JUDGMENT
Of 3rd November 2004
Case file number III CK 546/03
In the name of the Republic of Poland

The Supreme Court of the Republic of Poland sitting in the panel:
Elżbieta Skowrońska-Bocian – Judge of the Supreme Court, Presiding Judge
Jan Górowski – Judge of the Supreme Court, Judge Rapporteur
Maria Grzelka – Judge of the Supreme Court

in a matter concerning a complaint by the L. Rydygier Memorial Voivodeship Specialised Hospital in Krakow against the Małopolski Regional Health Fund, currently the Małopolski Voivodeship Branch of the National Healthcare Fund for payment,

upon hearing on 3 November 2004 the case by the Civil Chamber of the Supreme Court, initiated by a cassation filed by the defendant against the judgment issued by the Appellate Court of 7 May 2003,

revokes the challenged judgment and refers the case to the Appellate Court for re-examination and adjudgment on the payment of cassation proceedings fees.

STATEMENT OF REASONS

The L. Rydygier Memorial Voivodeship Specialised Hospital in Krakow demanded that the defendant, Małopolski Regional Healthcare Fund in Krakow, pay the amount of PLN 936,273 increased by statutory interest payable from 11 May 2004. The Regional Court by decision of 20 November 2002 allowed the claim in full.

The Court recognised that it was uncontested by either of the parties that the defendant conducted a tender for providing hospital services in the year 2000 and that the plaintiff was one of the tenderers. The tender specification did not stipulate that the services provided by the Anaesthesiology and Intensive Care Unit (ICU) be contracted separately. The costs of treatment performed by this unit were to be included in the prices of services performed by other units of the hospital.

On 31 December 1999, the parties concluded an agreement for in-patient healthcare services covered by the public health insurance for the year 2000, which did not include a provision that the services performed by the Anaesthesiology and Intensive Care Unit should be financed separately by the defendant, whilst § 12 of the agreement stated that the agreed amount to be paid for performed healthcare services constitutes the entire obligation of the Regional Healthcare Fund towards the plaintiff.

In a letter to the defendant dated 24 January 2000, the plaintiff made objections to the fact that the payment for services performed by the ICU had not been regulated by the agreement. Subsequently, with respect to the case of the patient Tomasz Z., the plaintiff claimed that the Regional Healthcare Fund should reimburse the cost of the patient's treatment. Further endeavours in this matter led to an annex to the agreement being drawn up on 23 May 2001, binding from 1 May 2001, stipulating that in such situations the cost of services should be settled separately, however the defendant still did not agree to pay for services performed in year 2000. The cost of services rendered by the Anaesthesiology and Intensive Care Unit to 40 patients, who were not treated by any other units of the hospital, amounted to PLN 936,273.

In the year 2000, The Małopolska Regional Health Fund's net income exceeded its expenditures by millions of PLN.

According to the findings of the Court of the First Instance, the agreement did not contain any provision concerning separate settlement of payment for services performed by the Anaesthesiology and Intensive Care Unit in the year 2000 and the tender specification did not provide for such option in cases where patients were treated only by this unit. In the Court's

opinion, the matter of separate payment for such services was not regulated by the agreement, so the Court assumed that the defendant's responsibility resulted from Art. 405 of the Civil Code.

The Court however, did not preclude contractual liability (Art. 471 of the Civil Code) and pointed out that the debtor should perform his obligation not only with respect to its content but also in a way that corresponds to its social-economical purpose and the rules of social conduct. The Court expressed an opinion that, since the substance of the defendant's activity was to secure healthcare services to the insured persons within the available financial resources, and the defendant was in disposal of resources exceeding its liabilities and had monopoly in financing healthcare services, it can hardly be judged that the defendant performed its contractual obligation in a way that corresponds to its social-economical purpose and the rules of social conduct.

The defendant appealed from this judgment to the Appellate Court. The appeal was dismissed by the judgment of the Appellate Court of 7 May 2003.

The Appellate Court concurred with the statement of facts made by the Court of First Instance, but precluded Art. 405 of the Civil Code as the basis for the defendant's liability.

In the Court's opinion, re-compensating healthcare services performed as life-saving procedures in 2000 on patients, who later died, were discharged or were moved to other medical institutions, was covered by the agreement. The Court expressed an opinion that, since the principles of settling payment applied by the defendant in 2000 did not foresee covering the costs of treatment performed solely by the Anaesthesiology and Intensive Care Unit, the hospital did not receive the payment due for these services. Refusal to pay for these services was contradictory to the nature of the contractual obligation relationship and Art. 4(2) and (3), Art. 53(3) and (4), art. 54(1) and (2) and Art. 127-131d of the Act on General Health Insurance (*Dziennik Ustaw*, No. 28, item 153 as amended, hereinafter referred to as "the Act"). In the opinion of the Court, the fact that Art. 53(4) of the above-mentioned Act on Health Insurance commands that an agreement has to indicate a maximum amount for healthcare services, does not allow to legitimately derive a prerequisite that Art. 53(4) is an unconditionally binding provision and that there are no grounds for renegotiating the agreement in the matter of settling payment for healthcare services rendered to patients treated by the Anaesthesiology and Intensive Care Unit in life- and health-threatening situations.

