



Case 2-88-09

Country: Russia

Region: Europe

Year: 2009

Court: Moscow District Court

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

Human Rights: Right to health

Facts

The applicant R.A. injured his right ankle joint when ice skating on January 4th, 2008. He went to an emergency room at the defendant's Medical Healthcare Institution (MHI) in order to. However, a doctor there only examined his ankle with her hands, and diagnosed a ligament sprain in the right joint, but neither took an X-ray nor immobilized the limb, which were the normal treatments for fractures. The doctor wrote a referral for the further examination to the hospital of the Department of Internal Affairs (DIA). Since DIA was closed during weekends, R.A. made an appointment to meet a doctor at DIA on January 9, 2008.

R.A. insisted that the medical staff's attitude became rude once they learned R.A. was a police officer and he had no insurance, and he was not provided necessary treatment. He also alleged that because of emotional distress caused by the knowledge that he received poor quality treatment since he was a police officer without insurance, as well as physical distress, it took a longer time to recover and return to his job.

R.A. brought suit in Moscow district court of city Tver against MHI seeking for compensation of moral damage.

Decision and Reasoning

The Court determined that the doctor at MHI made an incorrect diagnosis and did not provide full medical help to R.A., because she did not conduct X-ray examination of the right ankle joint and immobilize the injured limb, which were necessary to make a correct diagnosis and necessary treatment respectively, but these facts did not cause the delay of recovery.

The Court held, however, that the fact that the applicant received physical and psychological damage because he was not provided full medical help constituted the basis for psychological compensation, which was set forth in Article 1100 of CC RF. Thus, the Court ordered MHI to pay R.A. 1000 rubles as a compensation for emotional damages.

The Court also held that medical staff's rude attitude to the applicant was unproven based on the evidence at hand.

Decision Excerpts

According to Article 41 of the Constitution of the Russian Federation every person has the right on healthcare and medical help. Right on healthcare according to Article 17 of the Fundamentals of the legislation of the Russian Federation on healthcare of citizens dated 22 July 1993 No. 5487-1 is provided also through providing for citizens accessible medical help. This right is guaranteed by the state for the citizens of the Russian Federation regardless any circumstances. According to the Article 2 of the Fundamentals to the basic principles of the healthcare belong respect for rights of a human and a citizen in healthcare area and provision of state guarantees related to this rights, accessibility of medical-social help. Page 5

According to Article 150 of CC RF health belongs to intangible rights (non-profit rights). According to Article 151 of CC RF if the citizen has been inflicted a moral damage (the physical or moral sufferings) by the actions, violating his personal non-property rights or infringing upon the other non-material values in his possession, and also in the other law-stipulated cases, the court may impose upon the culprit the duty to pay

out the monetary compensation for the said damage.â€•Â Page 7

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