



Varapnickaite-Mazyliene v. Lithuania

Application No. 20376/05

Country: Lithuania

Region: Europe

Year: 2012

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Child and adolescent health, Health information

Human Rights: Right to privacy

Facts

The applicant in this case brought a lawsuit against the Republic of Lithuania under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (‘‘Convention’’). She alleged her right to respect for her private life, protected by Article 8 of the Convention, had been violated by employees of the Children’s Welfare Service of the Vilnius City (CWS), who published an article in which they disclosed humiliating information about applicant’s private life from which it was possible to recognize her. She also argued that under Article 13 of the Convention, she had not had an effective remedy for the alleged violation of her privacy.

The applicant had published a letter to the editor and been interviewed about her child custody proceedings and experience with CWS, in which she was deeply critical of the employees’ conduct. In response, the director of CWS described, in a published article, the day to day issues CWS tackled and used the applicant’s situation as an example, in which he disclosed many details of her and her son’s relationship and the child’s medical records, but did not provide their names or other seemingly identifiable information.

The applicant lodged complaints with the Children’s Rights Ombudsman, the Vilnius Child Development Centre and the Inspector of Journalistic Ethics, all of whom responded that CWS had acted inappropriately or unethically in some respect by disclosing this information.

The applicant brought an action for damages against the CWS for the disclosure of information regarding her private life and the health of her minor son. The Vilnius City Second District Court dismissed the case, finding that the article at issue did not contain any identifying information, and that the applicant had failed to prove that CWS had deliberately disclosed information about her private life.

This decision was upheld by the Vilnius Regional Court. The Supreme Court dismissed the applicant’s, and reaffirmed that the details of the article did not clearly identify her. However, the Supreme Court did notify CWS that it disapproved of the actions taken by its employees because their actions were not compatible with the child’s interests. The Applicant then filed an action with the European Court of Human Rights

Decision and Reasoning

The Court held that there had been no interference with the applicant’s or her son’s private life and thus there had been no violation of Article 8 of the Convention. The Court reasoned that neither the applicant nor her son were sufficiently identifiable from the article in which the director of CWS used the applicant’s situation as an example of the daily issues dealt with by CWS. While CWS revealed the son’s medical record, the information provided was not sufficiently distinctive such that anyone could identify the son from it. The Court noted, as part of its reasoning for this finding, that no other information was provided in the article, and the applicant had already spread most of the disputed information into the public domain.

The Court held that there was a legal scheme for the protection of privacy at the time of the applicant’s case, based on the existence of national laws protecting the right to privacy at the time, and that the applicant did have access to an effective remedy in that she had the benefit of a hearing at three levels of jurisdiction. The Court held that the fact that her case was dismissed does not mean that the remedy she had access to was ineffective and thus a violation of article 13 of the Convention.

The Court rejected applicant’s argument that because the Supreme Court had issued a ruling on the same day that expressed disapproval of the actions taken by CWS and regarded the general need for secrecy of

medical records, they had contradicted themselves and recognized that her and her son's rights had been violated. The Court held that the separate opinion addressed the general issue and was intended to ensure that a similar omission would not occur in the future.

Finally, the Court held that the applicant had not been denied an effective remedy because the district court had refused to summon three witnesses that the applicant argued could have proved she was identifiable from the disclosure. The Court noted that those to be summoned would have been able to recognize the applicant only because they had been intimately involved with her son's medical reports.

The dissenting judges argued that a violation of Article 8 had occurred because the director of CWS had breached his duty of confidentiality when he disclosed private information to the public about the applicant and her son. The dissent noted that the disclosure was not necessary in a democratic society, the patient did not imply consent to the disclosure, the fact that the patient voluntarily disclosed confidential information did not release the director from the duty of confidentiality, and this was not a case where disclosure was necessary for a health care professional to defend his conduct.

Decision Excerpts

“The protection of private life has to be balanced against, among other things, the freedom of expression guaranteed by Article 10 of the Convention. In this context the Court emphasises the duty of the press to impart information and ideas on matters of public interest (see, among many authorities, *Observer and Guardian v. the United Kingdom*, 26 November 1991, Å§ 59, Series A no. 216). However, the Court notes that a fundamental distinction needs to be made between reporting facts “even if controversial” capable of contributing to a debate in a democratic society, and making tawdry allegations about an individual's private life (see *Biriuk v. Lithuania*, no. 23373/03, Å§ 38, 25 November 2008). As to respect for the individual's private life, the Court reiterates the fundamental importance of its protection in order to ensure the development of every human being's personality. That protection extends beyond the private family circle to include a social dimension (see, *Von Hannover*, cited above, Å§ 69).” Para. 43.

“[P]rotection of personal data, not least medical data, if of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention. Respecting the confidentiality of health data is a vital principle in the legal system of all the Contracting Parties to the Convention. The disclosure of such data may dramatically affect an individual's private and family life, as well as his or her social and employment situation, by exposing that person to opprobrium and the risk of ostracism.” Para. 44

“Article 8 of the Convention protects the confidentiality of medical data as a fundamental part of the intimacy of a human being . . . The bond of trust between the health professional and the patient built upon this principle is of paramount importance both for the diagnostic process, which relies on the assessment of an accurate history of the illness, but also subsequently for the treatment phase, which often depends as much on the patient's trust in the health professional as it does on medication and surgery. This is a non-negotiable tenet of medical practice, although exceptions to this principle have been carved out over the centuries, such as where a patient threatens himself or herself or a third person with bodily harm.” Dissent, Para. 3.