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December 4 2008

#8-Iuri Archuadze-2008

Tbilisi City

Chamber of Administrative and Cases of Other Categories

Composed: Chairman M. Vachadze (Presenter),

Judges: Mariam Ciskadze

Nino Qadagidze

Case Consideration Form – without oral hearing

Cassator (plaintiff) – Iuri Archuadze

Defendant (respondent) - Ministry of Health and Social Affairs; Municipality of Gori

Third party – LEPL “Health and Social Programs’ Agency”

Appealed decision – Tbilisi Circuit Court Administrative Affairs’ April 24 2008 decision

Subject of the Dispute: Execution of an Act

#### D e s c r i p t i v e P a r t :

On September 12 2006, Iuri Archuadze submitted an application to the Tbilisi City Court Administrative Chamber against respondents: Ministry of Labour, Health and Social Affairs of Georgia and Municipality of Gori.

According to the plaintiff’s explanation, he was living at the Georgia-Ossetian conflict zone and in May 2006 he suddenly developed jugular total rotting-necrosing phlegm and upper mediarinit; because of this condition he underwent an immediate surgical operation– face’s inner wall section--at Tbilisi State and because of aftermath complications he was placed at intensive therapy (reanimation) department. The cost of the treatment amounted to 3426,01 GEL; out of this amount the plaintiff was able to pay 1300 GEL though he had to pay 2126,01 GEL. The cost of the treatment at jaw-face department compiled 1923,92 GEL, out of which the plaintiff paid 778,7 GEL. From the state program the plaintiff was reimbursed only 205,94 GEL, while he had to pay 939,28 GEL. In total the cost of the treatment amounted to 5123,9 GEL, while all of the required medicines were bought by the plaintiff at a total price of 4139,81 GEL, but for some reasons the later price as paid by the patient was not reflected into the calculation. In total the cost of the treatment amounted to 9263,71 GEL (5123,9 with calculation and with the medicines bought by patient for 4139,81 GEL). The Plaintiff paid 6218,51 GEL (2078,70 GEL – at clinical cashbox and 4139,81 GEL for medicines), while he still had to pay 3045,20 GEL.

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According to the plaintiff's claim, because of his difficult situation he applied to the Gori Municipality where he received an unfounded refusal. The Gori Municipality's refusal to pay the plaintiff's urgent medical aid expenses was based on exhaustion of the allocated funds in that regional budget. After that, the plaintiff applied to the Ministry of Health and Social Affairs for reimbursement of his treatment expenses, but he was also refused there; in particular nobody was able to answer, unlike the clinic doctors, why this given case was considered to be a lateral face abscess and why, according to the state standard, it cost 552,73 GEL. In this case the lethal outcome was inevitable for the patient so he was obliged to sell all the property in order to avoid death. The plaintiff's disease, according to the medical form #27, was the jugular total rotting-necrosing phlegmon and upper mediarinit; in calculation – as the jaws' inflammatory injuries (phlegmon), while Georgian Ministry of Labor, Health and Social Affairs health department claimed that the plaintiff underwent lateral face abscess surgical treatment with a cost of 552,73 GEL.

The plaintiff indicated that .in the first paragraph of article 37 of Georgian Constitution, in determined circumstances as established by law medical aid should have been free of charge. According to paragraph 1 of article 12 of the law on patient rights, the state protected the patient's right for medical service when without its' urgent realization the death, invalidism or significant health deterioration of patient was inevitable. According to the article 12 of the International Covenant on Economic, Social and Cultural Rights, states acknowledged that their obligation is to ensure a citizen's right to the highest attainable standards, which indispensably betokened urgent medical service funding. Given the mentioned lawful ground ,the plaintiff had the right to claim the obligation be fulfilled with due diligence and conscientiously. Along with this, according to the content and spirit of the obligation, the respondents' (state) were obligated to give special due diligence towards the plaintiff's rights (right to health and life) as the right to health and life were absolute human rights and accordingly – the particular subject of legitimate protection.

