MOSCOW DISCTRICT COURT OF CITY TVER

In the Name of Russian Federation

JUDGMENT

5 May 2009 in case No. 2-88/09

Judgment in its final form was made 12 May 2009.

Moscow district court of city Tver consisting of: chairman judge Perzukova L.V., with secretary Z.,

With participation of the applicant R.A., representatives of the respondent S. and N., acting by power of attorney <…>, considered in the open court hearing in city Tver civil case upon the application of R.A. against Medical Healthcare Institution "G." (hereinafter – MHI "G.") on compensation of moral damage,

established:

R.A. submitted an application to the court against MHI "G." on compensation of moral damage in the amount of 30000 rubles (hereinafter – RUB) saying that 4 January 2008 at around 14 o'clock he applied to the emergency room and requested medical help. Once it became clear that he is a police officer and that he has no health insurance the doctor's attitude became rude. Needed medical services practically were not provided for the applicant. The nurse filled in the registration card, the doctor examined an ankle with her hands, she diagnosed: sprain of ligaments of the right joint and wrote out a referral to the hospital of the Department of Internal Affairs (hereinafter – DIA). The doctor did not pay attention to the place where severe pain mentioned by the applicant was. In clinical practice fracture is normally diagnosed based on basic typical symptoms and results of X-ray examination, sprains – based on palpation followed by refinement of diagnosis through X-ray examination (to differentiate torn ligaments from fractures). Treatment of fractions involves cast application for immobilization, sprain – tight bandaging of a joint. X-ray examination of the injury was not done for the applicant, anesthesia was not used, the leg was not bandaged. As result of poor diagnostics he received incorrect diagnosis, and the applicant was deprived of necessary treatment. The hospital of DIA was not working on the weekend. The applicant got doctor's appointment only on 9 January 2008. There he underwent X-ray examination and was diagnosed having: fracture of the lower third of fibula with transition to the ankle without dislocation, the cast was applied on the leg. In the period from 4 until 9 January the applicant did not receive any other injuries, he stayed at home. Procedure of provision of medical help for personnel of the interior is regulated by the Decree of the Government of the Russian Federation dated 31 December 2004 No. 911, which approved the Regulations on provision of medical help (medical care) for personnel of the interior and some other ministries and departments and the Regulations on reimbursement for state and municipal healthcare institutions of costs for provision of medical help for servicemen, personnel of the interior and some other ministries and departments. According to paragraph 5 of the Regulations on provision of medical help for personnel medical help for the latter in state and municipal healthcare

institutions is provided if at duty station, place of residence (domicile) or other location of personnel there is no healthcare institution of the system of the Ministry of Internal Affairs (hereinafter – MIA) of Russia, and also in cases of emergency. According to Article 37.1 of the Fundamentals of the legislation of the Russian Federation on healthcare of citizens dated 22 July 1993 No. 5487-1 injuries refer to emergency cases. The applicant and DIA in Tver region entered into agreement <…> on provision of medical help and other medical services for personnel of the interior of Tver region, who were registered for permanent maintenance at MIA hospital of Tver region. According to paragraph 1 of the agreement medical help and other medical services are provided if at duty station, place of residence (domicile) or other location of personnel there is no healthcare institution within the jurisdiction of DIF in Tver region or if this institution does not have required departments or special medical equipment, and also in cases of emergency. According to paragraph 4 of this agreement the respondent provides patients with timely appropriate medical help of good quality. 9 January 2008 the applicant while getting to DIA hospital on a taxi with a swollen leg was suffering from pain. Due to the fact that he was provided with medical service of poor quality he had to suffer unfairly for more than five days, experiencing physical and related emotional distress, which increased by the knowledge that he was treated that way because he is a police officer, and also that as a result of medical service of poor quality the time of recovery is delayed and the date when he starts working again is also delayed.

