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### **NEWS REPORT**

**Date:** 16 February 2015  
**Expert:** Margarita Ilieva  
**Title:** Vital Healthcare Deprivation of Cancer Patients Constitutes Harassment  
**Country:** Bulgaria  
**Context**  
**Issue at stake:** Equal access to cancer treatments  
**Ground of discrimination:** Disability  
**Source:** National court decision: Decision N 820 of 26.01.2015 in administrative case N 3498/2014  
**Field:** Social protection (Healthcare)  
**Legislative provisions:**

### **Content**

**Case:** Three affected individuals (close relatives of deceased cancer patients in a smaller city) and an NGO defending health rights complained before the equality body (EB) that the Minister of Healthcare did not provide facilities for equal quality cancer treatment for all patients. In particular, contemporary medical equipment was insufficient to meet the needs of all patients (some patients only had access to outdated equipment), and patients were not duly informed of treatment possibilities. The complainants alleged that their close relatives who died of cancer were discriminated against on grounds of disability and personal status. The deceased were not informed about contemporary treatments that were only available in the two biggest cities, and were treated with the outdated equipment available locally. The EB ruled that the Minister was liable for harassment on grounds of disability: unwanted conduct consisting of an omission resulting in the creation of a threatening (intimidating) environment for persons with cancer ailments. It issued an injunction for the Minister to undertake positive and special measures to secure persons with cancer ailments timely and quality treatment on an equal basis. It recommended to the Council of Ministers to introduce in Parliament a draft law to equalise opportunities for persons with cancers by regulating in detail and with better safeguards their right to health information. The EB reasoned that: persons with cancers were a highly vulnerable group, and cancer was a form of disability; the authorities were under a duty under national and international law to take measures to equalise their opportunities; an integral part of such measures was to secure accessible health services, and that corresponded also to patients' right to life; at least 8000 cancer patients per year did not receive vital timely treatment due to insufficiency of equipment in terms of both quality and quantity; in practice, all cancer patients were on waiting lists causing them to miss the optimal time for treatment; the Minister's omission to secure quality and accessible therapy compounded persons with cancers' unequal situation, and by failing his duties under the law to undertake positive and special measures he infringed their right to equal treatment and to equal opportunities; the threatening (intimidating) environment consisted of being subjected to waiting lists and missing the optimal time for treatment, as well as a lack of sufficient and contemporary

equipment, a lack of sufficient public funding for treatment, a lack of social workers, a lack of up-to-date statistical data, availability of specific apparatus in only two locations, etc. Cancer patients in areas where no high technology for treatment was available suffered multiple discrimination on grounds of disability and personal status, the latter construed to include a person's place of residence. Inadequate health information further compounded those persons' inequality. On appeal, the first-instance court repealed this decision. The complainants appealed the lower court's decision before the Supreme Administrative Court (SAC).

**Decision of the Court:** The SAC held that while a sickness did not equate disability, certain cancers did meet the definition of disability under international law. The SAC rejected the EB's reasoning that a person's place of residence was part of the protected ground of 'personal status'. The SAC agreed however with the EB's finding that the Minister's 'unwanted conduct' consisted of his omission to undertake the necessary action expressly required under art. 10 and 11 of the Protection Against Discrimination Act (PADA) (public authorities' general equality duty, including for positive measures) in order to guarantee persons with disabilities due to cancers the right to healthcare. The SAC held that any conduct hindering the right to health was 'unwanted' within the meaning of the harassment ban. The Court agreed with the EB's finding that the Minister's omission consisted of a lack of guarantees for the provision of effective and adequate information for patients concerning the types of treatment available and their respective advantages and disadvantages. The SAC confirmed that the omission included not guaranteeing persons with oncological disabilities equal access to quality treatment. The Court confirmed that the lack of a de facto opportunity for persons with oncological disabilities to access the highest healthcare standard resulted from the Minister's omission to undertake action to remove the reasons for hindered access. According to the Court the fact that certain patients were unable to access any treatment, not just the best available treatment, due to a lack of medical equipment and necessary funding infringed their right to access to healthcare. The Court agreed that the unavailability of statistical data concerning cancers was a further omission by the Minister. The Court held that all those omissions affected patients' opportunities for timely and effective treatment, impinging upon their dignity. The Court reasoned that the Minister's unwanted conduct created an environment threatening to patients' health and life. The SAC upheld the EB's injunction to the Minister to undertake the requisite action under art. 10 and 11 PADA.

**Internet link source and additional information:**

<http://www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/04093ee4486c151dc2257dd200418a39?OpenDocument> (in BG)