According to the plaintiff's claims, nonpayment for medical service (non execution of an act) in accordance with article 24 of the Georgian administrative procedural code, imposes irreparable harm on him because he was obliged for creditors to payback for medical service, which was the loan. In addition, Tbilisi State Medical Institute required immediate payback and he received notification of their use of compulsory measures. The plaintiff did not have such means and in case of failing to fulfil the obligation he was responsible with all his property.

According to the aforementioned, the plaintiff required 9263, 71 GEL for emergency medical aid costs and for legal costs (4%) – 370 GEL from the amount incurred.

Iuri Archuadze's application has not been satisfied by the November 30 2006 judgment of Tbilisi City Court Chamber of Administrative affairs.

The calculations of the City Court, acquainted with the circumstances of the case, particularly N.Kipshidze's Central Clinical history file #3362 (conduct of examinations and manipulations, the expenses spent on medicines, the materials spent on operation and medicines), considered it established that Iuri Archuadze's treatment expenses at intensive therapy department amounted to

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3426,01 GEL, and at the jaw-face department treatment the cost amounted to – 1923,92 GEL. The plaintiff 's claim relied on paragraph 1 of article 37 of Georgian Constitution, accordingly everybody had right for health insurance as affordable mean of medical aid. As established by law free of charge medical aid is ensured. According to Georgian Constitution, for guaranteed free of charge medical aid's enactment as established by law, annually the state processed measures for special purposes. According to the order of #53/n February 15 2006 on "Labor, health and social protection, certain 2006 state program", this approved the 2006 state program on population's stationary medical aid. For the purpose of increasing the affordability of stationary medical aid the state took purposeful measures, which ensured a basic package medical service aid for the population, and the budget of the program was determined 92154,3 thousands GEL. The plaintiff was reimbursed 205,94 GEL within the mentioned program which confirmed by the plaintiff himself.

The City Court considered the article 12 of the International Covenant on Economic, Social and Cultural rights, according to which all of the the member states recognized every human being's right to a high level physical and mental health. With the same articles paragraph 2 the measures which should be implemented by these member states with this right's full realization included measures which were necessary for creating such conditions to ensure medical aid and patient's treatment for all. The analysis of the mentioned norm revealed that the participants from member states were accepting an obligation to take all the measures necessary to ensure medical aid and all the necessary measures for medical treatment was not an obligation for medical aid free of charge.

Thus the City Court considers that the plaintiff received the appropriate norm envisaged aid for medical service, but he failed to indicate the law or sub-law act which envisaged the full-payment obligation for the amount paid from the state budget for medical service. As to the plaintiff's request for payment of legal costs for his representative, this was unfounded because there was no displayed agreement and moreover, no amount of payment in a document.

Iuri Archuadze appealed the November 30 2006 Tbilisi City Court Administrative Chamber's judgment and requested that it be declared void and his application satisfied.

Iuri Archuadze's appeal was not satisfied by Tbilisi Circuit Court Administrative Chamber's November 4 2008 judgment; the November 30 2006 judgment of the Tbilisi City Court Administrative Chamber was left intact.

The Circuit Court, as a result of examination of the appeal within the frame of the appeal, concluded that pretension was unfounded, as a fact there was no basis on articles 393-394 of the Civil Code. The Circuit Court fully agreed on established factual circumstances and legitimate conclusions regarding the non-satisfaction of the application and considered that appellant could not establish the necessity of chaing the appealed judgment's. The indicated arguments at the appellate application were presented by the applicant even during the first instance case hearing in which the City Court responded with an exhaustive response. The City Court explained precisely the norms indicated as the basis for the application, particularly paragraph 1 of article 37 of Georgian Constitution and article 12 of the International Covenant on Economic, Social and Cultural Rights. The indicated article 12 of the Patient's

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Rights Act presented a reflection of the obligation in domestic legislation as established by article 12 of the International Covenant on Economic, Social and Cultural Rights. According to the aforementioned paragraph 1 of article 12 of the Act, the state protected the patient's right to medical service when without its realization the death, invalidism or significant health deterioration of a patient was inevitable. With paragraph 2 of the same article, if patient was in urgent need of medical service without which the death, invalidism or significant health deterioration of the patient was inevitable and the medical service provider had no ability to serve the patient, one was obliged to provide full information to the patient, his relative or his guardian under law where to obtain the urgent medical service. Accordingly, with the mentioned norm, the patient's right to medical service was ensured, which meant the obligation for the existence of medical standards, and not their free of charge use.