During the court hearings the applicant fully supported the declared application, he confirmed his arguments stated in the application and statements provided by him previously, according to which on 4 January 2008 he received sport injury and applied to the emergency room at MHI “G.” complaining about pain in the area of the right ankle’s joint. 9 January 2008 he applied to the DIA hospital with the same complaints, particularly pain in the same place, which he had had after injury 4 January 2008. According to valid legislation and medical literature injuries refer to emergency cases. People having isolated fractures of fibula and sprains of joints require provision of emergency medical help in emergency rooms. The clinical picture of fractures without dislocations, bruises and sprains is similar. Clinical manifestations of fractures are very diverse and not always are equally well seen. Pain and swelling are among the main symptoms of fracture. Symptom of dysfunction, which he had, could have been absent since in case of fracture of fibula the main function is executed by tibia. When he came to healthcare institution first of all he should have been properly diagnosed. Misdiagnosis was not a result of severity of injury but the consequence of dishonest attitude of medical staff towards their responsibilities. Diagnostics was limited to the fact that the doctor solely touched an ankle with his fingers from both sides. Clarification of his complaints did not take place. Moreover, the doctor ignored them. He or his wife who helped him to get to the doctor’s room was not asked about the circumstances of receiving the injury. Careful palpation of injury was not provided. Examination was superficial. None of other methods to establish diagnosis were used. The whole communication with the medical staff lasted for several minutes, and most of the time was spent on filling in the medical card. Outpatient card in his presence was not filled in. The applicant thinks that the refusal to make an X-ray examination was not grounded. First aid and treatment of fractures and strains includes anesthesia and immobility. The statement of the respondent that latter cast application affected neither the time of recovery nor the time of disability, which is 40-45 days, contradicts the Recommendations for chiefs of healthcare institutions and doctors, specialists of the executive bodies of the Fund of social insurance of the Russian Federation and the principle of urgency, which provide

basis for help in cases of injuries. According to the defined Recommendations the time of disability in case of closed fracture of fibula without dislocation is 35-40 days. He was temporary disabled from 4 January until 22 February 2008, i.e. 50 days, what is 10-15 days longer than the time set by the Recommendations and 10-15 days longer that terms identified by the respondent. Application of cast in first hours after injury is required for fractures without bones dislocation. Medical help for police personnel is provided according to the Decree of the Government of the Russian Federation dated 31 December 2004 No. 911 and the respective agreement, and the statement of the respondent that the agreement should not be applicable is ungrounded. At the same time mutual settlement of accounts is to be done starting from the moment when danger for life is gone, therefore, in his case he should have received full medical help and then the costs would have been paid by DIA. Having left him without first aid, and not registering medical certificate he was given the referral to undergo treatment and clarification of a diagnosis to DIA hospital knowing that that it is not working on holiday and weekend days and having an obligation also according to the agreement to establish the correct diagnosis and provide treatment. In addition to adverse effects to his health it should be taken into account that he is a police officer and he could have always been called on duty and he would had to go because he did not have a medical certificate. For respondent to fulfill the obligations under the agreement the second application or call to ambulance was not required. The reference of the respondent on planned medical treatment of personnel is irrelevant for this case, since on 4 January 2008 firstly he had an emergency situation and secondly DIA hospital was not working on holiday and weekend days. The second time he decided not to come to MHI “G.” since he did not see the point, for him the first time was enough and the bad attitude towards the patient. Bad attitude reflected in roughness that when the doctor saw the police officer’s identity card he threw it away. Moreover, the doctor provided examination of poor quality. During the court hearings the applicant stated that he disagreed with findings of the comprehensive forensic expertise to that extend that not fully provided medical care did not affect the recovery time and time of his temporary disability, since it is impossible to establish time of recovery and time of his temporary disability if proper medical care is provided. On the contrary the applicant thinks that the fact that the cast was applied later that 4 January 2008 affected the time of recovery.

While considering the case the respondent provided written response on application, according to which the respondent did not agree with the application on the following grounds. Rude attitude towards the applicant, which according to the statement of the applicant took place from the side of the medical staff after he mentioned the place of his work, did not take place since this emergency room provides twenty-four-hour free of charge emergency medical help for everybody who requests it regardless of place of work, place of residence and presence of documents. The attitude towards R.A. was appropriate. The reference of the applicant on the agreement dated 24 March 2005 No. 492 is ungrounded since 1 August 2006 the new agreement on provision of medical help for personnel of the internal affairs came into force. Moreover, in this case the presence of this agreement does not play any role since the applicant received free emergency medical help according to Article 7 of the Law of Tver regions dated 25 June 1999 No. 65-ОЗ-2 “On healthcare in Tver region’. The agreement comes into force when relations related to provision of planned medical care appear. R.A. was registered in the journal of patients, he was given an outpatient card <…>. While being examined mild swelling of outer surface of the right ankle joint was diagnosed, there were no hematomas. Palpation (touching) in the projection of

