

DECISION

No. 572, November 6th, 2006, Sofia

IN THE NAME OF THE PEOPLE

Sofia City Court, Civil College, 1st Division, 12th Panel of Judges, on October twentieth, two thousand and six, at a public hearing, with the following members:

Chairperson: ANELIYA TSANOVA

Secretary – Siika
Vesselinova.....

Public Prosecutor
Stoichev.....

After hearing the case reported by Judge Tsanova, concerning civil case No. 572, as per documents inventory dated 2005, and in order to pass judgment on it, the following is taken into account:

Objectively cumulative jointed claims are brought, as per Law on State and Municipalities Responsibility for damages (SMRDA) Art. 1 – Compensations for pecuniary and non-pecuniary damages.

It is stated in the claim that as per expert decision No. 0296 dated February 4th, 2003, issued by Sofia city Regional Oncology Dispensary (ROD), T.D.Z. has been disabled due to cancer disease. In 1998, an active treatment was started and good results were obtained. In 2002, the treatment was required to continue and in order to conduct it properly and successfully, chemical injections were required to “lead” her to binding menopause after which she was required to take a different kind of hormones. By reason of disorder in the Ministry of Health, Zodalex® injections had to be purchased by the patient—for April and May 2004 application—as the Ministry of Health was unable to provide the patient with the required medicines for uncertainty about the injection supplier. The patient had to pay 480 BGN for each injection on her own and after these two months, the Ministry of Health could not ensure, again, the supply of this medicine. Because the patient is unable to pay such amounts of money and her disease requires a fast surgery, her doctor

had decided, due to a lack of the medicine, to proceed with ovaries ray castration. After the surgery, following medical prescription, hormone Femara® intake was started. This medicine's intake should not be interrupted and as explained above, the Ministry of Health still had uncertainty about the medicine supplier. This pushed the patient to buy this medicine on her own. Until now, 3 blister packs of Femara®, 108 BGN each, had been purchased by the patient. She stated that her disease is very severe and that her life depends on regular intakes of prescribed drugs and medicines that should be supplied by the Ministry of Health. Medicines intakes interruption is impossible—it will provoke irreversible consequences for the patient. She cannot afford her treatment on her own any more. She is pushed to live in insecurity because of the Ministry of Health's incapable, incompetent, irresponsible and totally bureaucratic behavior; she feels panic and fears that next time she will be unable to purchase the required medicines; she cannot obtain even temporary tranquility, in order to feel happy in a certain way, and to have plans and do something meaningful. The patient's ailment is not the Ministry of Health's fault, but the Ministry should be entirely responsible for criminal, inhuman and cruel treatment, aggravating her already difficult existence.

In an additional statement of claim, submitted to the court on April 7th, 2005, T.D.Z. clarifies that the Defendant's concrete omission consists of a criminal delay in the provider's contracting procedure regarding life-saving and expensive medicines; this situation makes it impossible to receive this medicines. Intakes of these medicines are extremely important—due to the lack of them, as a result of Defendant's negligence, metastases spread and chemotherapy treatment was required. Due to the lack of the mentioned medicines and of adequate treatment over a long period of time, the resultant ovaries surgery, stress and insecurity, and the additional necessity to deal with two jobs in order to partially maintain her health condition and care for her child, the patient was also found to have metastases in the liver on March 3rd, 2005; diagnosis confirmed on March 17th, 2005.

Due to an additional statement of claim, submitted to the court on May 9th, 2005, T.D.Z. specifies that her claim for non-pecuniary damages is an attempt to get some revenge for the moral damage, pain and

suffering she had to tolerate and tolerates still because of her lack of access to life-saving and life-supportive medicines. As per the Constitution, the State, and respectively, its civil servants have the obligation to provide the patient with the above-mentioned medicines. All the more so as she is at the moment a regular taxpayer and continues to pay her social security despite the uncertainty regarding her health condition. Discussions between the Ministry of Health civil servants and the Pharmacy League on the matter of who will supply the essential medicines led to the intake of Temoxifen®, a weaker medicine with more side effects, instead of Nolvadex®. On the other hand, lack of Zoladex® injections, the aim of which is a gradual transition to menopause without any significant shocks to the body, led to an ovariectomy, as her menstruation cessation was required in order to continue with hormone therapy. There is a missing supply of another medicine vital to the patient's survival—Femara® hormone tablets, of which 30 intakes are required per month. Due to the lack of the mentioned medicines and of adequate treatment over a long period of time, the resultant ovaries surgery, stress and insecurity, and the necessity to deal with two jobs in order to maintain partially her health condition and care for her child, metastases were found in the patient's liver on 03/03/2005; diagnosis confirmed on March 17th, 2005. T.D.Z. affirms that she has not given up, but this mockery of her, provoked by the omission of Ministry of Health civil servants, calls into question and prejudices her battle with illness.

By means of an extra statement of claim (submitted to the court on January 18th, 2006) T.D.Z. declares that the facts of her claim indicate the Ministry of Health's nonfeasance in the free medicines provision, entrusted to it under regulations as a public body. The claimant holds that damages are caused because of Minister of Health's omission of responsibilities during the period January 1st 2004 to March 1st 2005 in his capacity as executor of healthcare regulations, such as: the Public Health Act (enacted January 1st 2005), Ordinance No. 23/2000 (amended, expanded and renamed by Regulation on Amendment and Expansion of Ordinance No. 23/2000 concerning the Order for expensive medicine prescription and obtainment; paid for by the National Budget, National Budget Law (2004) and others). As per 2004, in the Republic of Bulgaria Budget, more than BGN 70 M is provided to supply required medicines free of charge. The Minister of Health had the opportunity to

provide the necessary medicines to T.D.Z. Patients with cancer have the right to request the Minister to provide free medicines. The Minister's omission of responsibilities consists of contract non-delivery, delayed and unrealized proceedements as per Public Procurement Law, and the failure to provide necessary medicines in a timely manner. Claimed non-pecuniary damages resulted from postponing treatment of the existing disease, acceleration and increase of the ailment, reduction of the periods in which at least severe signs of the ailment were not manifested, and unnecessary castration. Damages are expressed in terms of the suffering caused by the health condition, poor quality of life, disability, inability to fulfill parenting obligations, depression and feelings of helplessness and hopelessness, preclusion of a normal social life, and inability to plan for the future.