Iuri Archuadze submitted a cassation application for the April 24 2008 judgment of the Tbilisi Circuit Court's Administrative Affairs. He requested that the judgment be voided and that new judgment satisfy the cassation appeal.

According to the cassation applicant's explanation, the appealed judgment is unfounded and delivered in violation of procedural norms without establishment of the significant circumstances and its legitimate assessments. The court delivered the decision in such a way that it did not establish the main factual circumstances – the state-formed standard and whether the reimbursement of the amount by the state was enough to save the patient's life, thus fulfilling the obligation envisioned by 1st paragraph of article 12 of the statute on Patients' Rights.

The Cassation applicant points to articles 4 and 19 of Administrative Procedural Code, paragraph 2 of article 4, article 222 of Civil Procedural Code of Georgia and claims that the court was obliged credibly substantiate how it was possible to protect the patient's right urgent medical service with 9263,71 GEL value when only 205 GEL was paid by the state. According to the appropriate medical documents it is indisputable that in this case the patient's treatment within the state standards (code 2618 – jaws' inflammatory injuries) was funded by 205, 94 GEL, which includes only the first operation and the four day bedstay at the jaw-face department. It is unclear that state standard doesn't include anything after operation period: when patient is at the therapeutic department being on artificial respiration and fighting against death, neither was this period which conducted additional operations nor was the stable hard period included.

According to the cassation applicant's explanation the court practically delivered the decision based on sub-law act (state standard). According to paragraph 3 of article 6 of Civil Procedural Code of Georgia, the court should have delivered the decision based on law – paragraph 1 of article 37 of the Constitution, paragraph 1 article 12 of Law on Patient Rights and the interpretation of article 12 of the International Covenant on Economic, Social and Cultural Rights, because the state standard (sublaw) could not affect rights guaranteed by the state –regarding an affordable price, during a life saving urgent medical aid maintenance.

According to the cassation applicant's claim, the court misinterpreted the law. In the Georgian Constitution medical aid free of charge is ensured as established by law, and the circumstances

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established by paragraph 1 of article 12 of the statute on Patient Rights, in other words by the patient's protection act determined circumstances occur when the patient's death, invalidism or significant health deterioration is inevitable.

In the appropriate medical conclusion it is simply indicated that in the case of not providing aforementioned medical aid the death of patient is inevitable.

In the July 14 2008 judgment of the Supreme Court of Georgia Chamber of Administrative and Cases of Other Categories – Iuri Archuadze's cassation claim for admission was accepted according to the paragraph 3 of article 34 of Georgian Administrative Procedural Code. The parties have been given the right to present their opinion within 14 days after the acceptance of the judgment on to what extent the cassation application should have been accepted according to paragraph 3 of article 34 of Georgian Administrative Procedural Code. Taken into account paragraph 3 of article 34 of Georgian Administrative Procedural Code, the examination for admission was set for October 2 2008.

#### Part of the Motivation:

The Cassation Court examined the case files without an oral hearing, verified the appealed application's lawfulness-validity and considered that Iuri Archuadze's cassation claim should not be satisfied:

The Administrative proceedings used the provisions of Civil Procedural Code, according to paragraph 2, article 1 of Administrative Procedural Code if otherwise established by this code.

The Cassation Court took into account the following factual circumstances established by the Circuit Court:

Iuri Archuadze in May 2006 suddenly developed jugular total rotting-necrosing phlegm and upper mediastinitis, because of this condition he underwent an immediate surgical operation – face's inner wall section--at Tbilisi State Medical Institute and due to aftermath complications he was placed at intensive therapy (reanimation) department. The cost of the treatment amounted to 3426,01 GEL at the intensive therapy (reanimation) department, and cost of the treatment at the Jaw-face department amounted to 1923,92 GEL.

For the constitutionally guaranteed free of charge medical treatment as established by law annually the state processed measures for special purposes.

According to the order #53/n February 15 2006 on "Certain Labor, health and social protection 2006" the state program approved the 2006 state program on population's stationary aid.