the external collateral ligament was painful. Palpation of the ankles of the right leg was painless, crepitus of bone fragments was not diagnosed. The foot was warm, clear pulse. Movement of the right ankle joint was painful. Due to absence of crepitus of bone fragments and localization of swelling and soreness in ligaments area X-ray examination was not carried out. Based on the provided examination the sprain of the ligaments of the right ankle joint was diagnosed. Treatment was prescribed: bandaging with elastic bandage, cold on the right ankle joint, “Nimesil” 1 tablet 2 times a day or “Nise” 1 tablet 2 times a day, “Fastum-gel”. Since the patient did not need anesthetic injections, the anesthetics in form of tablets and fixation of the joint with elastic bandage were prescribed. For further treatment, observation and possible further diagnostics the patient was referred to DIA hospital. Taking into account all mentioned above the respondent believes that the applicant was provided with full and high quality emergency medical help. The statement of the applicant that he in the period from 4 until 9 January 2008 was suffering from physical pain are doubtful since in such situations patients call the emergency or for the second time request help at the emergency room or at any other one, where also twenty-four-hour free of charge medical help is provided for all injured people. The fact that DIA hospital where the applicant was referred did not accept patients until 9 January 2008 is the consequence of the internal organization of the hospital. In addition, according to the agreement dated 1 August 2006 in order to accept personnel at healthcare institutions for planned treatment or diagnostics (examination) referral from chief of the body of the internal affairs with indication of passport information of the patient, goal of the referral to the healthcare institution, bank details of the Customer, an identity document are to be provided. Taking into account the above mentioned the respondent thinks that the stated application is not grounded.

During the court hearings the representative of the respondent N. did not acknowledge the application’s claims, confirmed arguments stated in the written response of the respondent, explanations of the representative of respondent S. and K. given during the consideration of the case, and also explanations given by her before, according to which this representative of the respondent disagrees with the indication about rude attitude of a doctor towards the patient, she thinks that the applicant has a purely subjective opinion. The help was provided urgently and fully. Doctor made a diagnosis that in the moment when help was requested seemed to be correct.

During the court hearing the representative of the respondent S. did not acknowledge the application, confirmed arguments stated in the written response of the respondent, explanations of the representative of respondent N. and K. given during the consideration of the case, and also explanations given by her before, according to which 4 January 2008 during her shift R.A., 41 years old, came complaining about pain in the right ankle joint. He said that he was ice skating and he sprained his foot in the ankle joint. The patient’s profession and absence of health insurance did not have any significance since the emergency room provides twenty-four-hour free of charge emergency medical help for everybody who requests it regardless work place, place of residence and presence of documents. Treatment of the patient was correct. R.A. was registered in the journal of patients, he was given an outpatient card <…>. After examination he was prescribed required treatment and bandaging with elastic bandage. The elastic bandage and tablets are to be purchased in a pharmacy, since the emergency room does not have the anesthetics in form of tablets and elastic bandages. For further treatment, observation and possible further diagnosis the patient was referred to DIA hospital. Modern medicine “Nimesil” and “Nise” are good anesthetic, antihydropic, and anti-inflammatory remedies, which eliminate or significantly

reduce pain and swelling. Therefore, the statement of the patient about unbearable pain in this case is exaggerated. From 4 January 2008 until 9 January 2008 R.A. did not request medical help, there is no reliable information on whether he could not have received a new injury. At DIA hospital after providing X-ray examination the diagnosis of fracture of the lower third of fibula with transition to the ankle without dislocation was made, the cast was applied on the leg. Such injury is not severe and it does not threaten the patient's life and health. Moreover, there is a functional method in treating standard fractures without dislocation – without a cast application, which has complications in form of muscles atrophy, joint contractures, osteoporosis. The fact that cast was applied later affected neither the recovery time of fracture nor the time of disability of a patient, since according to the approximate time of temporary disability according to International Statistical Classification of Diseases and Related Health Problems – 10 time of disability for fractures of fibula and lateral malleolus is 40-45 days. In this case there were no violations of job regulations, right on healthcare, consumer rights, no harm was caused to health, there was no moral damage. In addition, all circumstances of receiving the injury were discribed in the outpatient card. Medical certificate was not given to the patient, because it was referred to DIA hospital for further treatment and observation. Now to issue medical certificate there are two types of injuries household and industrial. Household injury includes also sport injury. The ultimate diagnosis is not always the same as the preliminary one and therefore treatment and observance of a patient are required. The applicant received the preliminary diagnosis. In addition the applicant himself did not request an X-ray examination. The applicant asked her concerning the fracture and she answered that there are many patients and she has a large practice, she did not identify fracture then. During the court hearings the representative of the respondent explained that R.A. did not need anesthetic injections and cast application for such type of fracture is not mandatory.