In the following additional statement of claim, submitted to the court on February 16th, 2006, T.D.Z. declares again the case subject consists of establishing the duties of a public administration body corresponding to the right to free, appropriate treatment of an existing disease, and the failure of the Minister of Health in his obligation to provide medicines for treatment with a negative result. Such obligations are stated in: Republic of Bulgaria Constitution - Art. 52; Public Health Act – Art. 3a, p. 13, Art. 26 and paragraph 11; Ordinance No. 23/2000, amended, expanded and renamed by Regulation on Amendment and Expansion of Ordinance No. 23/2000 concerning the Order for expensive medicine prescription and obtaining, and paid for by the Republic Budget – Art. 1, Art. 2, Transitive and Final Provisions (“TFP”) Paragraph 1 and 2; Ordinance No. 46/1997 – Art. 1, p. 1, 2 and 3; Rules for Implementation of Law on Public Health – Art. 1; 2004 Law on State Budget (“LSB”) – Art. 5, 15 and 31. The Minister of Health's obligations are regulated in the Law on Administration, in terms of the Minister's administrative-legal status. The claimant declares that after the 2003 contracts finalizing and 2004 LSB approval, a medicine supply call for tenders has been opened as per Minister order No. ПД(RD)–17-112, although not until 02/02/2004. By order No. ПД(RD)–17-241, dated May 16th, 2004, the Minister has stopped the procedure and opened a new one. As per order No. ПД(RD)–17-1011, dated 23/11/2004, another procedure has been opened, published in the State Gazette (“SG”), issue 106, dated December 3rd, 2004. In its enclosure 36000 packages of Femara® are

listed. As per Minister of Health decision No. ПД(RD)–17-1015, dated December 21st 2004, the expensive treatment medicine supply procedure for 2004 was finalized. The 2004 medicines' supply contracts were signed in February 2005.

The court is requested to order payment to the claimant from the Ministry of Health in the following amounts: BGN 398,500 for non-pecuniary damages for pain and suffering endured; BGN 960 for pecuniary compensation in terms of costs incurred in the purchase of 2 Zodalex® injections in April and May of 2004 (BGN 480 each); and BGN 540 for pecuniary compensation in terms of costs incurred in the purchase of 3 blister packs of Femara® (BGN 180 each) in January, February and March 2005, and all with costs incurred in the case.

The Ministry of Health's proxy contests the claims and asks the court to dismiss those presenting reasons in writing.

Sofia Public Prosecutor's representative expresses an opinion on the lawfulness of the claim.

The SCC (Civil College, 1st Division, 12th Panel of Judges) after considering the parties' opinion and collected evidence, as per Art. 188 of CPC, assessed the following factual and legal situation:

As evidenced by the attached case medical history, issued by the National Oncology Center (NOC), T.D.Z. has been diagnosed as follows: right mammal gland carcinoma, stage III, practiced a Patey method radical mastectomy, on July 9th, 1998.

On March 23rd 2003, Specialized Hospital for Active Treatment in Oncology (SHATO)–Sofia, three-member Commission issued a written statement No. 113, referred to prescription of medicines for a period of 3 months.

A medical history, issued by SHATO-Sofia, has been presented regarding percutaneous radiotherapy given to T.D.Z. (April 13-27 2004) by means of radiation ovariectomy treatment.

Patient medical history, issued by Sofia NOC, has been presented regarding the realization of T.D.Z.'s percutaneous radiotherapy (for the

period August 12th to September 8th 1998 and August 12th to September 16th 1998).

For the period November 28th to December 6th 2002, T.D.Z. was admitted to SHATO-Sofia Clinic of Thoracic Surgery for the performance of left mammal gland mastectomy (stage II B).

On December 9th 2004, the Ministry of Health SHATO three-member Commission issued a written statement (No. 36/04) that referred the prescription of 56 tablets of medicines.

As per Labor Expert Medical Commission (LEMC) expert decision No. 0296 (February 4th 2003), T.D.Z. has been rated at 80% permanently reduced working capacity, for a period of disability until February 1st 2006.

On April 13th 2005, T.D.Z. was prescribed Taxotere®, a 1st line chemotherapy.

T.D.Z. has had an ultrasound test on March 7th 2005 and a tomography test on March 17th 2005 that indicated the existence of a hypodense lesion on the boundary between the two liver lobes.

As stated in letter No. 94-T-56, dated June 8th 2005, T.D.Z. has been presented with a certified muster copy of a name Distribution Request by the Ministry of Health, which states that she is eligible and included in treatment procedure with Taxotere® medicines.

A request-allocation form No. 4 has been presented, as per realized distribution of Taxotere® (80 mg, Commission No. 20, Contract No.17-469/April 14th 2005).

On December 21st 2004, the Ministry of Health approved decision No. PД-17-1075/04. By this decision, "Meditex 2004" Ltd. was awarded 1st place regarding 4 cited items (including Letrozole®/Femara®) also prescribed to T.D.Z..

According to the SCC (Civil Division, 28th Panel of Judges) Decision, dated January 18th 2005, on civil case No. 000599/04, collateral estoppel has been accepted regarding claims of "Commercial League-NAC" S.A. against the Ministry of Health and "Meditex 2004" Ltd., based on Art. 120 of Public Procurement Act (PPA) through

suspension of the decision of the contracting part—Ministry of Health (order No. PД-17-1075, dated December 21st 2004) appointing "Meditex 2004" Ltd. as the executor of this supply.

On January 26th 2005, Protocol of Delivery and Acceptance No. 3/2005, which concerned Femara® medicine supply, was signed by the Ministry of Health, "Meditex 2004" Ltd. and SHATO-Sofia.

As per Contract No. PД-17-040/2005 Distribution Request (for January and February, 2005) presented to the Court, the Region of Sofia had received 40 tablets of Femara® medicine.

On March 11th 2005, Protocol of Delivery and Acceptance No. 70/2005, which refers to the Femara® medicine supply, was signed by "Meditex 2004" Ltd. and SHATO-Sofia.

According to Distribution Request (contract No. PД-17-040/2005) for March and April, 2005 presented to the Court, it has been determined that SHATO received 45 tablets of Femara®.

On February 21st 2003, contract No. PД-17-203/2003 (supply of 3 types of medicines, including one taken by T.D.Z.—Anastrozole® /Arimidex®/) was signed by the Ministry of Health and Magined Ltd., with term of the contract until December 31st 2003.

On March 7th 2003, the Protocol of Delivery and Acceptance No.5730/03, which referred to a 35 piece supply of Zoladex®, was signed by Magined Ltd. and SHATO/NSII (National Social Insurance Institute), Darvenitsa.

As per Contract No. PД-1700203/21.02.03 Distribution Request (for March to April, 2003) of Zoladex®, presented to the Court, SHATO - NOC had received 35 pieces.

On May 14th 2003, Protocol of Delivery and Acceptance was signed by Magined Ltd. and SHATO (NOC), Darvenitsa, for delivery of 42 pieces of Zoladex®.

According to Distribution Request No.2 (Zoladex® supply Contract N. PД-170203/21.02.03) for May to June, 2003, presented to the Court, SHATO - NOC had received 42 pieces of the same medicine.

