Case No. 1-27/09

JUDGMENT

IN THE NAME OF UKRAINE

26 October 2009
Turiyskiy District Court of the Volunskiy region consisting of:

the Chairman Ovsienko A.A.
Secretary Veremchuk L.U.
Prosecutor Knish V.V.
Victims PERSON_1, PERSON_2
Advocate PERSON_3

considered in the open court hearing in the village Turiysk of the Volunskiy region the criminal case on charges PERSON_4, INFORMATION_1, Ukrainian, the citizen of Ukraine, who was born in INFORMATION_2, who is currently living in the city Kovel, 26/2, Mechnikova street, Volunskyi region, single, INFORMATION_3, retired, who was not previously convicted for the crimes prescribed by Article 139 paragraph 1, Article 184 paragraph 1 of the Criminal Code of Ukraine,

established:

On 27 August 2003 at 3:45 PM PERSON_4, who has a higher education and the first medical qualification, who has worked as an infectious disease physician at the Department of infectious diseases at the Kovel central regional hospital, who according to Article 52 of the Law of Ukraine "Fundamentals of the Legislature of Ukraine on protection of health" issued on 19.11.1992 No. 2801-XII,which provides that the medical personnel should provide full medical help for a patient, whose health condition is critical, was obliged to provide timely appropriate and qualitative medical help, when it was identified that the patient PERSON_5, who was in a manipulation room at the Department of infectious diseases at the Kovel central regional hospital, had deterioration of respiration with development of respiratory and heart failure and its side effects, such as acrocyanosis of lips and nose. 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.
PERSON_4 did not accept her guilt in committing the crime and she said that PERSON_5, who was hospitalized at the Department on the request of the Deputy Head of the Department of the Intensive Care and Anesthesiology, PERSON_6, was not her patient. For this reason when the patient experienced health deterioration, she immediately called the intensive care department doctor PERSON_7, who was already prescribing the treatment for PERSON_5.

According to Person No 4 Since at 3:45 PM though the patient had weakened breathing and heartbeat, there were no grounds for providing PERSON_5 with artificial respiration and close heart massage. Despite the evidence provided by the Respondent (Person_4), she has been found

guilty of committing the crime, prescribed by Article 139 paragraph 1 of the Criminal Code of Ukraine. The guilt was proven by all the evidence collected and studied by the court.
Thus, according to the excerpts of the orders No. 226 dated 5 October 1981, No. 152/os dated 11 August 2003, PERSON_4 is working in the position of an infectious diseases physician at the Department of infectious diseases at the Kovel central regional hospital since 1981, and since 11 August 2003 she additionally became a Deputy Head of the Department of infectious diseases.
As it was stated by PERSON_4, on 27 August 2003 she was the only one working as an infectious diseases physician at the Department of infectious diseases of the Kovel central regional hospital.
The fact that at 1:30 PM on 27 August 2003 PERSON_5 was hospitalized at the Department of infectious diseases of the Kovel central regional hospital having been diagnosed with "Acute noninfectious enterocolitis, critical condition. Neurotoxicosis". At 3:45 PM on the same day PERSON_4 was asked by the nurse to go to the manipulations room because of acrocyanosis of the lips and nose of PERSON_5.
As it was said by the witnesses PERSON_8 and PERSON_9, they called for PERSON_4 at 3:45 PM on 27 August 2003 due to deterioration of the respitorial functions of PERSON_5 and appearance of symptoms of acrocyanosis of the lips and nose. PERSON_4 examined the child superficially and did not take any measures and did not give any instructions. Then she left the manipulation room and she came back again just after the intensive care doctor PERSON_7 came around 4:00 PM.
Similar testimonies were provided by PERSON_2 and PERSON_1, who also confirmed that when PERSON_4 upon a request, came at 3:45 PM, she conducted just a brief examination of PERSON_5, then she left the child along. Until PERSON_7 came, namely until 4:00 PM, no resuscitation measures took place.
The witnesses PERSON_7 and PERSON_10 said to the court that when at 4:00 PM PERSON_4 came upon a request being made to her, to the manipulation room of the Department of infectious diseases of the Kovel central regional hospital, PERSON_5 did not have respitory functions and heartbeat. For this reason, they immediately conducted such reanimation measures as: artificial lungs ventilation and closed heart massage. However, despite all the measures they did not manage to restore the heartbeat and at 5:40 PM on 27 August 2003 PERSON_5 passed away.
According to the conclusions of the forensic expertise commission No. 13 dated on 26 April 2004, No. 204 dated on 16 June 2004, No. 292 dated on 16 September 2006 in the situation when a patient has a sudden respiration and heart dysfunction with the development of the respiratory and heart failure, what is accompanied by the lips and nose wings acrocyanosis symptoms, what was the case of PERSON_5 AT 3:45 pm N 27 August 2003, PERSON_4 should have started to done for the patient an artificial respiration and closed heart massage until the respiration and heart functions would have been restored or until the medical personnel from the resuscitation department would have come.
The above mentioned conclusions of the forensic experts are based on fully and objectively established facts of the case, amongst others: on the results of the autopsy study, on primary medical documentation (medical card No. 1065 of the patient), on testimony of witnesses and victims, which are based on scientific facts and are consistent. Therefore, taking into account scope of the trial, mentioned in Article 275 paragraph 1 of the Criminal Process Code of Ukraine, they are sufficiently informative and persuasive.