During the court hearings the representative of the respondent K. whose explanations were supported by the representative of respondent N. and S. did not acknowledge the application, saying that there are difficulties in differentiation of diagnostics between ligament strains and ankle fractures. From the first sight after having examined the patient the doctor described edema, bones crepitus was not identified. For this reason, sprain was diagnosed. The only mistake which is acknowledged by the respondent is that it was necessary to bandage the joint with simple bandage until the patient would have bought elastic bandage. If the patient had pain syndrome he should have applied to any healthcare institution. The applicant's case was discussed by the doctors and specifically with doctor, who led the reception. On that stage it was really hard to make a diagnosis for the applicant due to his big muscle bulk. Pain does not mean that patient has fracture. Therefore, according to the treatment standards for ligament strains X-ray examination is not required. But if the patient would have insisted the emergency room had all resources to provide the examination. No measures of disciplinary penalty were applied towards doctor S.

Having heard the partied, examined the case materials the court comes to the following conclusions.

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.

According to Article 31 of the Law of Tver region dated 24 June 1999 No. 65-ОЗ-2 "On healthcare in Tver region" in situations which require urgent medical intervention, including injuries, citizens of RF and other people who are on the territory of Tver region are provided with free emergency medical help.

The court discovered that 4 January 2008 the applicant R.A. applied to the emergency room of MHI "G." because of the injury received while being ice skating. S. made a diagnosis "ligament strain of the right ankle joint", bandaging with elastic bandage was recommended, application of cold on right ankle joint, "Nimesil" in tablet to take 2 times a day or "Nise" to take 1 tablet 2 times a day. The fact of receiving of injury 4 January 2008 was confirmed by explanations of the applicant, explanations of witnesses S., R.B., R.T., outpatient card of the injured <…>, medical card of the outpatient patient <…>, copy of the conclusion of the official inspection of the fact that senior legal adviser police major R.A. received household injury on 4 March 2008, other case materials.

X-ray examination of the right ankle joint according to the conclusion of the comprehensive forensic expertise No. 50, held from 20 January 2009 until 30 March 2009, was necessary to make a correct diagnosis for R.A. Although as it was established during the court hearings and acknowledged by the representatives of the respondent it was not prescribed by doctor S., and accordingly it was not carried out.

The court found that 9 January 2008 the doctor of Medical sanitary department (hereinafter –MSD) DIA in Tver region in connection with the injury received by the applicant on 4 January 2008 after providing X-ray examination made a diagnosis "fracture of the lower third of fibula with transition to the ankle without dislocation", the cast was applied on the leg.

From the aforementioned it follows that the MHI "G." doctor S. on 4 January 2009 made an incorrect diagnosis and the medical help was not fully provided. Moreover, both in case of fracture of the lower third of fibula with transition to the ankle and also in case of diagnosis made by S. immobilization of the injured limb should have been done, what was not done by doctor. The above argument of the court is also confirmed by the above mentioned expert's conclusion. The arguments of the experts regarding the necessary immobilization of the injured limb correspond with expert's consultations: chief of the department of medical work of the Department of healthcare of the administration of city Tver and deputy of the Department of Traumatology of the Tver state medical academy (hereinafter – TSMA), the necessity of immobilization was also acknowledged by representative of the respondent K., whose explanations were supported by representatives of the respondent N. and S. during the court hearings on 4 Mai 2009.

As it follows from explanation of the applicant because of the fact that he was provided with poor quality medical service from 4 January 2008 until 9 January 2008 he was suffering from severe pain and associated emotional distress, which was enhanced because of the awareness of rude attitude towards him, and due to poor quality medical services the recovery time was delayed and the time when he started working was also delayed.

