

SUPREME COURT OF THE RUSSIAN FEDERATION

JUDGMENT

10 December 2009 No. 53-O09-81

(extract)

By the judgment of the Supreme Court of the Republic of Bashkortostan dated 14 September 2005 which was left unchanged by the cassation judgment of the Supreme Court of RF dated 13 December 2005 O. was released from criminal responsibility for committing in state of insanity a socially dangerous act, envisioned by paragraph 1 Article 30, paragraph 4 Article 33, point "z" paragraph 2 Article 105 of CC RF. He was imposed to compulsory measure of medical nature in form of compulsory outpatient observance and treatment by a psychiatrist.

The court established that under the circumstances stated in the judgment O. in state of insanity committed preparation for contract killing and abetting in committing this crime.

By the judgment of the Krasnoyarsk territorial court dated 3 April 2007 the compulsory measure of medical nature in form of compulsory outpatient observance and treatment by a psychiatrist for O. was changed to compulsory measure of medical nature in form of compulsory treatment at a psychiatric hospital of general type.

In cassation complains and amendments to them O. and his defenders requested to annul the judgment of the court dated 3 April 2007 and to send the case to a new trial. According to their statement this judgment was delivered in violation of criminal procedure law, and the court based it on the unverified conclusion of the expert's commission, which was made in violation of requirement of the law by persons concerned.

The judicial board on criminal cases of the Supreme Court of RF on 10 December 2009 annulled the judgment of the Krasnoyarsk territorial court based on the following grounds.

According to Article 7 of CPC RF the rulings of the court, the resolutions of the judge shall be lawful, substantiated and motivated.

Provisions of this article of the criminal procedure law do not allow the refusal of the court (judge) from consideration and assessment of all arguments of the application, petition or complain of the participants of criminal procedure if they relate to the merits of the issue considered by the court.

Court's judgment shall include the motivation of the decision made by pointing to specific, sufficient in terms of the principle of reasonableness grounds, according to which these arguments of the participants are to be rejected.

These requirements of the criminal procedural law were violated.

Krasnoyarsk territorial court while considering the submission of the administration of the special medical institution (hereinafter – institution) to change O.'s compulsory measure of medical nature from compulsory outpatient observation and treatment by a psychiatrist to compulsory treatment at a psychiatric hospital of general type according to Article 102 of CC RF, Article 445 of CPC RF was obliged to substantiate that the conclusion of psychiatrists' commission was grounded, and also the fact that the mental state of O. changed, what made it necessary to place him to the psychiatric hospital.

To motivate her decision to change O.'s compulsory measure of medical nature the judge in the judgment referred to the conclusion of the expert's commission, which was made by psychiatrists of the medical institution, to information from his outpatient card, and also to testimonies of the interrogated persons made during the court hearings: deputy head of the psychiatric addictology hospital M., testimony of O. and his legal representative A. At the same time the judge made the conclusion that O. evades compulsory medical treatment by a psychiatrist, does not execute the court's judgment, which appointed the compulsory measure of medical nature in form of outpatient treatment, and based on mental state and nature of a committed socially dangerous act was and is a danger for the society. This is the reason to place him at a psychiatric hospital.

However these conclusions do not correspond to the actual circumstances, since the judge did not take into account circumstances which could have affected the judgment of the court.

Within the meaning of Article 102 of CC RF and its interaction with Articles 97, 98, 99, 101 of CC RF compulsory measure of medical nature appointed for the person in form of compulsory outpatient treatment by a psychiatrist can be changed by a court to a more severe one only in case if his mental state had changed, what is connected with the necessity to place him to a psychiatric hospital for compulsory treatment. The court must have the information that due to the nature of mental disorder a person requires such conditions of treatment, care, maintenance and observance, which can be implemented only at a psychiatric hospital.

The judgment of the court do not provide reasoned arguments and evidence, which show that after O. was imposed to compulsory outpatient treatment his mental state deteriorated and he started being dangerous for himself and other people. Moreover, the information that due to the nature of mental disorder of O. he requires such conditions of treatment, care, maintenance and observance, which can be implemented only at a psychiatric hospital was not provided.

Such information neither was provided in the conclusion of psychiatrics, to which the judge referred in the judgment.

The expert's commission to support its conclusion about the necessity to place O. to a hospital for compulsory treatment stated that he refuses "required medical rehabilitation measures" and this does not exclude recurrence of a socially dangerous act and he does not have "disease's criticism".

The expert's conclusion does not include information about "medical rehabilitation measures", which were prescribed for O. by psychiatrists.

This fact should have been verified by the court also because O. and his defender in the court hearings stated that during O. was registered at the psychiatric addictology hospital he was not prescribed any treatment, although he did not refuse any medical rehabilitation measures.

As it follows from the case materials O. was not waiting for the judgment of the Supreme Court of the Republic of Bashkortostan to be received by the medical institution, by which he was appointed to compulsory medical treatment by a psychiatrics, in February 2005 he had an appointed with psychiatrist at his place of residence to be registered and to be observed by a psychiatrist. Later he regularly monthly (until the administration of the medical institution requested the court to place him at a psychiatric hospital) had appointments with a psychiatrist, under whose surveillance he was.

The court did not assess the statement of O. that he on principle did not refuse treatment.

O. during the court hearings explained that if M. (deputy head of the psychiatric neurological hospital) would have prescribed him a particular treatment then he (O.) would have taken the medicaments. Explanation of O. that he was not able to refuse treatment because it was not prescribed for him was not refuted by the administration of the medical institution. In support of his position O. referred to the fact that he needed medical documents since he intended to consult other psychiatrics of other medical institutions to verify the correctness of this diagnosis and prescribed treatment methods, but the head of the psychiatric neurological hospital prevented him from doing this, therefore he had to complain to the prosecutor office, to the Commissioner for Human Rights of city Zeleznogorsk and to the court.

