ARHANGELSK REGIONAL COURT

Case No. 33-3161

21 November 2002

JUDGMENT

Judicial board on civil cases of the Arhangelsk regional court consisting of Chairman judge Panteleev V.V., judges Karpushina A.V., Efremova U.M. considered in the open court hearing in the city Arhangelsk on 12 November 2002, the case on cassation, complaint of A. on judgment of Mirniy city court of the Arhangelsk region dated 15.10.2002 in which it was decided:

To reject the complaint of A. on actions of the administration of the city child clinic in the city Mirniy.

Judicial board established:

A. filed a complaint on actions of the administration of the city child clinic in the city Mirniy, which when she came to the clinic refused to give her the medical history issued for her under-aged daughter by this health care institution.

The applicant considers the actions of the administration of the health care institution as inconsistent with the federal legislation since they violate her constitutional right to receive relevant information.

In the court hearing the applicant sustained her complaints.

The representative of the administration of the child clinic in the city Mirniy did not agree with the complaints of the applicant, saying that the refusal to give the medical history is grounded, since it is not stipulated by normative documents and the applicant could have received copy of the relevant document, which she refused to receive.

The Mirniy city court passed this judgment, with which A. did not agree. In the submitted cassation complaint she requests to nullify the judgment adopted saying that it is illegal. The court did not consider relevant provisions of the Constitution of the Russian Federation (RF), which state the obligation of institutions to provide relevant information for citizens on their request. Moreover, the court made an incorrect interpretation of the provisions of the Fundamentals of the legislation on health care, which also provide right to receive relevant information as a part of citizen's rights. Established in the Fundamentals right to request a copy of a medical document is an additional guarantee to protect citizen's rights, which was not taken into account by the court while rendering the judgment. The normative acts mentioned in the judgment may not be applicable since they were not published for general information and did not pass legal review. The court did not take into account the fact that for more than 10 years the medical history was not in the clinic and some data which was in it was lost due to clinic's fault.

As a counterargument to the submitted cassation appeal, the Central city hospital in the city Mirniy considers the judgment made by the court to be correct since the court properly applied substantive and procedural law. It stated that relevant provisions of the legislation on health care of citizens limit the right to receive the original medical history by citizens, but provide the right to receive its copy.

Having examined and studied the case materials, arguments stated in the cassation complaint, having heard report of the judge Karpushin A.V., the judicial board considers the court's judgment to be correct and lawful.

Based on the present statement of A. dated 28 September 2002 addressed to the deputy head of the City child clinic in the city Mirniy it is seen that she requested the medical history of her underage daughter V.

From the response of the Head Doctor of the Municipal Health Care Institution Central City Hospital S. it follows that the applicant was refused her request to receive a copy of the requested medical documents.

By refusing to satisfy A's complaint about refusal of citizen's request by the actions of the administration of the health care institution, the court came to the conclusion that actions of the Head doctor of the clinic

do not violate rights of a citizen to receive needed information. This is because relevant provisions of the federal legislation provided that a copy of relevant documents is to be considered as a reliable document and, relevant health authorities have a responsibility to keep information in original.

Refusal of an official to provide copy of the information for a citizen as it is prescribed by substantive law was not established by the court.

The judicial board considers the conclusion of the court about the refusal to satisfy citizen's complaint on actions of the administration of the clinic addressed to the Head doctor to be correct and lawful.

As it was explained in its Judgment No. 10 dated 21.12.1993, the Plenum of the Supreme Court of the RF "On consideration by courts of complaints on illegal actions which violate rights and freedoms of citizens" (p. 6), every citizen has the right to receive and an official, public servant have the responsibility to provide them with access to documents and materials which directly affect their rights and freedoms, if there are no restrictions on information in these documents and materials established by the federal law.

According to Article 31 of the Fundamentals of the legislation of the Russian Federation on health care of citizens, a citizen has the right to get directly acquainted with medical documents which include information about their health condition and to get advice on it from other professionals. On the request of a citizen they can receive copies of medical documents, which includes information on their health condition if rights of third parties are affected by it.

Under such circumstances taking into account mentioned explanation given in the Judgment of the Plenum of the Supreme Court of the RF, taking into account requirements of provisions of the federal law, the court reasonably concluded that the administration of the clinic did not violate the rights of citizen related to receipt of needed information including receipt of medical book. This is because the above mentioned provisions of the federal legislation do not provide issuance of medical documents for citizens in original, and a citizen has the right to receive information about its content in the form of copies of such documents.

The mentioned provisions show that the right of a citizen to receive information which is contained in the originals of the medical documents may be realized through providing a copy of these documents.

As follows from the official response to the applicant, a copy of the medical history of her daughter could have been given to her when she came to the clinic.

The above mentioned judgment demonstrates that the court of first instance gave a correct interpretation and application of substantive law related to rights of a citizen to receive needed information from health care institution, whose actions were carried out within the limits set by the specifically applicable law.

Therefore the judicial board cannot agree with the arguments of the cassation applicant in that the court wrongly refused to satisfy her complaint, since the clinic's official violated her constitutional rights as a citizen as a part of receipt of needed information related to her private rights.

The court gave a proper assessment of the circumstances, established that constitutional rights of citizen were not violated by the actions of an official and the actions cannot be recognized illegal since official of the administration of the clinic was acting within the limits of the powers granted to him in accordance with the provisions of the federal law.

The reference of the cassation applicant that the court in its judgment applied provisions of law which did not pass the state registration and were not published for general information cannot be justified. This is because while deciding on the merits the court made a decision based on valid federal laws, and the reference of the court to the mentioned departmental acts cannot discredit in whole, the correctness and legality of the judgment of the court.

The complaint of the applicant on the decision of the judge to refuse satisfaction of comments to the court hearing record cannot be taken into consideration, since provisions of the procedural law do not provide the procedure for appealing decisions in the part of consideration of comments to the court hearing record, as according to Article 230 of the Civil Procedural Code of the RF comments to the record and decision of a chairman are to be attached to the court hearing record.

Considering that the court gave the proper assessment of the legal relations, the provisions of the substantive and procedural law were applied properly, there are no grounds for cancellation of the judgment, neither there are such grounds in the submitted cassation complaint, guided by Article 305 paragraph 1 of the Civil Procedural Code of the RF, the judicial board

established:

Judgment of the Mirniy city court of the Arhangelsk region dated 28.10.2002 to be left unchanged, the cassation complaint of A. to be left unsatisfied.