

# HOW THE PLOVDIV DISTRICT COURT PROTECTED THE RIGHT TO LIFE IN A LAWSUIT AGAINST SHORTAGE OF CANCER DRUGS

*In its decision the court takes a stand against the state neglect and irresponsibility*

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On 2 June 2005, the Plovdiv District Court handed down a decision ordering the Ministry of Healthcare to pay compensation for non-pecuniary damages to cancer patient Rositsa Shkodrova, for "non-fulfilment of its duty to provide the biochemical modulator Calcium Folate necessary for her treatment". With this judgment, besides outlining the boundaries of the responsibility the state must take to ensure the healthcare - and, in part, the effective treatment - of the cancer patients protesting at that time, the court also stepped into the arena of human rights by making a statement on the fundamental human right to life. Justice Mariya Kafedzhieva described the rights and the obligations undertaken by the state in its constitutional claim to be a "democratic, legal and social" entity, and touched upon the responsibilities of the bureaucracy, undertaken with the ratification of a series of international documents. In the end Rositsa Shkodrova should receive from the Ministry of Healthcare not only the compensation, but also the quantity of medicine she needs in order to resume her treatment.

The debate amongst human rights activists and lawyers about the scope of the right to life touches on the differentiation between civil and political rights (which have to do with the individual's freedoms with regard to the state), and economic, social and cultural rights (which are programme rights, having a more abstract formulation, and for the preservation of which the state should implement a specific policy). With regard to the right to life, which is a fundamental civil right, Article 2 of the European Convention on Human Rights imposes upon the state the obligation to protect the life of every person and to enforce a ban on the deliberate taking of human life. The ban on depriving people of their lives holds true for both actions and inactions, for which the state bears responsibility, and also for threats to life caused by neglect.

The Plovdiv District Court interpreted the problem of the shortage of medication for those suffering from the deadly disease as neglect and lack of willingness on the part of the state with respect to its duties, as undertaken in such regulatory texts as:

1. **The Constitution of the Republic of Bulgaria.** The fundamental law defines the state as "democratic, legal and social", and in Article 52 pronounces the life and health of its citizens to be constitutionally protected values. It establishes the state's obligation to protect the health of its citizens and sets forth funding from the state

budget as a principle of funding healthcare, under the conditions and order established by law. That first obligation is the subject of the Public Health Act, which provides that the Ministry of Healthcare is a specialised organ for conducting the state policy with regard to healthcare. The second is formulated in the Regulation on the System for the Prescription and Receiving of Medication for Costly Treatment Covered by the Budget of the Republic, according to which the entire procedure for the provision of Rositsa Shkodrova's medicine - which was never obtained for her - was carried out.

2. **The European Convention on Human Rights and Fundamental Freedoms**, which on the one hand guarantees the right to life in Article 2, and on the other provides guarantees of effective internal legal means for its protection, even when (and this is the case with Ms. Shkodrova) the violation is committed by persons acting in their capacity as representatives of official institutions.

3. **The Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights**, which define as the irrevocable and inviolable the right of every individual to life and to a standard of living and medical care necessary for the preservation of his health (Art. 25 of the Universal Declaration).

The court did not find the state's claim that due to a lack of sufficient budgetary resources, the delivery of medication needed for cancer patients covered only 25% of their needs, to be a sufficiently motivated argument against Ms. Shkodrova's suit. Even though in Rositsa Shkodrova's case a request had been submitted by the Plovdiv oncology clinic, which was responsible for the number of patients, and in response the amounts delivered corresponded to the financial limits of the Ministry of Healthcare. That is, in theory the state protects the health of everyone, but in practice it endangers the health of the remaining 75% and in practice violates their right to life.

In the motivation for its decision, the Plovdiv District Court wrote: "The right to life and the protection of health in the context of the positive concept of freedom means a real opportunity to realise that protected value, and not just its declaration. The entity exercising state policy in the area of healthcare is responsible for providing the necessary amount of medication for the resumption of the applicant's treatment. As has already been established, that entity is the Ministry of Healthcare." ■