In the petitions and complains available in the case which were referred to the prosecutor office, to the Commissioner for Human Rights of city Zeleznogorsk and to the court, O. states about the prevention of doctors of the medical institution in receiving information about his health condition.

During court hearings he explained that the administration of the medical institution submitted a complaint to the court about his compulsory placement at the psychological hospital what was a reaction on his complains: the deputy head of the psychiatric neurological hospital M. who signed the conclusion of the expert's commission about the necessity to change for him compulsory measure of medical nature is a person concerned since because of his (O.) complains M. was brought to the disciplinary responsibility for violation of his rights.

The case includes the copy of the order of the head of the medical institution from which follows that based on statement of the prosecutor made on complains of O. the deputy head of the psychiatric hospital M. was announced reprimand.

As follows from the present copies of the judgment of the city court of Zeleznogorsk dated 24 August 2006 prior to issue of "conclusion of the expert's commission" dated 30 August 2006 which included psychiatric M., O. submitted an application to the court against M. about recognition of his actions (or inactions) illegal and about compensation of moral damage.

The judgment of the court does not provide evaluation of these facts and explanations of O., who states that the expert's conclusion was written by persons concerned.

As it is stated in the case materials the petition of O. and his defender about carrying out forensic expertise was motivated by the fact that psychiatrics of the medical institution practically did not carry out the examination, they did not consider the conclusion of the expertise, which O. underwent at the institute named after V.P.Serbbskiy in the city Moscow; the medical doctor's conclusion itself which was sent to the court is not the conclusion of psychiatrics, as it is envisioned by Article 102 of CC RF and Article 445 of CPC RF and according to its form and content it is a conclusion of forensic expertise, which was received in violation of requirements of Article 18 of the Federal law dated 31 Mai 2001 No. 73-Φ3 "About the state forensic activity in the Russian Federation".

In the judgment the judge did not give a proper evaluation of these arguments of the advocate of O.

Meanwhile, comparison of the results of previous examinations, which include information about the mental condition of O., and results of the conclusion of psychiatrics' commission of the medical institution would have allowed the court to made an objective conclusion about presence or absence of

changes in mental condition of O., in case of which the need to appoint another compulsory measure of medical nature arises.

According to paragraph 5 Article 445 of CPC RF if medical conclusion is doubtful then the court upon the petition of persons who take part in the court hearings or upon its own initiative can order court's expertise, demand additional documents.

The court while considering the issue about existence of grounds for application, renewal, amendment or termination of application towards a person compulsory measures of medical nature has to verify during the court hearings the validity of the conclusions of psychiatrics about the existence of mental disease and its possible consequences and depending on the mental condition of a person to make a properly motivated judgment in the case.

Thus, the judge of the Krasnoyarsk territorial court did not consider arguments of the defender of O. and circumstances which could have significantly affected the conclusions of the court while having considered the issue about the change of the compulsory measure of medical nature for O.

The arguments of O. that in principle he never refused the treatment and only requested the doctors to explain for him in accessible for him form information about the nature of his diseases, since he thought that after some time his mental health condition improved; he also requested to inform him about the proposed methods of treatment. Meanwhile, he is referring to his rights envisioned by paragraph 2 Article 5 of the Law of RF "On psychiatric help and citizen's rights while providing it".

The psychologist M. which took part in the court of the first instance did not provide court with reasoning arguments, which would prove that mental condition of O. during the ambulatory observation period prevents psychiatrics from informing O. in an accessible form about the nature of the mental disorder and its treatment methods.

The fact that person who committed a socially dangerous act is appointed compulsory measures of medical nature does not exclude the right of person to receive such information taking into account his mental condition.

The Constitutional court of RF in its judgment dated 20 November 2007 No. 13-П expressed the position according to which provisions of international acts (Convention for the Protection of Human Rights and Fundamental Freedoms (point "s" paragraph 3 Article 6), Principles for the protection of persons with mental illness and the improvement of mental health care (adopted by General Assembly resolution 46/119 of 17 December 1991), recommendations of the Parliamentary Assembly of the Council of Europe 818(1977) "On the situation of mentally ill", recommendations of the Committee of Ministers of the Council of Europe N R(83)2 "Concerning the legal protection of persons suffering from mental disorder placed as involuntary patients", Rec(2004)10 "Concerning the protection of human rights and dignity of persons with mental disorder") correspond with provisions of the Law of RF dated 2 July 1992 "On psychiatric care and guarantees of citizens' rights in its provision", account to paragraph 1 Article 5 of which persons who suffer from mental disorders have all rights and freedoms of citizens, envisioned by the Constitution of the Russian Federation and federal laws; restrictions of rights and freedoms of citizens related to mental disorder are allowed only in cases envisioned by laws of the Russian Federation as it follows from Article 55 (paragraph 3) of the Constitution of the Russian Federation.

At present without objective medical examination of O., and also taking into account the time passed after the court made judgment it is impossible to resolve the issue whether it is possible or impossible to place him at psychiatric hospital.

The petition about dismissal of the case expressed by O. and his defenders during the court hearings in the cassation instance is not to be satisfied, because such decision would basically mean end of application of compulsory measures of medical nature towards O., which was appointed for him based on the judgment of the Supreme Court of the Republic of Bashkortostan.

Settlement of this issue (about extension, modification or termination of compulsory measures of medical nature) according to Article 102 of CC RF, paragraph 1 Article 445 of CPC RF falls into jurisdiction of the court, which made judgment about its application, or the court in the area where the measure is applied.

The judicial board on criminal cases of the Supreme Court of RF cancelled the judgment of the Krasnoyarsk territorial court against O. and referred the case to a new trial to the same court with different composition of judges.
