further determined that the present case did not involve such immediate and specific endangerment of life so as to warrant the application of Article 2 of the ECHR. The Court pointed out that for preventing real and immediate danger to health, emergency medical services operated in Latvia which were not covered under the impugned regulations.

Then Court then queried whether Article 93 of the Constitution established broader rights than Article 2 of the ECHR and determined that it did not. Therefore, as the impugned regulations did not warrant the application

for Article 2 of the ECHR, the Court determined that the impugned regulations also complied with Article 93 of the Constitution. The Court held that the State did not have an obligation to provide required medication for everyone free of charge under Article 93.

Citing to a prior decision on the matter and referring to General Comment No. 14 of the International Covenant on Economic, Social and Cultural Rights, the Court held that Article 110, read in conjunction with Article 111 of the Constitution, obliged the State to carry out special activities to protect the health of disabled children by providing access to those services and conditions which have an impact on achieving the highest standard of health; however such obligation still did not imply a State obligation to provide medication irrespective of price.

With reference to the State's budgetary allocations to healthcare, the Court held that while the Cabinet of Ministers (which was the body entrusted with the task of defining reimbursement procedures for out-patient treatment under the impugned regulations) was under an obligation to create reimbursement procedures that made a proportionate division of the allocated budget, the Cabinet could not create procedures which would exceed the allocated amount of budget. The Court noted that certain parties' opinions that the impugned regulations' constitutionality should be reviewed by the Court in light of the budgetary allocations to the healthcare field were unfounded.

Referencing other health-care regulations of the State which gave priority to children in health care and funding, the Court found that the State had not avoided its obligations under Article 111 of the Constitution.

The Court noted that the impugned regulation only applied to one procedure covered by the State, but did not cover in-patient treatment or a centralized medicament purchasing procedure, and suggested that it could be disproportionate to provide expensive medicament reimbursement for out-patient treatment. The Court further stated that the evaluation of economic and therapeutic efficiency was a key factor of the reimbursement procedures established in the impugned regulations.

The Court also noted the problem that rare diseases present in EU member countries, but stated that Latvia should not be admonished for not creating programs for rare disease treatment when other countries were also grappling with the high costs connected with rare disease medicaments.

The Court thus found that impugned regulations were in compliance with Article 110 of the Constitution, which did not oblige the State to fully reimburse medicament purchase costs.

Decision Excerpts

"A disputable question is if and how widely Article 2 of the Convention defines State's obligations to protect life if a life is endangered by external factors such as illness or impact of environment. The history of creating the Convention suggests that the provision on social rights was not a part of it. Therefore, the State's obligation to implement actions regarding Article 2 of the Convention exists only if a life endangerment is immediate and specific (see Grabenwarter C., page 133). Para 14.3

A difference, however, exists between the interpretation of life-support in Regulation No. 899 and the interpretation of immediate and specific endangerment of life in Article 2 of the Convention. Such regulations do not exist, which establish specific lifespan for a person. The State has no obligation to ensure maximum lifespan. No country in the world is able to implement that. Para 14.3.1.

The Constitutional Court states that by reducing the scope of Articles 93 and 111 of the Constitution, rights guaranteed under Article 93 could not be interpreted in a broader sense. The restrictions of those rights should be interpreted in a narrow sense. The Constitutional Court agrees with the Senate and the Cabinet of Ministers that Article 93 of the Constitution can be restricted on by situations defined in Article 2 of the Convention. Since the Constitutional Court has already concluded that the impugned regulations are not related to Article 2 of the Convention, the impugned regulations are not applicable to Article 93 of the Constitution. Para. 15.2

With a reference to General Comment No. 14 on the right to the highest attainable standard of health formulated by the Committee on Economic, Social and Cultural Rights, the Constitutional Court has concluded that the right to health is not the same as the right to be healthy. It should be taken into account that the State cannot take full responsibility for a person's options to achieve the highest standard of health due to the impact of genetics, the immune system's vulnerability and unhealthy lifestyle. Therefore, the State's obligation is to provide access to services of medical institutions, availability of equipment and

medicament and other conditions which have an impact on achieving the highest standard of health. From the right to health emerges the State's obligation to carry out such activities which would protect a person's health. • Para 17.

• Interpretation of Article 110 of the Constitution within Article 111 of the Constitution shows that the State's obligation to carry out special activities for protecting the health of disabled children, including the provision requiring medical services and medicaments. This, however, does not imply the fact that the State shall provide with medication irrespective of its price. • Para. 17.

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