For the purpose of increasing the affordability of stationary medical aid the state undertook purposeful measures, which ensured a basic medical service aid package for the population, and the budget of the program was determined 92154,3 thousands GEL.

The plaintiff was reimbursed 205, 94 GEL within the mentioned program.

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The Cassation Court cannot agree with cassation applicant's opinion that the appealed decision is delivered in a breach of the legislation, lawfully unfounded and received in violation of article 393 of Civil Procedural Code.

The Cassation Court indicates that the cassation applicant relies on paragraph 1, article 37 of the Georgian Constitution, according to which everybody have right to benefits with a health insurance as an affordable means of aid. As defined by law there are determined conditions for ensuring free of charge medical aid.

The Cassation Court agrees with the Circuit Court's interpretation that paragraph 1 of article 37 of Georgian Constitution sets forth in which circumstances can free of charge medical service be used and such circumstances should be established by law. The cassation applicant received determined medical service as established by aforementioned law, but he failed to indicate the law or sub-law act which will determine the obligation of full reimbursement of the expenses from the state budget.

According to article 12 of the International Covenant on Economic, Social and Cultural Rights each member state recognizes every human being's right to a high level physical and mental health. According to the same article's subparagraph "d" of paragraph 2, the measures which should be implemented by the member states for the full realization of this right include measures which are necessary for creating such conditions to ensure medical aid and patient's treatment for all.

The Cassation Court agrees with the Circuit Court's interpretation that article 12 of the International Covenant on Economic, Social and Cultural Rights, according to which the member states accept an obligation to undertake all the measures which are necessary for creating such conditions to ensure medical aid and patient's treatment for all and cannot agree on the cassation applicant's interpretations that, by this covenant, member states recognize an obligation for the availability of medical aid free of charge.

The Cassation Court agrees with the Circuit Court's interpretation that cassation applicant's indication that article 12 of the Georgian law on "Patient's Rights" codifies the reflection of the obligation from article 12 of the International Covenant on Economic, Social and Cultural Rights.

According to article 12 of the aforementioned law the state protects the right of the patient to medical service when, without its urgent realization, the death, invalidism or significant health deterioration of the patient is inevitable. By paragraph 2 of the same article if patient is in urgent need of medical service without which the death, invalidism or significant health deterioration of the patient is inevitable and a medical service provider has no ability to serve the patient, one is obliged to provide full information to patient and his relative or his guardian under law on where to obtain urgent medical service. In accordance with the mentioned norm the patient's right to medical service is ensured, which means the obligation is for the existence medical standard and not for their use free of charge.

The Cassation Court cannot agree with the cassation applicant's opinion that the Circuit Court delivered its decision on the basis of that sub-law which does not correspond to the law, as he failed to prove on which basis the order #53/n February 15 2006 on "Certain Labor, health and social protection 2006 state

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program” – approved 2006 state program; Georgian law on “Patient’s Rights” and Georgian Constitution and also the cassation applicant fails to point to another law by which he can receive constitutionally-envisaged medical aid free of charge.

From the aforementioned the Cassation Court cannot share the cassation applicant’s interpretation that the appealed judgment is unfounded and delivered in breach of the procedural norms, without the examination of necessary circumstances and giving no legal assessment.

As to the cassation applicant’s request for legal cost of his representative, the court considers that this claim is unfounded as there is no contract for service provided or the amount paid presented in the case files.

Thus the Cassation Court considers that during the case hearing the Circuit Court did not breach Georgian legislation and delivered grounded and lawful judgment.

Taken the aforementioned into the account the Cassation Court considers that there is no basis for satisfying the cassation appeal as the judgment should remain unchanged.

#### R e s o l u t i o n P a r t :

The Cassation Court guided by paragraph 2 of article 1 of Administrative Procedural Code; paragraph 3 of article 408 and article 410 of Civil Procedural Code and

#### H e l d :

1. Iuri Archuadze’s cassation application should not be satisfied;
2. To be remained unchanged the Circuit Court’s Administrative Chamber’s April 24 2008 judgment;
3. The decision of the Cassation Court is final and cannot be appealed.

Chairman: M. Vachadze

Judges: M. Ciskadze

N.Qadagidze