PERSON_4 witnessed that she knew that the lips and nose wings acrocianosis are the symptoms of respiration dysfunction with the development of the respiratory and heart failure.
Therefore, the Court considers that taking into account the health condition, which had the patient PERSON_5, by leaving her without any medical help and without conducting immediate artificial respiration PERSON_4 realized that not doing this could have led to grave consequences.
The PERSON_4's arguments that there were no medical indications for conducting such immediate resuscitation measures as: an artificial lungs ventilation and closed heart massage, are refuted by her own statement that the appearance of the lips and nose wings acrocianosis symptoms and also the dysfunction of the respiration were the reason why she called for the resuscitation doctor.
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.
However, since the crime committed by PERSON_4, which is envisioned by Article 139 paragraph 1 of the Criminal Code of Ukraine, according to Article 12 paragraph 2 of the Criminal Code of Ukraine belongs to the category of minor offence, for which the punishment prescribed is less severe than restriction of freedom. Moreover, since starting from the moment when the crime was committed till the moment when the judgment was delivered more than two years passed, according to Article 49 paragraph 1, Article 74 paragraph 5 of the Criminal Code of Ukraine the court by recognizing PERSON_4 guilty of committing the crime envisioned by Article 139 paragraph 1 of the Criminal Code of Ukraine releases from the punishment since the it was barred by limitation.
PERSON_4 is also accused of unlawfully asking the father (Person_1) of the patient (Person_5) to purchase the medications in the pharmacy N. 35, which is situated in the building of the below mentioned medical institution.on 27 August 2003 around 13:00 while being in the admission office of the Kovel central regional hospital, which address is 4, Olena Pchilka str., Kovel, Volinskiy Region,
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 Artilce 184 paragraph 1 of the Criminal Code of Ukraine.
Thus, PERSON_4 categorically denied the fact that she demanded PERSON_1 or PERSON_2 to pay for providing medical aid for PERSON_5. This was confirmed by the witnesses PERSON_6 and PERSON_7.
In addition, during pretrial and trial period victims PERSON_1 and PERSON_2 did not mention that PERSON_4 demanded payment for the treatment, preventive measures or other kind of medical services, which were provided or should have been provided by the Kovel central regional hospital for PERSON_5 when she entered the medical institution.
Moreover, PERSON_1 was not able to state clearly who drafted and gave him in the admission office of the Kovel central regional hospital the list of medications, needed for treatment of his

daughter PERSON_5 and which were later purchased by him in the pharmacy by his own money.
As it was said by the witnesses PERSON_1 and PERSON_2 in the admission office PERSON_4 just answered PERSON_1's question of where the pharmacy is situated where he would be able to purchase the medication mentioned in the list and she also complained that PERSON_1 and PERSON_2 did not have enough money to pay purchase mentioned medication. She did not demand payment the medication.
Thus, the evidence investigated by the court shows that PERSON_4 did not demand anything from PERSON_1 or PERSON_2 to pay for the medical aid (treatment, preventive measures or other medical services), which was provided or should have been provided by the Kovel central regional hospital for PERSON_5 when she entered the medical institution. So the actions of PERSON_4 do not include corpus delicti envisioned by Article 184 paragraph 1 of the Criminal Code of Ukraine, namely its objective part.
In such circumstances, the court considers that the fact of committing the crime by PERSON_4, which is envisioned by Article 184 paragraph 1 of the Criminal Code of Ukraine, is not proved and it justifies PERSON_4 because there is not corpus delicti in its actions.
Until the judgment comes into force, the court leaves the previously chosen preventive measure, house arrest.
Pursuant to Articles 323, 324 of the Criminal Process Code of Ukraine the court

held:

PERSON_4 is guilty in committing a crime envisioned by the Article 139 paragraph 1 of the Criminal Code of Ukraine and according to Article 74 part 5 paragraph 1 of the Criminal Code of Ukraine she should be released from the punishment since the time legislative period has expired.
PERSON_4 is not guilty in committing the crime envisioned by Article 184 paragraph 1 of the Criminal Code of Ukraine and she is acquitted from the accusation due to absence of corpus delicti in her actions.
Until the judgment comes into force PERSON_4 will continue to remain under house arrest.
The judgment of the court could be appealed to the Turinskiy regional court of the Volinskiy region during the 15-day period after it is proclaimed.

Chairman