On June 24th 2003, Protocol of Delivery and Acceptance (Public Contract No.6181/03) was signed by Magined Ltd. and SHATO (NOC), Darvenitsa, regarding the delivery of 40 pieces of Zoladex®.

As per Distribution Request No. 3 (contract Ho. ПД-170203/21.02.03) for July to August 2003, presented to the Court, SHATO - NOC had received 40 pieces of Zoladex®.

A Protocol of Delivery and Acceptance signed by Magined Ltd. and SHTAO/NSSI/Darvenitsa on September 2nd 2003 states that 10 pieces of Arimidex® and 40 pieces of Zoladex® had been delivered.

Distribution Request No.4 (contract No. ПД-1702203/21.02.03) presented to the Court, states that during Septemeber to October 2003 delivery of Zoladex® was been received by SHATO - NOC.

A Protocol of Delivery and Acceptance was signed on March 11th 2003, by Magined Ltd. and SHATO (NOC) that certified the delivery of 60 pieces of Zoladex®.

As per Distribution Request No.5 between the Ministry of Health and "Alex Plus 2000" Ltd. (contract No. ПД-170203 dated February 21st, 2003) presented to the Court, 60 pieces of Zoladex® had been provided to SHATO (NOC) for the period November to December 2003.

By Labor Expert Medical Commission expert decision No. 0920, dated September 7th, 2005, T.D.Z. has been rated at 95 percent of "permanent disability without assistance" for a period until September 1st 2008.

By order No. ПД-17-241/16/03/2004, the Minister of Health ceased the procedure opened by order No. ПД-17-112/02/02/2004 for Public Tender procurement on the items enumerated in detail in Appendix No.1 (an integral part of the same order) and opened a Public Procurement procedure for supply of expensive medicines used to treat diseases that are outside the scope of mandatory health insurance system for 2004, according to Ordinance No. 23, Appendix No. 1, p. 1 to 11.

On February 10th 2004 a contract was signed between the Ministry of Health, as a buyer and "Alex Plus 2000" Ltd. as a seller, under which the buyer assigns to seller, and seller is obliged to deliver to the buyer 6

types of medicines, including up to 16470 tablets of Aromazin®. The duration of the contract was up to February 28th 2004.

On April 15th 2005, contract No. PД 17-480/2005 was signed for supply of medicines, including Femara®, until December 31st 2004), between the Ministry of Health, as contractor and "Konsumfarm" Ltd. as contracted party.

On April 30th 2004, contract No. PД-17-475/30/04/2004 was signed, between the Ministry of Health as a buyer and "Higiya" S. A. as seller, for delivery of up to 77 000 tablets of Arimidex®. The term of the contract was up to December 31st, 2004.

On April 16th 2004, a new contract (No. PД-17-383/2004) for medicine supply, including Aromazin® was signed between the Ministry of Health and "Alex Plus 2000" Ltd. The contract was up to December 31st 2004.

On April 30th 2004, contract No. PД-17-477/2004 was signed for supply of medicine, including up to 3330 ampullae of Zoladex®, between the Ministry of Health and "Commercial League - National Pharmaceutic Center" S. A. The contract duration was up to December 31st, 2004.

According to the information provided by SHATO - Sofia, T.D.Z. had been allotted ZOLADEX® on May 1st, 2004, February 26th 2004, February 2nd 2004, March 23rd 2004, June 10th 2004 and July 9th 2004; and FEMARA® on September 16th 2004, October 18th 2004 and November 18th 2004.

In accordance with letter No.27-00-1, dated January 3th 2006, the Director of the Ministry of Health Medical Diagnostic Laboratories Department, Professor A., informed hospital directors that since the Commission for distribution of expensive medicine for oncology treatment session is programmed to start in late February 2006, requests based on concluded December 31st 2005 contracts for expensive medicine supply treatment should be sent to the Ministry of Health after this Commission Session.

Based on the competent, impartial and irrefutable initial conclusion of expert witness, Dr. R. I., lodged in the Court on December 9th, 2005,

T.D.Z.'s disease dates back to July 1998, with diagnosis: carcinoma of right breast.

On July 9th 1998 T.D.Z. underwent surgery of the right breast for removal of carcinoma, clinical stage III.

On November 29th 2002, T.D.Z. underwent surgery for removal of carcinoma of the left mammal gland, clinical stage II B.

The following treatments were performed upon T.D.Z.: preoperative radiotherapy on July 1st 1998; surgery intervention in July 1998; postoperative radiotherapy, from August 12th 1998 to September 16th 1998; adjuvant chemotherapy, 6 courses following FEC scheme, from September 1998 to January, 1999; anti-estrogen hormone therapy for a period of 5 years (1998-2003) with Tamoxifen®, subsequently with Nolvadex®; surgery performed in November 2002; postoperative chemotherapy, a 6 course TMZ system, from January 3rd 2003 to June 11th 2003; administration of Zoladex® on September 3rd 2003, October 3rd 2003, October 31st 2003, November 28th 2003, January 5th 2004, February 2nd 2004, February 26th 2004, March 23th 2004, June 10th 2004, and July 8th 2004; radiation ovariectomy for the period July 13th 2004 to July 27 2004; hormone therapy on October 18th 2004 with Femara® and on December 9th 2005 with Arimidex®; curative chemotherapy, 4 mono-courses of chemotherapy with Taxoter® on March 22nd 2005, April 13th 2005, May 30th 2005 and June 20th 2005; and chemotherapy treatment with Taxoter® and Cisplatin®, 4 courses on July 18th 2005, August 15th 2005, September 8th 2005 and September 28th 2005. On October 27th 2005 third line curative chemotherapy treatment with Xeloda® was initiated, and continues in a day stationary hospital conditions.

According to the expert witness, Dr. R.I., treatment of oncologic diseases must be comprehensive, by surgery, radiation and medication, i.e. these three main methods of treatment support and complement each other. An individual treatment plan (a fundamental principle in oncology) is designed for each oncology patient. Combined (comprehensive) therapy improves life duration of patients.

The aim of radiation and medicine therapy after removal of the tumor in II B and II stage is to extend disease-free interval, i. e. a period

without recurrence and metastasis, in which case life duration varies between 50% - 60%.

T.D.Z. was prescribed expensive medicine pursuant to Ordinance No. 23/2000 of the Ministry of Health. After practicing a comprehensive treatment (carcinoma of the left mammal gland), adjuvant chemotherapy (carcinoma of the right mammal gland) and five years hormone therapy with antiestrogen, T.D.Z. was prescribed hormone therapy with Zoladex®, a medicine that causes temporary ovarian suppression, i. e., it leads to cessation of ovarian function.

