



RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

No. 50

Moscow

26 November 2019

On Certain Issues Encountered in Court Consideration of Administrative Cases on Involuntary Hospitalisation of Citizens to Medical Antituberculous Organisations

In order to ensure the uniform application of legislation by courts of general jurisdiction in proceedings regarding administrative cases on involuntary hospitalisation of citizens to medical antituberculous organisations, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 “On the Supreme Court of the Russian Federation”, hereby rules to provide the following clarifications:

1. The Constitution of the Russian Federation, laying the foundations of the constitutional system and stipulating the human and civil rights and freedoms, guarantees everyone’s right to protection of health (Part 2 of Article 7, Article 41). It is a duty of the state to protect and strengthen the health of citizens. This presupposes the need to take state coercive measures in regard of citizens suffering from publicly dangerous infectious diseases, who fail to comply with the rules that allow preventing contagion of other persons. Tuberculosis is one of the publicly dangerous diseases.

State coercive measures must be applied with strict adherence to procedural rules guaranteeing that the aims of such measures will be reached and excluding the possibility of arbitrary or inadequate restriction of human and civil rights and

freedoms (Federal Law No. 77 of 18 June 2001 “On Prevention of Spread of Tuberculosis in the Russian Federation”, Code of Administrative Judicial Procedure of the Russian Federation (hereinafter – the CAJP RF, the Code).

2. In accordance with Part 1 of Article 281 of the CAJP RF, Article 1, Item 2 of Article 8, Item 2 of Article 10 of Federal Law “On Prevention of Spread of Tuberculosis in the Russian Federation”, an administrative statement of claim for involuntary hospitalisation of a citizen to a medical antituberculous organisation may be submitted in regard of the following persons:

- a citizen infected with a contagious form of tuberculosis, who has repeatedly violated the sanitary-anti-epidemic regime;
- a citizen, who intentionally evades examination aimed at detection of tuberculosis (a person, who has a suspected cases of tuberculosis; a person, who is or was in contact with a source of tuberculosis), or a citizen, who intentionally evades tuberculosis treatment (a tuberculosis patient).

3. Repeated violation of sanitary-anti-epidemic regime is in particular understood as violation of duties stipulated in Article 13 of Federal Law “On Prevention of Spread of Tuberculosis in the Russian Federation”, perpetrated two or more times.

Intentional evasion of a citizen, who has a suspected case of tuberculosis, from undergoing examination or intentional evasion of a tuberculosis patient from treatment may be established, where there is initial medical information regarding that citizen, that he/she is, accordingly, probably or actually infected with tuberculosis, and where that citizen was warned about the need to undergo examination or additional treatment, but did not undergo the corresponding examination or treatment without a good reason (Item 2 of Article 10, Article 13 of Federal Law “On Prevention of Spread of Tuberculosis in the Russian Federation”).

4. In accordance with Part 2 of Article 281 of the CAJP RF, an administrative statement of claim for involuntary hospitalisation of a citizen to a medical antituberculous organisation is submitted by the head of a medical antituberculous organisation, a representative of such an organisation, authorised to submit an administrative statement of claim, or by a prosecutor.

As follows from sub-item 2 of Item 1 of Article 51 of Federal Law No. 52 of 30 March 1999 “On Sanitary and Epidemiological Well-Being of the Population”, chief state sanitary physicians and their deputies have the right to submit statements

of claim for involuntary hospitalisation of citizens to medical antituberculous organisations.

5. An administrative statement of claim for involuntary hospitalisation of a citizen to a medical antituberculous organisation is submitted to the court at the location of the medical antituberculous organisation, in which the citizen is under dispensary observation (Part 4 of Article 23 of the CAJP RF).

If a citizen is not under dispensary observation of such an organisation, the administrative statement of claim for involuntary hospitalisation of a citizen to a medical antituberculous organisation is submitted at her/his place of residence, place of stay or actual location (Part 3 of Article 22 of the CAJP RF).

6. The court refuses to accept an administrative statement of claim, terminates proceedings in the administrative case regarding involuntary hospitalisation of a citizen to a medical antituberculous organisation, if there is an effective court decision regarding involuntary hospitalisation of the same citizen to the same medical antituberculous organisation on the same grounds, subject to enforcement (Item 4 of Part 1 of Article 128, Item 2 of Part 1 of Article 194 of the CAJP RF).

Herewith, the fact that a court decision on refusal to satisfy an administrative claim for involuntary hospitalisation of a citizen to a medical antituberculous organisation has entered into force does not preclude future filing of a new administrative claim for the corresponding hospitalisation of the same person with reference to other circumstances that serve as grounds for hospitalisation.

