



Case 2-A-216-1/06

No. 2-A-216-1/06

Country: Ukraine

Region: Europe

Year: 2006

Court: Pecherskyi District Court

Health Topics: Health information, Health systems and financing

Human Rights: Right to privacy

Facts

Plaintiff Svitlana Yuriyivna Poberezhets challenged the Order “On Approving the Form and Technical Description of a Medical Certificate and the Instructions for Filling In the Medical Certificate,” which required health care institutions to include information regarding a person’s initial and final medical diagnosis, and their associated medical codes, on a person’s medical certificate. The medical certificate then had to be provided to the person’s employer and government agencies in order for him or her to receive time off work and state benefits for temporary sickness, pregnancy, or childbirth. The policy gave doctors discretion to decide whether, in certain situations, a person’s diagnosis should be left off of the medical certificate, but the doctor’s decision was subject to written approval from the department chief.

The plaintiff filed an administrative claim with the Court alleging that her constitutional rights to privacy were violated when she was forced to submit a medical certificate to her place of work, as this led to the disclosure of information about her acute respiratory viral infection among her co-workers.

Decision and Reasoning

The Court held that requiring either the medical diagnoses or their associated codes violated a score of constitutional rights based around the right to privacy. The order violated Article 3 as the order violated the “Constitutional principle of the orientation of the State towards affirming and ensuring human rights and freedoms.” Furthermore, the order violated Article 19, which states that subordinate legislation cannot violate a law nor the Constitution, Article 21, which provides that a restriction on human rights must be based on constitutional principles, Article 32, which provides a right to privacy that includes keeping confidential information on one’s health. Additionally, the Court held that the violation of Article 32 necessarily meant that the order violated Article 22 because it diminished the content and scope of the constitutional protections of Article 32.

The Court also held that the policy violated Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that everyone has the right to respect for his or her private and family life.

The Court held that the order violated multiple laws, including the Basic Law on Health Care, for the same general reason that the right to privacy includes keeping health information confidential. The Court also noted that Article 41 of the Basic Law on Health Care does not require disclosure of one’s diagnosis to one’s employer to receive sick leave and social insurance benefits.

The Court noted that although the policy provided for a situation in which a doctor could leave out a patient’s diagnosis from the medical certificate, the way the doctor’s decision was regulated violated human rights. This was so because the doctor, not the patient, had the discretion whether to include the diagnosis, and even the doctor’s right to leave out the patient’s diagnosis was dependent on written approval from the department chief.

Decision Excerpts

“The demand for submission of information of the person’s state of health (diagnosis) at his or her place of work is an infringement of the person’s right to respect for his or her privacy, and therefore, unless such restriction of the person’s right to respect for his or her privacy is based on the Constitutional principles of restricting human rights, such restrictions are unlawful (unconstitutional).”

â€ The demand for submission of information of the personâ€™s state of health (diagnosis) at his or her place of work cannot be justified by considerations of security, economic welfare and human rights, especially if, as mentioned above, such requirement is set forth not by the laws of Ukraine, but by a normative legal act of subordinate legislation.â€• Page 4.

â€The arguments presented by the administrative respondents that prohibition to specify diagnoses in medical certificates would make it impossible to control the appropriateness of awarding and making respective insurance payments, cannot be accepted by the Court, since considerations of efficiency, expediency, and the practice history hardly suffice to be any valid excuse for avoiding the duty to abide by human rights standards established by the Constitution of Ukraine and the international treaties of Ukraine, the binding nature of which is recognized by the Verkhovna Rada of Ukraine and the laws of Ukraine. Out of the same considerations, the Court does not take into account the fact that â€no problems had ever arisen before in connection with inclusion of diagnoses in medical certificatesâ€™â€• Page 7.

Copyright © 2015 www.GlobalHealthRights.org