Zoladex® application is part of the comprehensive treatment, since the patient was evaluated as a "high-risk patient" for whom the appearance of recurrence or metastasis may be expected; administration of this medicine began in September 2003 and the last application was in July 2004. On June 10th 2004, the opinion of T.D.Z.'s doctor in charge of the treatment was recorded in her personal ambulatory file, namely that T.D.Z.'s Zoladex® supply was irregular and thus he proposed to perform radiation ovariectomy. The "initiation of hormone therapy with a peripheral aromatase inhibitor Femara® and Arimidex®" was recorded in T.D.Z.'s personal ambulatory file after performance of radiation ovarian suppression (ending July 27th 2004). The existence of liver metastasis was discovered by ultrasound examination performed on March 3rd 2005 (finding confirmed on March 17th 2005 by means of computer tomography examination). For this reason, T.D.Z. began chemotherapy treatment, and in her Medical History the "initiation of 4 cycles of chemotherapy with Taksoter®, 4 cycles of chemotherapy with Taxoter® and Cisplatin®, [and] 4 cycles of chemotherapy with Xeloda®" was recorded. Prescribed medicines were recorded in T.D.Z.'s personal ambulatory file and in her Medical History. In the available documentation—Medical History and Temperature List—it was recorded that the same prescribed medicines had been received and the treatment was realized. T.D.Z.'s medical documentation contains protocols issued to prescribe medicines for expensive treatment based on Article 3 of Ministry of Health Ordinance N.27/2000. These expensive medicines (same Ordinance Article 3) are granted by the Commission (Article 3 of the Ordinance) and at the discretion of the treating physician. T.D.Z.'s disease stage is not an early one. According to statistical data,

five-year survival varies between 50-60%, and there is a relatively high likelihood of appearance of distant metastases in cases of patients that are at this same stage. The implementation of comprehensive systemic treatment significantly improves life duration. There was a 2 month interruption of prescribed hormone therapy in T.D.Z.'s particular anti-tumor treatment. No scientific evidence is available to suggest how this fact would affect the outcome of the disease.

Evidence by the same expert witness (Dr. R.I.) gave additional findings (lodged in the Court on May 23rd, 2006), accepted as competent, objective and uncontested by both parties, that T.D.Z. had undergone surgery because of a second cancer complaint—carcinoma of the left mammal gland, II B clinical stage—in September 2002 with a histological result "moderately differentiated, invasive ductal carcinoma."

Any cancer disease poses a risk of recurrence or metastasis and only early stage cancer develops in a favorable manner, when it is curable. In this particular case, in stage II B, only about 50% of cases develop recurrence or metastasis, and 10-year life duration is 51%. Liver metastases are a cancer consequence; this connection may be considered a regularity. During the period of November 2002 to March, 2005, T.D.Z. underwent chemotherapy and hormone therapy. The following medicines were applied during hormone therapy: Nolvadex® (antiestrogen), Zoladex® (ovariectomy), Femara® (aromatase inhibitor), and Arimidex® (aromatase inhibitor). Zoladex® therapy can be replaced with another type of treatment—operative ovarian suppression or radiation ovarian suppression. Hormone therapy was performed with one of three medicines: Arimidex®, Aromazin®, Femara®. Zoladex® is administered every 28 days and the effect is reversible after discontinuation of treatment, and there is no adequate therapeutic effect if it is administered every 56 days. An alternative to Zoladex® treatment is radiation or surgical ovariectomy. Ovariectomy has a curative effect and in this case it is part of the comprehensive treatment performed on T.D.Z.. There is no Zoladex® alternative, and medicines: Arimidex®, Femara® and Aromazin® are II line hormone therapies, part of the group of aromatase inhibitors, and as medicines of II line hormone therapy they have no alternatives. Medicine hormone therapy with aromatase inhibitors is applied to postmenopausal women, i.e., after ovarian

function cessation. Hormone therapy should initiate about 1 month after ovarian suppression. If hormone therapy with peripheral aromatase inhibitors is administered once a day, in an appropriate dose, without interruption until disease progression is obtained. Hormone therapy medicines (Femara®, Aromazin®, Aridimeks®) are prescribed every month.

At the hearing on October 20th, 2006, the expert witness, Dr. R.I., stated that T.D.Z. had been provided with the prescribed medicines in her personal ambulatory file treatment. The recommended treatment had been applied with temporary interruptions or delays, as reflected in expert witness's conclusions. The expert witness argued that in this case interruption lasted 2 months, so it has been impossible to assess whether this suspension affected T.D.Z.'s health state. Forced menopause is achieved with Zoladex® application; it is reversible when medicine is suspended. Second line therapy could not be applied during menstruation. Liver metastasis has direct connection with T.D.Z.'s underlying disease.

Interrogation (as a witness) of Dr. S.I.H.—T.D.Z.'s physician in charge until December 2004—states that T.D.Z. has been a strict patient, always attending examinations and treatments, and that there were problems with hormone therapy caused by the hospital's irregular supply of hormones required for the treatment.

There were also cases of irregular supply of Zoladex®, Arimidex®, Femara® and Aromazin®—treatment with these agents should be performed rhythmically, otherwise the disease may progress. The lack of medicines has affected T.D.Z.'s emotional state; stress and negative emotional state added to her deteriorated health condition.

As per the testimony of interrogated witnesses, Y.D.K.—T.D.Z.'s sibling, who shared the same household with her—in the previous 6 years it had been determined that they should purchase medicines on their own repeatedly. Every 2-3 days before the day of the medicines intake was marked off with a cross on the calendar by T.D.Z., as she was worried because of the expected lack of required medicines. This situation was repeated over and over again. By lunch time, T.D.Z. used to call him, crying, walking aimlessly on the streets, not knowing what to

do in order to solve the lack of medicines problem. She did not dare to go home in order to avoid her daughter's alarm. On other days, bitter and ambitious she called to inform him that she was waiting in front of the actual Minister or deputy Minister's door expecting to find the solution to her problem. In early 2005, T.D.Z. ceased work activity because all her time was committed to procuring medicines. One of the most difficult moments for T.D.Z. is associated with the ovaries suppression surgery—after it, her boyfriend of many years parted from her. During this period, all kind of thoughts spun round in her head, including suicidal thoughts. The next particularly difficult experience was the discovery that cancer had spread to her liver. For a long period of time, T.D.Z. was totally confused, as the fight against cancer had to be initiated again, after four years of lasting treatment. In May 2005, feeling herself at a total impasse and hopeless, T.D.Z. did a hunger strike. She had been strict patient who did not allow herself to omit designated treatment procedure and examinations. At least a dozen times, T.D.Z. was left without medication for her treatment and the same amount of times there were delays in medicines delivery.

