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Case No. A42561808

SKA - 13/2010

Judgment

Riga, 11 March 2010

Department of Civil Cases of the Supreme Court of the Republic of Latvia composed of:

The Chief Justice of the Court session Senator J. Neimanis

Senator A. Guļāns

Senator I. Skultāne

With the participation of the authorized representatives of the Applicant G.Z. - K.Z., L.L. and L.K. and

The authorized representatives of the Defendant - the Republic of Latvia - E.J., R.O. and A.D., the spokespersons of the Ministry of Health of the Republic of Latvia,

In open court hearing reviewed the administrative case, which was prosecuted based on G.Z application to issue beneficial administrative act regarding the appeal of Judgment of 29 January 2009 of the Regional Court of Administrative Cases.

The facts

[1] According to the Decision of 11 October 2007 of the doctor's council of the Medical Genetics Clinic G.Z.'s diagnosis was type 1 Gaucher's disease. This disease can be treated only with a reimbursed medication, which is not in the list of the State Reimbursed Medicines. However, it is in the European Medicines Agency list of registered medicines, and the medication does not have an analogue.

[2] The Applicant brought a claim for full compensation of purchase costs of the medication *Imiglucerase (Flac.Cerezyme 200V)* for a 12-month course of treatment

(LVL 81 900) against Health Compulsory Insurance State Agency (now Health Payment Centre¹; hereinafter - HCISA).

[3] On 11 December 2007, HCISA passed a resolution to compensate LVL 10 000 of purchase costs for a 12-month treatment course. Resolution of 4 April 2008 adopted by the Ministry of Health of the Republic of Latvia (hereinafter - the Ministry of Health) rejected the aforementioned claimed amount and the HCISA resolution remained valid.

[4] The Applicant submitted an application to the Regional Court of Administrative Cases. In that application, a claim was made to repeal the aforementioned resolution adopted by the Ministry of Health and that HCISA must be instructed to pass a resolution on 100% compensation of purchase costs of Cerezyme for a 12-month course of treatment starting from 17 December 2007 till 16 December 2008.

[5] Judgment of 3 October 2008 of the District Court of Administrative Cases approved the Applicant's claim. The judgment of 29 January 2009 of the Regional Court rejected the Applicant's claim. That judgment states that both the court and the institution must apply the legal order established in Clause 100 and 100¹ of the Regulations No. 899 of 31 October 2006 of the Cabinet of Ministers on the procedures for compensating purchase costs of the medication and medical equipment for out-patient treatment (hereinafter- the Regulations No. 899). The Applicant's situation is a typical case, which is under the above mentioned Regulations. According to the norm, there is no reason to deviate from those Regulations and to issue a different administrative act.

[6] The Applicant appealed the judgment of Regional Court of Administrative Cases of 29 January 2009 claiming to nullify it. The appeal states that the court has unreasonably applied Clause 100 of the Regulations No. 899. Although, the application of those Regulations should be limited taking into account the principles of proportionality and justice. The court applied Clause 100¹ of the aforementioned

¹ [Translator's remark.]

Regulations not considering that the above mentioned norm discriminates the Applicant by his/her socioeconomic status status.

[7] On 21 May 2009 the Senate passed a resolution to terminate legal proceedings in this case, and an application was submitted to the Constitutional Court of the Republic of Latvia (hereinafter – the Constitutional Court) on the conformity with Article 93 and 110 of the Constitution of the Republic of Latvia of words of Clause 92 second sentence “within the granted limits of medication purchase”, words of Clause 94 “with the exception of mentioned case in the Regulation Paragraph 100¹”, words of Clause 100 “not more than amount of LVL 10 000 for one patient in 12 months ” and words of Clause 100¹ second sentence of the Regulations No. 899 of 31 October 2006 of the Cabinet of Ministers on the procedures for compensating purchase costs of the medication and medical equipment for out-patient treatment. The Constitutional Court hold that the amount of the compensation LVL 10 000 for 12-month course of treatment is established considering the State budget options.

[8] In the court hearings the representatives of the Applicant supported the appeal based on the grounds mentioned in it. The representatives of the Defendant did not acknowledge the claim.

Motivation part

[9] According to Paragraph 4 of Section 349 of the Administrative Procedure Law a court, while reviewing a matter, may rule that a judgment of a lower instance court is based on correct and reasonable grounds, and the court may refer to that in the motivation part by mentioning that it agrees with those grounds. In this case there is no need for more detailed argumentation. According to the aforementioned Regulations and by verifying legitimacy of that judgment, the Senate acknowledged that grounds of the ruling of the Regional Court of Administrative Cases are correct and reasonable. The Senate, therefore, agrees with the arguments of the Regional Court of Administrative Cases.

[10] The Senate rejected the argument stated in the appeal that in this particular case the court could deviate from the limit established in the Regulations No. 899 because