According to Article 67 of the CPC RF while announcing judgment court assesses relevance, admissibility, reliability of each evidence separately and also sufficiency and mutual connection of evidence in aggregate.

The court considers it to be proved that the applicant suffered physically due to absence of immobilization of the injured limb.

This argument of the court is confirmed by the explanations of the applicant, which correspond with consultation of an expert who has professional knowledge in the traumotology area, who explained during the court hearings that in case of absence of cast application, which provides rest for bone and joint, pain which lasted for about one week was severe, and also by the explanations of witnesses questioned.

The argument of the applicant about rude attitude towards him from the side of medical staff, mentioned in the application, was clarified during the court hearings and was limited to the fact that when S. saw his identity card she threw it away. The words of the applicant were confirmed also by R.T. According to explanations of the representative of the respondent S. the attitude towards R.T. was correct. Other evidence which would confirm or disclaim arguments of these persons was not provided. Based on the aforementioned the court considers that there is no sufficient evidence of rude attitude of the doctor S. towards the patient R.A., therefore, the courts finds this fact unproved.

The court considers as proved the fact that health damage as a result of actions of the doctor S. was not caused for the applicant, delayed diagnostics of fracture of the lower third of fibula with transition to the ankle without dislocation did not affect the recovery time and time of temporary disability. This argument of the court is based on the above mentioned expert's conclusion which corresponds with expert's consultations provided during the consideration of the case and with explanations of the representative of the respondent S. The court critically considered counterarguments of the applicant in this part since he does not possess special knowledge in the traumatology area, therefore, his arguments may have tentative, probabilistic nature. The conclusion of the comprehensive forensic expertise, however, is the admissible evidence of the circumstance under consideration. The court does not have reasons to doubt conclusions of experts, who conducted an expertise upon court's request, who were warned about the criminal liability for giving knowingly false conclusion, their qualifications and work experience show that they possess special knowledge in the field of medicine. Based on these grounds and also seeing the interest of the representative of the respondent S. to get the case's outcome, the court considered critically her arguments that the applicant was provided with the necessary medical help.

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.

According to the general rule of Article 1100 of CC RF moral damage is to be compensated only in cases when there is guilt of the inflictor of damage, excluding cases directly envisioned by the law.

According to the court's opinion the above established fact that medical help for the applicant provided by the doctor of MHI "G." was not full and that it led to physical and moral damage is the basis for moral damage compensation.

According to Article 1068 of CC RF a legal entity shall redress the injury inflicted by the employee during the performance of labour (official) duties.

Since the deputy of the Department of Traumatology of MHI “G.” S. did not provide the applicant with full medical help, it is as it was stated above a basis for moral damage compensation, the court finds that the respondent MHI “G.” is a proper respondent in this case.

While determining the size of moral damage compensation the court was guided by the Articles 151, 1101 of CC RF, following the principles of reasonableness and fairness, taking into account the nature of physical and moral damage caused for the applicant, absence of any harmful effects for the applicant’s health and absence of influence of delayed diagnostics on time of recovery and time of temporary disability of the applicant, and also degree of guilt of the inflictor of damage. Taking into account provisions of Article 401 of CC RF the court believes that an employee of the respondent S. had careless form of guilt namely taking into account the degree of care and diligence which was expected from her due to the nature of responsibilities and work conditions, she did not undertake all measures for proper performance of her responsibilities.

Based on the aforementioned the court believes that it is correct to reduce the amount of the moral damage compensation, which is to be paid by the respondent, to 1000 rubles.

Since the applicant did not pay state fee while having submitted the application, taking into account that the applicant submitted an application of non-property nature, the applicant is to pay to the federal budget the state fee in the amount of 100 rubles, what is determined on the basis of point 1 paragraph 1 Article 333. 19 of Tax Code of RF.

Guided by Article 196-198 CPC RF,

held:

to enforce from MHI “G.” in favour of R.A. as a compensation of moral damage 1000 rubles.

To refuse in satisfaction of the other part of the application of R.A.

to enforce from MHI “G.” into the federal budget state fee in the amount of 100 rubles.

The judgment can be appealed to the Tver regional court through the Moscow district court of city Tver within 10 days after the judgment is made in its final form.