Considering the established factual basis, the court found at law the following:

As per Article 1 of SMRDA (title amendment in force July 12th, 2006), State liability in damages caused to citizens by illegal acts, actions or omissions of its organs and officials or in connection with administrative activity execution, as when damages have been caused by unlawful act or omission, shall be established by the court where the claim for compensation had been presented. The wording is based on the general principle "do harm to no-one" and rules the preconditions under which the liability to repair damages originates. Substantiating liability (which when implemented establishes the right to compensation for damages) includes the following elements: damage, unlawful act, action and/or omission of any state authority or official in connection with administrative work execution; causal connection between the injury and the act, action and/or omission.

By its nature, State Responsibility under Article 1 of SMRDA is objective, i.e., presence of guilt is not required.

In the application (and specified by several additional applications) it is stated that the inactivity of the Ministry of Health, represented by the Minister of Health, is expressed in breach of statutory obligations to provide free medicines for the period January 2004 - March 1st 2005. This omission is expressed in: lack of supply contracting; Public Procurement Act (PPA) delayed procedures; impracticable PPA procedures and lack of provision of medicines in the quantity required for treatment. On the other hand, Ministry of Health inactivity also has caused: delay of treatment of T.D.Z.'s existing disease; acceleration and enhancement of the development of the disease; reduction of the period of absence of serious manifestations of the disease; and unnecessary ovariectomy. As a result, T.D.Z. has been caused non-pecuniary damages, namely: poor health, suffering, poor quality of life, a sense of helplessness and hopelessness, and prevention of normal social life and planning for the future.

As per Article 52 of the Constitution of the Republic of Bulgaria, citizens are entitled to free medical care under the conditions and procedures specified by law.

Under the provisions of Public Health Act (prom. SG, No. 88, November 6th 1973, repealed SG, No. 70, August 10th 2004) and Health Act (in force since January 1st 2005, period of claim January 2004 to March 1st 2005), every Bulgarian citizen is entitled to free use of expensive treatment outside the scope of the mandatory health insurance system. It is financed by the national and municipal budgets, as per the order defined by the Minister of Health. Implementation of Law on National Health (repealed) and Health Act is committed to the Minister of Health and regarding their application the Minister of Health issues Secondary Acts.

In fulfillment of this obligation the Minister of Health issued the Ordinance No.23/2000 (Prom. SG, No.90/2000, amended, expanded and renamed by Ordinance on the procedures for administering and receiving of expensive drugs for treatment paid by the state budget, renamed SG No.87/2004, repealed SG No.95, dated November 29th 2005). Pursuant to provisions of Article 1 of this Ordinance, all procedures and conditions for administering and receiving expensive treatment of diseases outside the scope of mandatory health insurance

system that are provided by the Ministry of Health by means of state budget funding are regulated. All diseases, health conditions stages and medicines that are prescribed under this Ordinance, the same as those of the relevant health care institutions and pharmacies, are listed in Annex N.1 of the same. Under provisions of article 8, paragraph 1 of the Ordinance, every hospital listed in Annex N.1, provides the Ministry of Health with information on the number of patients (as per the ordinance listed diseases) and the required quantities of drugs for the next year (annually, by 15 July).

Under the provisions of Administration Act (Prom.SG. No. 130/November 5th 1998, last amended - No. 69/August 25th 2006) the Minister of Health belongs to the central government authority of Council of Ministers, whose activity is supported by the Ministry of Health. The Ministry of Health is a legal entity financed by state budget, which is managed and represented by a minister.

Under provisions of the Law on State Budget (LSB) for 2004 (prom. SG, No. 115/30.12.2003), the Ministry of Health is entitled to expenditures determined in the amount of BGN 566,306,000 and subsidies of BGN 499,470,000. According to Paragraph 39 of the TFP (Transitive and Final Provisions) of the LSB for 2004, the centralized procurement of medicines is undertaken by the Ministry of Health pursuant to the provisions of the Public Procurement Act.

REGARDING the alleged omission—it results from the failure to conclude contracts for delivery, delay in the proceedings under the PPA and unrealized procedures under PPA, and the failure to provide necessary medicines for the period January 1st 2004 to March 1st 2005;

OMISSION that consists of the failure to conclude delivery contracts, delayed procedures under the PPA and unrealized procedures under the PPA:

After the expiration of contracts for 2003 and adoption of the Law on State Budget of the Republic of Bulgaria for 2004, by Minister of Health Order No. PД-17-112/02.02.2004, a call for tenders was opened that referred to medicines procurement (for treatment of diseases outside the scope of mandatory health insurance system) to supply country necessities for 2004, under Ordinance No. 0.23, Annex No. 1, p.1-11.

Among the drugs requested for were: hormone ZOLADEX® and enzyme inhibitors ARMIDEX® and AROMAZIN® (required for the treatment of T.D.Z.). By Order No. ПД-17-241/16.05.2004, the Minister of Health ceased the procedure opened by Order No. ПД-17-112/02.02.04 and opened a new procurement procedure for the supply of expensive drugs to treat diseases outside the scope of the compulsory health insurance system under the Ordinance No.23, Annex No. 1, p. 1-11, for the needs of the country in 2004. On February 10th 2004, under the provisions of article 17 of the PPA and Minister of Health Order No. ПД-17-092, dated February 2nd 2004, contract No. ПД -17-142, dated February 10th, 2004 for medicines supply (including Aromazin®), was concluded between the Ministry of Health and "Alex plus 2000" Ltd., with delivery time of up to 5 days after receipt of the Distribution Request (quantities precisely specified in the Distribution Request) and duration (of the contract) until February 28th 2004. On April 16th 2004, pursuant to Art. 17 of PPA and Orders No. ПД-17-245, 259, 263, dated March 19th 2004, contract No. ПД -17-383, dated April 16th 2004 was concluded between the Ministry of Health and "Alex Plus 2000" Ltd., for medicine supply (including Aromazin®) with delivery term of up to 10 days after receipt of the Distribution Request (quantities specified precisely in the Request), with contract duration until December 31st 2004. No evidence was presented on behalf of the Defendant regarding conclusion for 2004 of other contracts concerning drug Aromazin®, and therefore the court held that for the period January 1st 2004 to February 10th 2004 and February 28th 2004 to April 16th 2004 there was a lack of concluded contracts by the Ministry of Health for the supply of Aromazin®. There was also a PPA procedural delay for this medicine supply for 2004.

On April 30th 2004, pursuant to Art.17 of PPA and Minister of Health Order Np. ПД-17-353/2004 contract No. ПД -17-475, dated April 30th 2004 was concluded between the Ministry of Health and Higiya, S. A. for supply of Arimidex®, with duration until December 31st 2004. There is no evidence presented on behalf of the Defendant regarding conclusion in 2004 of other contracts concerning the drug Arimidex®, and therefore the court held that for the period January 1st 2004 to April 30th 2004 there was a lack of concluded contracts by the Ministry of Health for the supply of Arimidex®. There was also a PPA procedural delay for this medicine supply for 2004.