7. After accepting the administrative statement of claim for proceedings, the judge may require to correct the defects of the statement and documents attached thereto within a reasonable time established by the judge, where such defects constitute a violation of norms stipulated in Articles 125, 126, 281 of the CAJP RF. If the defects are not corrected within the stipulated time, the judge may leave the administrative statement of claim without consideration (Item 5 of Part 1 of Article 196, Part 2 of Article 282 of the CAJP RF). Taking into account the need for urgent consideration and adjudication of the administrative case on involuntary hospitalisation of a citizen to a medical antituberculous organisation, the request to correct the corresponding defects may be stated in the court decree on acceptance of the administrative statement of claim for proceedings.

Herewith, an administrative statement of claim for involuntary hospitalisation of a citizen to a medical antituberculous organisation may not be left without consideration by virtue of Item 5 of Part 1 of Article 196 of the CAJP RF on the grounds that documents confirming receipt of a copy of the statement of claim by the administrative defendant are not attached to the statement, if the court is provided with evidence that the administrative defendant is absent at an earlier known place of residence (place of stay) or refused to receive the copy (Article 165.1 of the Civil Code of the Russian Federation).

8. If proceedings are initiated in an administrative case on involuntary hospitalisation of a citizen to a medical antituberculous organisation based on an administrative statement of claim of a prosecutor, chief state sanitary physician or its deputy, the medical antituberculous organisation, in which the tuberculosis patient is under dispensary observation and (or) to which he/she is subject to hospitalisation, is drawn to participation in the administrative case as an interested person (Article 47, Part 4 of Article 283 of the CAJP RF).

Herewith, as follows from Part 5 of Article 54 of the CAJP RF, the medical organisation may conduct the case in court, in particular participate in court sessions, both through representatives that have higher legal education and through the employees of the organisation, authorised to conduct its cases in court by normative legal acts or constituent documents of the organisation.

9. For the purpose of protecting the life and health of citizens present in the court building, of judges and members of the court staff, a court session in an administrative case on involuntary hospitalisation of a citizen to a medical antituberculous organisation may be conducted with the use of videoconferencing systems of the court and of the medical antituberculous organisation, where this is technically possible; or the court may appoint a court session out of the court premises, taking place at the corresponding medical antituberculous organisation, wherein conditions are ensured for the safe presence of the judge, secretary of the court session and trial participants.

10. If the place of residence (place of stay) of the person, in whose regard the issue of involuntary hospitalisation to a medical antituberculous organisation is being resolved, is unknown, if that person refuses to accept the court notification, fails to appear in the court session without a good reason after being duly notified about the time and place of the court session, the court may consider the administrative case with participation of a representative of the administrative defendant in the court

session, and if there is no representative – with participation of a court-appointed advocate in the court session (Part 4 of Article 54, Part 6 of Article 277, Part 1 of Article 283 of the CAJP RF, Article 10 of Federal Law “On Prevention of Spread of Tuberculosis in the Russian Federation”).

Failure of the prosecutor, representative of the medical antituberculous organisation, duly notified of the time and place of the court session, to appear in the court session does not preclude the consideration and adjudication of the administrative case, unless the court recognises their appearance obligatory (Part 5 of Article 283 of the CAJP RF).

11. Taking into account that materials of administrative cases on involuntary hospitalisation of a citizen to a medical antituberculous organisation contain information protected by medical secrecy, the trial in such cases may be conducted *in camera* upon the motion of the administrative defendant or its representative (Article 11, Part 3 of Article 283 of the CAJP RF, Article 13 of Federal Law No. 323 of 21 November 2011 “On Basics of Healthcare of Citizens in the Russian Federation”, Article 12 of Federal Law “On Prevention of Spread of Tuberculosis in the Russian Federation”).

The courts should also take into account that a reasoned court decree is issued regarding the conducting of proceedings in an administrative case *in camera* (Part 6 of Article 11 of the CAJP RF).

12. Since protection of the basic constitutional rights and freedoms of the administrative defendant and of the general public depends on adoption and execution of a decision in an administrative case on involuntary hospitalisation of a citizen to a medical antituberculous organisation, the court does not accept the renunciation of the administrative claim for involuntary hospitalisation of a citizen to a medical antituberculous organisation by the administrative plaintiff, except when such renunciation is based on voluntary satisfaction of stated claims (Part 5 of Article 46 of the CAJP RF).

If the administrative plaintiff renounces the administrative claim for involuntary hospitalisation of a citizen to a medical antituberculous organisation due to the fact that the administrative defendant ceased to evade examination aimed at detection of tuberculosis and (or) ceased to evade tuberculosis treatment, proceedings in the administrative case may be terminated (Part 2 of Article 46, Item 3 of Part 1 of Article 194 of the CAJP RF).

