

Council of State

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Litigation Section

Mr. Martin, president

Mr. Jean-Luc Matt, advisor

Mr. Boucher Julien, public advisor

SCP WAQUET, FARGE, HAZAN,, lawyers

Ruling of Friday 10 April 2009

FRENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

Considering the summary appeal and the corresponding report, registered on 2 February and 24 May 2006 with the Secretary of Litigation of the Council of State, presented by Mr. Jean A, remaining...; Mr. A requests that the Council of State:

- 1) annul article 3 of the judgment of 1 December 2005 by which the Administrative Tribunal of Rennes dismissed his application for annulment of the decision of the Côtes-d'Armor refusing to provide a copy of his entire medical file on his compulsory admission to the hospital and direct the head of the Côtes-d'Armor to provide this document;
- 2) adjust the merits to grant his request;
- 3) be borne by the State the sum of 4,000 Euros on the basis of L. 761-1 of the Code of Administrative Justice;

Considering the other documents in the file;

Considering the Code of Public Health;

Considering law no. 78-753 of 17 July 1978;

Considering the Code of Administrative Justice;

After having heard at public hearing:

- the report of Mr. Jean-Luc Matt, Master of Requests
- the observations of SCP Wauet, Farge, Hazan, lawyers for Mr. Jean A,
- the conclusion of Mr. Julien Boucher, public advisor;

The word having been given back to SCP Waquet, Farge, Hazan, lawyers for Mr. Jean A;

Without needing to examine the other grounds of appeal;

Whereas under Article R. 611-3 of the Code of Administrative Justice in the version applicable to the present proceedings : (...) notifications (...) of the Notice of Hearing (...) Are necessarily carried out using letters that demand return receipt (...); that notification may also be made in the Administrative form pursuant to Article R. 611-4 of the same Code ; it appears from the file forwarded by the Administrative Court of Rennes, that Mr. A was summoned to the hearing of 3 November 2005 in accordance with these provisions, that he was present or represented at the hearing; as a result , Mr. A validly argued that the contested judgment was delivered following an unlawful procedure and requested the cancellation as it rejected his conclusions on the communication of their medical files;

Whereas it is necessary, in the circumstances of the case, to adjust to that extent the merits pursuant to Article L. 821-2 of the Code of Administrative Justice;

Whereas Mr. A was hospitalized at the request of a third party in specialized hospital centers in 1990 and 1996; that the direction of the Department of Health and Social Affairs of the Côtes-d'Armor had sent medical documents related to these hospitalizations on 23 August 2000, Dr. B, designated by M. A, as stipulated in the provisions of the then-applicable Code of Public Health, informed him of the result given in the application; Mr. A asked again, October 2003, that these medical documents be provided to management of the Department of Health and Social Affairs; he seeks annulment of the decision of the head of the Côtes-d'Armor refusing to provide these documents;

On the conclusions of annulment;

Whereas examination of the final paragraph of Article L. 111-7 of the Code of Public Health that consultation of information gathered as part of a hospitalization requested by a third party or involuntary hospitalization may be subject to the presence of a doctor in cases of particularly grave risk; that, it follows, the plea that the head could lawfully refuse Mr. A access to his files must be rejected;

Whereas if Mr. A disputed the existence of a risk to justify intervention of a doctor , the production of a district court judgment ordering the freehand measure of guardianship and evidence that the applicant provides to support this affirmation is not enough to seriously challenge the assessment by the administration in terms of severity of psychiatric illness which prompted his hospitalization at the request of a third party; thus, the administration has not made an incorrect application of the above provisions of the Code of Public Health taking the challenged decision;

Considering that the letter of 23 August 2000, in which Mr. A's communication is established by the documents, merely to inform the latter of the transmission of the transmission of his file to the practitioner chosen by him; that the fact that the doctor did not allow his patient to check this file is not binding on the administration; that if Mr. A has made a new communication request for his medical file on the basis of new provisions of Article L. 1111-7 of the Code of Public

Health , after having written article 11 of the Law of 4 March 2002 on patients' rights and the quality of the health system, it is common that at the date of the challenged decision, the Administration no longer held the requested documents, which were kept by the hospitals concerned; that, consequently, the plea of ignorance of the rules concerning the right of access to administrative documents must be rejected;

It follows from the above that Mr. A is not entitled to seek an annulment of the decision of the head of the Côtes-d'Armor refusing to send him his new medical file;

On the claim for injunctive relief;

Whereas this decision, which preliminary rejects the conclusions of Mr. A regarding the annulment of the decision of the head of Côtes-d'Armor refusing to provide a copy of his entire medical record requires no implementing measure; then, therefore, the conclusions of Mr. A requiring the head of the Côtes-d'Armor to communicate this document is rejected;

The claims regarding the provisions of Article L. 761-1 of the Code Administrative Justice:

Whereas these provisions preclude that costs be borne by the State, which is not , in this instance , the losing party , the payment to Mr. A of the sum he asks for costs incurred by him and not included in the costs;

DECIDED:

Article 1: Article 3 of the judgment of 1 December 2005 of the Tribunal of Administrative Justice of Rennes is annulled;

Article 2: The conclusions presented by Mr. A before the Tribunal of Administrative Justice of Rennes regarding the annulment of the decision of the head of the Côtes-d'Armor refusing to provide his medical file and that he be ordered to disclose this document, and other submissions of his appeal before the Council of State, are rejected.

Article 3: This decision shall be notified to Mr. Jean A and the minister of health and sports.