On April 30th 2004, pursuant to Art. 17 of PPA and Minister of Health Order No. PД-17-332 (dated April 13th 2004) contract No. PД-17-477 (dated April 30th 2004) was concluded, between the Ministry of Health and "Commercial League - National Pharmaceutical Center" S. A., for the supply of drugs, including Zoladex®, with duration until December 31st 2004. There is no evidence presented on behalf of the Defendant regarding conclusion for 2004 of other contracts concerning the drug Zoladex®, and therefore the court held that for the period January 1st 2004 to April 30th 2004 there was a lack of concluded contracts by the Ministry of Health for the supply of Zoladex®. There was also a PPA preprocedural delay for this medicine supply for 2004.

Medicine Femara® has been included for the first time in the list of medicines that are prescribed under amended Ordinance on procedures for prescribing and obtaining medicines destined for expensive treatment, funded by the state budget (Prom.SG, No.7, October 5th 2004) in Annex No.1, under provisions of Article 1, Paragraph 1 of the Ordinance. By Minister of Health order No. PД-17-1011 (dated November 23th 2004) a procurement procedure was opened for supplying newly included medicines, as per Ordinance on procedures for prescribing and obtaining medicines for expensive treatment, funded by state budget (Prom.SG. No. 87, dated October 5th 2004), for the needs of the country by the end of 2004. By decision No. PД-17-1075 (dated December 21st 2004) Minister of Health announced "Meditex 2004" Ltd. as classed at first place regarding the items cited in the decision (medicine supply), including among them Femara®. On December 27th 2004, SCC (Civil College, 28th Panel of Judges) adopted Decision No.000599/04 regarding "Commercial League - National Pharmaceutical Center"; S.A.'s claim against the Ministry of Health and "Meditex 2004" Ltd., which referred to suspension of the implementation of Order No. PД-17-1075 (dated December 21st 2004), under provisions of Art. 310, paragraph 2 of CPC, in connection with Art. 316, b (c) of CPC and Art. 120, paragraph 4 of PPA.

On January 18th 2005 SCC, Commercial College (CC) had quashed the December 27th 2004 decision on Civil case No.48/05 adopted by SRC, 28th Panel of Judges, referred to as Civil case No.000599/04, and disallowed "Commercial League-National

Pharmaceutic Center" S.A.'s claim, under provisions of Art. 308 of CPC, Art.120 of PPA brought against the Ministry of Health and "Meditex 2004" Ltd., through the suspension of the implementation of Ministry of Health order No. PД-17-1075 (dated December 21st, 2004).

On January 26th 2005, Contract No. PД-17-040 (January 26th, 2005) was concluded between the Ministry of Health and "Meditex 2004" Ltd., based on Article 41 of PPA, Minister of Health Order No. PД-17-1075, dated December 21st 2004 and SCC Decision, dated January 18th 2005. It referred to procurement of medicines, including Femara®, with a delivery time of 10 days after receipt of Distribution Request and exact defined quantities (as per Distribution Request). The duration period of of the contract was one calendar year, i. e., until December 31st 2005.

Evidenced by the Distribution Request, enclosed by "Meditex 2004" Ltd., on January 31st 2005, a total of 600 tablet packs had been ordered for January to February 2005 as needed by Ministry of Health as per Contract No. PД-17-040 (dated January 26th 2005). 45 pieces of these had been received by SHATO-Sofia.

On February 2nd 2005, Protocol of Delivery and Acceptance had been signed, as per Contract No. PД-17-040/January 26th 2005, regarding 45 pieces of Femara®, between "Meditex 2004" Ltd. and SHATO-Sofia.

According to Distribution Request presented by "Meditex 2004" Ltd., on March 7th 2005, on Contract No.PД-17-040 (January 26th 2005), which referred to March to April 2005 supplies, the Ministry of Health placed an order for a total of 600 pieces of Femara® tablets, 45 pieces of which are received by SHATO-Sofia.

On March 12th 2005, under provisions of Contract No. PД-17-040 (dated January 26th 2005) on medicines supply, a Protocol of Delivery and Acceptance of 45 pieces of Femara® had been signed between "Meditex 2004" Ltd. and SHATO-Sofia.

In view of the foregoing, the court accepts the fact that there was a lack of concluded contracts by the Ministry of Health for the supply of Femara® (in the period of Femara's® inclusion in the list of medicines,

as per special Ordinance (SG, No. 87, October 5th 2004) until January 26th 2005). There was also PPA procedural delay for the same medicine supply, during the same period of time.

The special Ordinance procedure documentation includes: 1. Minister of Health order; 2. Annex to this order that states contractual medicines and required quantities; 3. Delivery contracts; 4. Distribution request for each hospital, emitted by the Ministry of Health, addressed to contracts suppliers and 5. Protocols of Delivery and Acceptance, signed between each concrete hospital and provider regarding received quantities. The Defendant Ministry submitted, as case evidence, the five elements of the 2003 to April 2005 procedure, but not the Distribution request and Protocols of Delivery and Acceptance as per the above-mentioned signed contracts for 2004. The Distribution Request and the Protocol of Delivery and Acceptance are essential part of these contracts, as without them the contractual obligation has not being completely met. Thsu there is no evidence that the above mentioned 2004 supply contracts have been effectively executed.

OMISSION that consists in lack of medicines:

It is evidenced in the attached report No. 478, dated October 16th 2006, (prepared by SHATO - Hospital Pharmacy), and not disputed by the respective Ministry, that the following medicines were allocated to T.D.Z.: 1. For the period January to July 2004, Zoladex® was granted for January, February, March, June and July as there is no indication of medicine grant for April and May 2004, despite the lack of a contract that covers the period January to April 2004 T.D.Z. was granted (free of charge) Zoladex® medicine for January, February, March, June and July 2004, but no supplies for April 2004 (there is no signed contract for supply), May 2004 and for August, September, October, November and December 2004 (there is a signed contract for supply) and 2. For the period August 2004 to March 2005, Femara®, which is included in Annex No.1 to the special Ordinance (amended in SG, No. 87, dated October 5th, 2004), was granted for September, October and November 2004; no deliveries for the period December 2004 to March 2005 had been done;

for the period August 2004 to March, 2005 Arimidex® medicine had not been granted to T.D.Z..

This irregular and chaotic supply of medicines used in T.D.Z. treatment is also confirmed by other evidence collected for the case, including Dr. H.'s testimony. Dr. H is T.D.Z.'s doctor in charge of the treatment and he has been implementing the treatment "at any price." Dr. H was interrogated as a witness.

