

**CITY COURT OF SAINT PETERSBURG**

**CASSATION DECISION  
28 September 2010 No. 22-6267**

Judge Patrina N.N.

Case No. 1-132/10

Judicial board on criminal cases of the City court of Saint Petersburg consisting of:

Chairman Vesnina N.A.

and judges Kuznezov S.L. and Zemzovskaya T.U.

with secretary K.

considered in the court hearing on 28 September 2010 the cassation complaint of the convicted person M. on the judgment of the Kronshtadskiy district court of Saint Petersburg dated 16 August 2010, by which

M. <...>, who was working as general practitioner in Saint Petersburg's state healthcare institution "Hospital" (hereinafter – SPb SHI "Hospital"), registered and residing in <...>, untried,

Convicted under Article 290 paragraph 2 of the Criminal code of the Russian Federation (hereinafter – CC RF) (11.06.2009) to 3 years of imprisonment with deprivation of the right to exercise medical activities for the period of 1 year; under Article 290 paragraph 2 of CC RF (5.02.2010) to 3 years of imprisonment with deprivation of the right to exercise medical activities for the period of 1 year; under Articles 30 paragraph 3, 290 paragraph 2 of CC RF (2.03.2010) to 3 years of imprisonment with deprivation of the right to exercise medical activities for the period of 1 year. On the basis of Article 69 paragraph 2 of CC RF by an accumulation of crimes through partial addition of punishments, the final punishment in the form of 4 years of imprisonment with deprivation of the right to practice medical activities for the period of 1 year and 6 months.

Based on Article 73 of CC RF, punishment in the form of imprisonment for the period of 4 years was given to M. with conditionally probation of 2 years requiring Doctor M. to come regularly to register herself once in a month in a specialized state authority responsible for her reformation, and not to change place of residence without notifying this authority.

The part of the judgment about punishment in the form of deprivation of right to exercise medical activities for the period of 1 year and 6 months is enforceable.

Having heard the report of the city court judge Vesnina N.A., statements of the convicted M., lawyer Yusupova M.A., who supported the cassation complaint; opinion of the prosecutor Kulikova S.I., who suggested to leave the judgment unchanged, the judicial board

established:

By the judgment of the court, M. was convicted that while being an official, a general practitioner, she received bribes for illegal actions in favour of a briber:

11.06.2009 knowing that D. is healthy and according to medical indications does not require the issuance of a medical certificate,<sup>1</sup> issued to D. a medical certificate for the period from 5 until 11.02.2010, for which she received from D. a bribe in the amount of 200 rubles;

5.02.2010 knowing that D. is healthy and according to medical indications does not require the issuance of a medical certificate, issued to D. a medical certificate for the period from 11 until 15.06.2009, for what she received from D. a bribe in the amount of 500 rubles;

In addition, by the judgment of the court, M. was found guilty of while being an official, a general practitioner, she made an attempt to receive a bribe for illegal action in favour of a briber:

2.03.2010 knowing that D. is healthy and according to medical indications does not require issuance of a medical certificate, in order to receive a bribe in the amount of 500 rubles, she issued to D. a medical certificate for the period from 2 until 5.03.2010, for what she received from D. a bribe in the amount of 1000 rubles, but she was not able to use it due to circumstances beyond her control.

In the cassation complaint, the convicted M. asks the court to change the judgment of the court to allow her to practice medical activities without a right to carry out disability examinations for the period of 1 year.

In support of her claims, the convicted states that she does not contest her guilt, but she thinks that the court appointed her too severe a punishment by depriving her of the right to practice medical activities.

The convicted points out that she has been working in outpatient service for 25 years, she is a doctor of higher category after studying at the medical institute for 6 years, every 5 years she attends medical trainings to improve her doctor's qualification, and passes exams to receive the certificate to be empowered to work as a doctor and the confirmation of the highest category at the Medical academy of postgraduate education (hereinafter - MAPE), Medical academy named after Mechnikov, 1<sup>st</sup> Medical university named after Pavlov.

Also the convicted states that she likes her work, she is respected by her colleagues and patients. Work of an outpatient doctor includes not only disability examination; the main responsibilities of doctor is diagnostic, therapeutic, preventive, health educative work, and carrying out of medical examinations.

The convicted notes that she could be provided with work without the responsibility to carry out disability examinations and issuance of medical certificates.

Moreover, the convicted asks to take into account that she violated the law due to giving way to provocation because of sympathy to D.

Objecting to the cassation complaint of the convicted M., the state prosecutor Lubchenko V.A. asks to leave the court's judgment unchanged, and the cassation complaint unsatisfied.

Having checked the criminal case materials and objections of the cassation complaint, the judicial board believes that the part of the judgment of the court that indicates that M. is sentenced to the punishment of deprivation of the right to practice medical activities should be adjusted.

From the presented materials, it is clear that the criminal case against M. was reasoned according to the requirements of the criminal law process.

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<sup>1</sup> Translator's note: here and below, the Court is referring to a disability certificate.

The actions of M. got the correct judicial review in the judgment.

The punishment in the form of imprisonment under Article 73 of CC RF was given to M. taking into account the severity of the crimes committed, data about her personality, confession of guilt, repentance, the fact that this is the first time she is criminally liable, positive reviews from her workplace, and also the requirements of Article 66 paragraph 3 of CC RF, Article 316 paragraph 7 of CC RF. Taking into account all the mentioned above, the argument in the cassation complaint of the convicted that the punishment she was given was too severe is invalid and is to be left unsatisfied.

However, the punishment envisioned by the sanction of Article 290 paragraph 2 of CC RF in the form of deprivation of the right to exercise certain activity given to M. is to be changed.

From the criminal case, it is seen that the fact that M. received a bribe was due to the performance of her professional responsibilities to provide medical help and official powers associated with that, namely the issuance of medical certificates. From the job description of a general practitioner it is seen that, according to the instruction "On process on issue of medical certificate", disability examination of a patient is within the responsibilities of a general practitioner. Performance of these responsibilities allowed the convicted M. to commit a crime, and therefore the activity, of which exercise she is deprived, should be determined more accurately.

Assuming the above mentioned and also the information about the positive characteristics of M. as a general practitioner; information from the service book that M. has worked as a doctor since August 1985 until recent time, so that she has professional experience of working as a doctor for more than 25 years; she has a son, who is dependent on her; the convicted M. should be appointed to a punishment in the form of the deprivation of the right to practice medical activities associated with the right to carry out disability examinations and issuance of medical certificates.

Thus, the arguments of the cassation complaint of the convicted are to be partly satisfied.

Based on the above and guided by Articles 377, 378, 388 of CC RF the judicial board

held:

The judgment of the Kronshtadskiy district court of Saint Petersburg dated 16 August 2010 concerning M. to be changed: the appointed punishment in the form of deprivation of the right to practice medical activities to be specified and appoint under Article 290 paragraph 2 CC RF (crime dated 11.06.2009), under Article 290 paragraph 2 CC RF (crime dated 5.02.2010), and under Articles 30 paragraph 3, 290 paragraph 2 CC RF (crime dated 2.03.2010) (for each) punishment in the form of 3 years of imprisonment with deprivation of the right to practice medical activities associated with the right to carry out disability examinations and issue medical certificates for the period of 1 year.

Based on Article 69 of CC RF by an accumulation of crimes through partial addition of punishment, M. is to be appointed to a final punishment in the form of 4 years of imprisonment with deprivation of the right to practice medical activities associated with the right to carry out disability examinations and issue medical certificates for the period of 1 year and 6 months.

The rest of the judgment is to be left unchanged.

Cassation complaint of the convicted M. is to be partially satisfied.

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