Herewith, termination of proceedings in the case does not preclude repeated application to court with an administrative statement of claim for involuntary hospitalisation of a citizen to a medical antituberculous organisation, if the administrative defendant once again evades the corresponding examination and (or) treatment.

13. In the course of the trial, the court evaluates the medical history, the conclusion of a commission of doctors of the medical antituberculous organisation, other documents provided by the parties following its inner conviction based on a comprehensive, full, objective and direct examination of evidence contained in the administrative case and requested by the court.

If, after considering the administrative claims for involuntary hospitalisation of a citizen to a medical antituberculous organisation, the court does not establish the facts that the citizen has a contagious form of tuberculosis and repeatedly violated the sanitary-anti-epidemiological regime, or does not establish the fact that the citizen intentionally evaded her/his statutory duty of undergoing examination and (or) treatment, the court adopts a decision to refuse to satisfy the administrative claim (Part 2 of Article 285 of the CAJP RF).

14. In accordance with Part 3 of Article 285 of the CAJP RF, the contents of a court decision in regard of an administrative statement of claim for involuntary hospitalisation of a citizen to a medical antituberculous organisation must meet the requirements stipulated in Article 180 of the Code, and the introductory part of the decision must also indicate the place in which the court session was conducted.

Moreover, such a decision must indicate the medical antituberculous organisation drawn to participation in the case, to which the administrative defendant is subject to hospitalisation; the term, for the duration of which hospitalisation may take place, stipulated as a period of time (eighth paragraph of Item 1 of Article 12 of Federal Law "On Prevention of Spread of Tuberculosis in the Russian Federation").

15. The court determines the term of hospitalisation proceeding from the time necessary for examination and (or) treatment of the administrative defendant, taking into account the information provided by the administrative plaintiff about the health of the administrative defendant, the necessary course of examination and (or) treatment. The court may consult a specialist in order to determine the term of hospitalisation.

16. The term indicated in the court decision, for the duration of which hospitalisation may take place, begins to run on the day of placement of the citizen into the medical antituberculous organisation. Herewith, “placement” includes the period of escorting of the citizen to the corresponding organisation.

17. If, during execution of the court decision regarding the involuntary hospitalisation of a citizen to a medical antituberculous organisation, it is discovered that the term of hospitalisation stipulated in the court decision is insufficient to complete examination and (or) treatment, the head of the medical antituberculous organisation may apply to court with a repeated administrative claim for hospitalisation of the citizen in need of continued examination and (or) treatment.

18. If the aims of examination and (or) treatment are reached before the term established by the court expires, involuntary hospitalisation may be terminated upon decision of the head of the medical antituberculous organisation.

This decision, as well as failure to act on the part of the head of the medical antituberculous organisation, failing to adopt such a decision, may be challenged in court in the manner stipulated in Chapter 22 of the CAJP RF (Article 17 of Federal Law “On Prevention of Spread of Tuberculosis in the Russian Federation”). After considering an administrative case on challenge of failure to act on the part of the head of the medical antituberculous organisation, the court may recognise that failure to act as illegal and resolve the issue of termination of hospitalisation (Article 227 of the CAJP RF).

19. Since the norms of Chapter 31 of the CAJP RF do not stipulate special rules on distribution of court costs, when an administrative statement of claim for involuntary hospitalisation of a citizen to a medical antituberculous organisation is satisfied, the court costs incurred by the court, the medical antituberculous organisation, other persons participating in the case on the side of the administrative plaintiff may be recovered from the administrative defendant, unless the defendant is exempt from payment thereof (Articles 111, 112, 114 of the CAJP RF).

If the administrative plaintiff does not support its claims because the administrative defendant voluntarily executed them after the administrative statement of claim was filed, the court costs incurred in the case may also be recovered from the administrative defendant (Part 1 of Article 113 of the CAJP RF).

20. Proceedings aimed at enforcement of the court decision on involuntary hospitalisation of a citizen to a medical antituberculous organisation may not be finalised due to actual execution of claims contained in the enforcement document until the term of hospitalisation of the debtor to the corresponding organisation expires (Item 1 of Part 1 of Article 47 of Federal Law No. 229 of 2 October 2007 “On Enforcement Procedure”), except when the head of the medical antituberculous organisation adopts a decision to terminate the citizen’s involuntary hospitalisation prior to expiration of the court-established term due to reaching of the aims of examination and (or) treatment.

21. If it is established during consideration of an administrative case on involuntary hospitalisation of a citizen to a medical antituberculous organisation that requirements of Federal Law “On Prevention of Spread of Tuberculosis in the Russian Federation” were violated by officials of medical antituberculous organisations, executive bodies, this may constitute grounds for issuing a special court decree (Article 200 of the CAJP RF).

Chief Justice of the Supreme Court of
the Russian Federation

V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation

V.V. Momotov