There was no discussion during the proces of this case regarding whether T.D.Z.'s treatment was adequately assigned. As evidenced by expert witness, Dr. R.I., basic and additional conclusions (accepted by the Court) based on a forensic report, indicate that T.D.Z.'s treatment should be implemented in two stages. The 1st consists of Zoladex® application that aims to establish a compulsory, temporary menopause; it is applied for 28 days during 2 years, otherwise the effect is reversible. The 2nd stage consists of II line hormone therapy with peripheral aromatase inhibitor. The respective dose should be applied once daily without interruption, as this 2nd stage of treatment should began about 1 month after cessation of ovarian function. Therefore, T.D.Z.'s treatment should have been developed in the following way: 1. After September, 2003, when Zoladex® application had started, until menstruation cycle suspension was obtained (in about 2 months), Zoladex® should be taken for 28 days without interruption; this medicine application had to continue for 2 years (otherwise menstruation cycle would not cease or would resume); 2. After stopping this cycle, aromatase enzyme inhibitors should have been applied using one of three medicines: Arimidex®, Femara® or Aromazin®. If ovariectomy was required instead of hormone Zoladex® intake, one month after its application, II line of treatment should have been continued until headway was obtained. The manner by which forced menopause is acheived is irrelevant once II line of treatment is applied, either Zoladex® or ovariectomy is sufficient. In both cases, after menopause is obtained, the treatment should continue with II line with peripheral aromatase inhibitor. The treatment performed on T.D.Z., however, was in fact different. For the period September 2003 to July 2004, according to expert witness, Dr. R.I.'s, conclusions, only Zoladex® medicine had been applied, though irregularly: on September 3rd 2003, October 3rd 2003, October 31st 2003, November 28th 2003,

January 5th 2004, on February 2nd, 2004, on February 26th, 2004, on March 23rd 2004, April 10th 2004 and July 8th 2004, as the required application (every 28 days) had been fulfilled regularly for the periods September to November 2003 and January to March 2004, there were two interruptions.

Radiation ovariectomy was performed for the period of July 13th to 27th 2004. There were only two intakes of II line treatment: on October 18th 2004 Femara® was used, and on December 12th 2005 Arimidex® was used. Therefore II line hormone therapy was started one year later than the recommended time, as the next moment of medicine prescription for II line hormone therapy was after more than one month. After that, followed three months of lack of treatment until metastases were detected and chemotherapy treatment was initiated. T.D.Z. received: four courses of mono chemotherapy with Taxoter®, then four courses starting in October 27th 2005 of healing poli-chemotherapy with Taxoter® and Cisplatin®, then III line chemotherapy with Xeloda®. The Court considers that the recommended treatment purposes, in this way, were practically not attained. If in November 2003 it had been clarified that there was no regular supply of Zoladex®, achieving temporary menopause with Zoladex® would not have been attempted, rather an ovariectomy would have been applied. Also, chemotherapy would not have been recommended if the medical commission had been warned that there were no available medicines but rather Tamoxifen® treatment would have been applied (such a treatment had been conducted from July 1998 until 2002, after a right breast carcinoma had been removed). Thus there was inadequate treatment despite irregular and chaotic drug treatment.

Lack of medical treatment was not due to T.D.Z.'s behavior. This fact has not been challenged by the Defendant and is confirmed by the testimony of interrogated witnesses Dr. H., who is in charge of T.D.Z.'s treatment, and Y., T.D.Z.'s sibling. The objection (presented by the respondent Ministry's proxy) to the lack of evidence presented by the Plaintiff toward certifying the Zoladex® and Femara® prescription is groundless. Under the explicit wording of the Special Ordinance requisition (article 6, paragraph 2), pursuant to Protocol as per Commission Annex No. 2 journal, personal ambulatory files and

medicine lists or prescriptions with a blue longitudinal stripe—a document that contains the consent of the head of the hospital—are not to be kept by the patient. Therefore T.D.Z. does not have her own copy. It is common ground between the parties, and the evidence attached to the case documentation demonstrates, that T.D.Z. suffers oncologic disease. Because of this fact and according to the current operative legislation in our country, Plaintiff is entitled to free use of expensive treatment not covered by compulsory health insurance in the order determined by the Minister of Health. That is, when oncologic ailment is diagnosed, prescribing expensive medicines as per the order determined by the special ordinance is mandatory.

In view of the foregoing, the Court considers that there is an alleged omission of the Defendant resulting in the failure to conclude contracts for delivery, delayed PPA procedures, unrealized PPA procedures, and a failure to provide necessary quantities of medicines for treatment during the claim period.

The Plaintiff insists that as a result of the Defendant's omission her existing disease treatment has been postponed resulting in: an acceleration and increase in the development of her disease; a reduction of the periods during which she is free from the manifestations of the diseases' severe signs; and an unnecessary ovariectomy. Plaintiff claims these have caused her pecuniary and non-pecuniary damages.

Evidenced by adduced facts, medicine treatment was practically missing during the claim period, while lack of Zoladex® led to a forced ovariectomy. An oophorectomy performed without post-operative application of II line chemotherapy treatment had a significant effect, as in March 2005, metastases was found in T.D.Z.'s liver.

In this particular case, Zoladex® is prescribed to T.D.Z. as part of her individual treatment plan, but it has been carried out only occasionally due to its irregular delivery. This is the only reason her treatment plan was amended through application of radiation therapy, realized through a radiation ovariectomy. When Zoladex® is used to achieve forced menopause, it is temporary in nature, since subsequently the ovaries' functions are recuperated, while the consequence of surgical ovariectomy is irreversible menopause due to the removal of ovaries.

Surgical ovariectomy inevitably leads to serious negative psychological changes and to changes in the woman's physical health condition. Besides, the ovariectomy was imposed without regularly performed II line chemotherapy (the prescribed treatment is generally of a minor effect). In her basic conclusion, principal expert witness Dr. R.I. said that drug treatment of breast cancer decreases the relative risk of death by 20 to 25% and the risk of recurrence and metastases by 30 to 40%, as the goal of treatment is to prolong the disease-free interval; i. e., the period free of recurrence and metastasis. This means the treated patient has a significantly increased chance to avoid metastasis development, and even if such metastasis are developed, the patient will live longer than without treatment.