The legal successor of the defendant, the Voivodeship Branch of the National Healthcare Fund in Krakow, in its petition for cassation based on the breach of the substantive law i. e. Art. 354 §1 of the Civil Code, Art. 471 of the Civil Code and Art. 58 of the Civil Code and the breach of the rules of proceedings affecting the outcome of the case (Art. 233 of the Code of Civil Procedure), filed that the challenged judgment be reversed and that the case be remanded by the Appellate Court or optionally that the judgment be changed by admitting the appeal.

The Supreme Court considered the following:

At first, it should be considered that the Court of First Instance recognized that all relevant circumstances of the case were indisputable, including the fact that the parties did not include in the agreement of 31 December 1999 the services rendered to patients only by the ICU, which, in the Court's opinion, meant that the basis for liability should be Art. 405 of the Civil Code. Whereas the Appellate Court, although there were appellate issues against the factual basis of the challenged judgment, recognised the findings made by the Regional Court to be correct, and it stated that the services at issue were covered by the agreement concluded by the parties, but were not paid for. The Appellate Court made thus an additional finding of facts, partly differing from the factual basis of the judgment issued by the Court of First Instance, without indicating the underlying evidence and without evaluating the evidence collected so far.

In order to determine the facts, one should first of all establish the content of the parties' statements included in the agreement in question, as this belongs to the factual sphere (cf. the judgment of the Supreme Court of 6.11.1996, case file No. II UKN 9/96, published in *OSNPiUS* 1997, No. 11, item 201), and to interpret these statements, which belongs to the law sphere and is

subject to review within the framework of the first ground for cassation (cf. e.g. the judgments of the Supreme Court of 20.02.1997, case file No. I CKN 90/97, unpublished; and the judgment of 4.03.1999, case file No. I PKN 616/98, published in *OSNAPiUS* 2000, No. 8, item 312).

If a court of second instance makes additional fact-findings, it is obliged to indicate the underlying evidence and to evaluate the evidence collected by both the courts of first and of second instance (cf. the judgment of the Supreme Court of 9.05.2002, case file No. II CKN 615/00, published in *LEX* No. 55097). This applies especially to the case where the Court of First Instance recognized the factual circumstances of the case as indisputable, although there were no sufficient grounds for recognising them as such. The finding of facts made by the Appellate Court without indicating the underlying evidence and omitting the Court's own evaluation of evidence is a flagrant infringement of Art. 233 § 1 of the Code of Civil Procedure, subject to cassation review and warrants the second ground for cassation under Art. 393 of the Code of Civil Procedure.

The Supreme Court agrees with the plaintiff's position that the Anaesthesiology and Intensive Care Unit is a specific unit, whose task is basically to sustain or restore the bodily functions of the patients. Both courts accepted Art. 354 § 1 of the Civil Code and Art. 355 of the Civil Code as the basis for the defendant's obligation to pay for the services, however the Appellate Court also referred to the above-mentioned provisions of the Act on Publicly Funded Healthcare Benefits. It is obvious that if the obligation results from the agreement, it is the provisions of the Civil Code and other Acts (Art. 56 of the Civil Code) that define the obligation relationship more precisely, including the Code's dispositive provisions unless they were excluded by the will of the parties expressed in the agreement. The mandatory provisions of law, on the other hand, are a source of obligation in every case, unless, pursuant to Art. 58 of the Civil Code, the entire agreement and not its particular provisions is nullified. The healthcare system is and always has been regulated by many acts of law. Therefore, while interpreting the regulations, one may not omit their systemic interpretation. Incidentally, Art. 7 of the Healthcare Institutions Act of 14 October 1991 (consolidated text *Dziennik Ustaw* 1997, No. 104, item 661 as amended) and Art. 30 of the Act on Practicing as a Physician (consolidated text *Dziennik Ustaw* 1998, No. 64, item 729) place healthcare providers under an absolute obligation to provide services in life-threatening situations. These obligations are unconditional and they precede the limitations resulting from agreements on healthcare services (cf. the judgment of the Supreme Court of 5 September 2000, case file No. III CKN 365/03, unpublished).

Therefore, to make a decision on this case it was necessary to determine the relationship between the obligations of rendering life-saving healthcare services and financing of their costs. The Supreme Court in its judgment of 25 March 2004 (case file No. II CK 207/03, unpublished) expressed an opinion that neither the provisions of the Act on General Health Insurance nor Art. 7 of the Healthcare Institutions Act or Art. 30 of the Act on Practicing as a Physician do not give grounds to establish the defendant's obligation to pay for such healthcare services.

The plaintiff however charged, with reference to Art. 58 of the Civil Code that it would be unacceptable as incompatible with the rules of social conduct to enter into an agreement which would exclude a complete financing of life-saving services. They also argued that they were imposed the unfavourable rules of settling payment for these services by the defendant.

The lack of sufficient findings of facts and the lack of consideration of the concluded agreement's compatibility with Art. 58 of the Civil Code warrant the first ground for cassation under Art. 393 of the Code of Civil Procedure.

For the above reasons the cassation was allowed (Art. 393 of the Code of Civil Procedure).