



## Case 1-27/2009

Case No. 1-27/2009

**Country:** Ukraine

**Region:** Europe

**Year:** 2009

**Court:** Turiyskiy District Court

**Health Topics:** Child and adolescent health, Health care and health services, Health systems and financing, Hospitals, Medical malpractice

**Human Rights:** Right to health

### Facts

On 27 August 2003, the defendant doctor, who had worked as an infectious disease physician at the Department of Infectious Diseases at the Kovel central regional hospital, examined her patient who was showing signs of respiratory and cardiac failure. The defendant doctor left her patient in this critical health condition without taking the appropriate medical measures or issuing any instructions. 15 minutes later an intensive care doctor tried to resuscitate the patient, but it was too late and the patient died. The defendant doctor was therefore accused of failing to provide medical help to a patient knowing that such failure may have grave consequences for the patient, which was a crime under the Article 139 paragraph 1 of the Criminal Code of Ukraine,

In addition, under the Article 184 paragraph 1 of the Criminal Code of Ukraine, the defendant doctor was also accused of unlawfully demanding that the father of the patient pay for the medical treatments, which should have been provided by the Kovel central regional hospital.

### Decision and Reasoning

The Court noted that, during the trial, the defendant doctor gave evidence that she was aware that the symptoms the patient displayed indicated respiratory and cardiac failure and determined that the defendant doctor knew that that not undertaking appropriate medical treatments for the patient, such as an artificial respiration and closed heart massage, could cause serious harm. Therefore, the Court held that the defendant guilty of committing the crime pursuant to the Article 139 paragraph 1 of the Criminal Code of Ukraine.

With respect to the defendant doctor's alleged unlawful demand that the patient's father to pay for treatment the Court found that the evidence did not prove that the defendant had made such a demand. Therefore, the Court held that the defendant was not guilty in committing the crime stipulated by the Article 184 paragraph 1 of the Criminal Code of Ukraine.

### Decision Excerpts

“Instead of starting artificial respiration and performing closed heart massage until the respiratory and health functions would have been restored, PERSON\_4 without any reason left PERSON\_5 in a critical health condition without proper immediate medical help, while knowing that absence of immediate medical help may cause grave consequences for the patient.” • Page 1.

“Thus, after analyzing the evidence collected, the Court considers that PERSON\_4 is guilty of committing the crime envisioned by Article 139 paragraph 1 of the Criminal Code of Ukraine. It classifies her actions as failure to provide medical help to a patient without having good reason by the medical personnel, who according to the established rules is obliged to provide such help, if he/she knows that this may have grave consequences for a patient.” • Page 3.

“Under Article 184 paragraph 1 of the Criminal Code of Ukraine such actions of PERSON\_4 is qualified as unlawful demand to pay for the medical aid provided at the municipal health protection institution. Moreover, there is no evidence in the case, which would confirm that actions of PERSON\_4 establish corpus delicti, which is envisioned by Article 184 paragraph 1 of the Criminal Code of Ukraine.” • Page 3.