By expert decision No. 0296 (dated February 4th 2003) T.D.Z. was given a working capacity assessment at 80% disability. By expert decision No. 0920, this assessment (dated September 7th 2005) was increased to 95% of permanent disability, with duration period up to September 1st 2008. It was evidenced by the testimony of Y.D.K., T.D.Z.'s sibling, interrogated as a witness in the case that T.D.Z. has endured in extreme severity the irregular supply of medicines. Y.D.K. testified that T.D.Z.'s anxiety commences 2 to 3 days prior to the day of medicine intake. She cries and walks the streets aimlessly, avoiding her daughter's alarm because of the next need of medicines for treatment. In Spring 2005, T.D.Z. ceased working because her time was completely engaged in obtaining the drugs her treatment requires. One of her worst moments was the ovariectomy when her boyfriend broke off with her. During the mentioned period all kinds of thoughts spun round in T.D.Z.'s head, including ones of suicide, since despite the 4-year treatment, the fight against cancer had to start over. Another particularly difficult moment was related to the discovery of liver metastasis. She had been totally inadequate for a long period of time, at a complete impasse and without hope. T.D.Z.'s worsening emotional state was established by her doctor, Dr. H. (in charge of the treatment process), interrogated as a witness in the case. Dr. H. testified that the cause was the emotional stress and T.D.Z.'s strong concerns over the lack of medication, which inevitably had an impact on her physical condition. The result of the Defendant's omission led to: T.D.Z.'s treatment delay; the acceleration and enhancement of the development of her disease; a reduction of the

periods of absence of serious signs of the disease; an unnecessary ovariectomy that caused her non-pecuniary damages and resulted in the deterioration of her health condition and associated pain and suffering; a feeling of inferiority; permanently reduced working capacity of 95%; and depression and a sense of helplessness and hopelessness, preventing normal social life and planning for the future.

In this particular case and in the context of the already set circumstances, actual life experience shows that any normal person would have felt moral suffering because of the adverse consequences of the damages that would not have occurred if the authority or the officials would have strictly observe the requirements of law.

In view of the foregoing, the Court considers that there are prerequisites, as per Article 1 of SMRDA, that engage the responsibility of the Ministry of Health to repair material and immaterial damages caused to T.D.Z..

REGARDING the amount of pecuniary damages of BGN 960 corresponding to 2 injections of Zoladex® (BGN 480 each) purchased in April and May 2004, and BGN 540 corresponding to 3 blister packs of Femara® (BGN 180 each) purchased in January, February and March 2005 based on the testimony of the interrogated witness Y. K., it is found that his sister T.D.Z. repeatedly purchased medicines on her own, due to the periodic and irregular lack of medicine supply already established in the case documentation.

As evidenced in the enclosed report (prepared by SHATO - Hospital Pharmacy), T.D.Z. had not been granted Zoladex® in April and May 2004, nor Femara® in January, February and March, 2005. There is no evidence regarding the value of 2 purchased injections of Zoladex® and 3 blister packs of Femara® in the case documentation presented by the Plaintiff. According to the attached last protocol of Delivery and Acceptance (No.6813 dated November 3rd 2003) the wholesale unit price of Zoladex® as determined by the provider is BGN 459,29. As per the above statement and pursuant to Article 130 of CPC, the court, taking into consideration the continuous rise in medicine prices and the fact that retail prices in pharmacies are higher than wholesale prices, and considering the prices (presented in the case) of other medicines used

for II line chemotherapy, assumes that the value of a single injection of Zoladex® (in April and May 2004) was BGN 480 and the value of a blister pack of Femara® (in January, February and March 2005) was BGN 180. In view of the foregoing and pursuant to Article 1 of SMRDA, the Ministry of Health should be ordered to pay T.D.Z. the amount of BGN 960 that corresponds to pecuniary damage resultant from the amount of 2 injections of Zoladex® purchased in April and May 2004; and the amount of BGN 540 that corresponds to pecuniary damage resultant from the amount of 3 blister packs of Femara® purchased in January, February and March 2005.

REGARDING the amount of moral damages: Compensation for non-pecuniary damage is aimed to repair, in a relatively full amount, endured sorrow and suffering, as on the grounds of Article 52 of the Law on Obligations and Contracts (LOC), non-pecuniary damage compensation is assessed by the court according to the principle of justice. Justice as a criterion for determining the amount of compensation for moral (non-pecuniary) damages cannot be applied in the abstract, but only based on the assessment of a number of specific objectively existing circumstances. The court takes into account that the Defendant's omission affected Plaintiff's health (as one of the most important rights of the individual is to achieve the best possible state of physical and mental health). The court also takes into account the State's omission (consisting in non-feasance of its principal obligation to create conditions for providing medical assistance and medical care in case of illness) in light of the age of T.D.Z., the fact that this omission reflected on her whole lifetime and both her personal and public life, that she experienced permanently manifested feelings of helplessness and hopelessness leading to an inability to plan her future and a permanently reduced working capacity of 95%, and the socioeconomic conditions in our country. The court considers that the decision nearest to justice is the decision which sued under the claim for non-pecuniary damages in the amount of BGN 80 000, as the difference brought to the full amount of BGN 398 500 should be rejected.

There is no request for an adjudicated statutory interest, presented by Plaintiff (T.D.Z.) commissioners in this lawsuit, therefore it is not due.

COSTS: In view of the outcome of the dispute and based on Article 64 (1) of CPC, the Ministry of Health should be ordered to pay T.D.Z.'s costs incurred in the case, amounting to BGN 1 700 for legal fees for a lawyer.

On the grounds of Article 10, paragraph 2 of SMRDA, T.D.Z. should be ordered to pay on the account of Sofia City Court the sum of BGN 12 740 for the state fee and the amount of BGN 28,53 for the deposit for an expert witness.

Based on the foregoing expose, SCC, Civil College, 1st Division, 12th Panel of Judges has

DECIDED:

CONDEMNS THE MINISTRY OF HEALTH, situated in the city of Sofia, Square "Sveta Nedelya" No.5 to pay T.D.Z., from S., on the grounds of Article 1 of SMRDA, BGN 80 000 (eighty thousand leva) for compensation for non-pecuniary damages and **dismissed** the claim corresponding to the difference brought to the full amount of BGN 398 500.

CONDEMNS THE MINISTRY OF HEALTH, situated in the city of Sofia, Square "Sveta Nedelya" No.5 to pay T.D.Z., from S. (on the grounds of Article 1 of SMRDA) the amount of BGN 960 (nine hundred sixty leva) for compensation for pecuniary damages that corresponds to the amount of 2 injections of Zoladex® purchased in April and May 2004 and the amount of BGN 540 (five hundred forty leva), compensation for pecuniary damage corresponding to the amount of three blister packs of Femara® purchased in January, February and March 2005.

CONDEMNS T.D.Z., from S., to pay on the account of

Sofia City Court (on the grounds of Article 1, paragraph 2 of SMRDA) the amount of BGN 12 740 (twelve thousand seven hundred forty leva) for state fee and BGN 28,53 (twenty-eight leva fifty three stotinki) - deposit for an expert witness.

The DECISION is enacted with the participation of Sofia City Prosecutor (SCP).

This DECISION could be appealed in front of Sofia Administrative Court (SAC) within 14 days of noticing the parties about its preparation.

JUDGE: (signature)