



Gray v. Germany

Application no. 49278/09

Country: Germany

Region: Europe

Year: 2014

Court: The European Court of Human Rights

Health Topics: Chronic and noncommunicable diseases, Health care and health services, Hospitals, Medical malpractice, Medicines

Human Rights: Right to life

Facts

The applicants are brothers whose father died after being treated by a German doctor for acute pain due to kidney stones. The doctor had been recruited by a private agency to provide medical services for the National Health Services (NHS). The doctor was suspended by the private agency and returned to Germany. The doctor had explained to the German authorities later that he had got confused with two drugs and injected the applicants' father with diamorphine. Criminal proceedings were started in the United Kingdom. It was found in the post-mortem report that the diamorphine had significantly led to the death of the applicants' father. The German District Court convicted the doctor without a hearing relying on a letter by the doctor to one of the applicants apologizing for his actions. As the doctor did not appeal, the judgement became final. The criminal proceedings in the United Kingdom were discontinued and the German authorities rejected a request for extradition. The applicants filed civil action against the doctor, the NHS and the private agency, which was settled.

The Applicants alleged a violation of Article 2 (right to life) as the British health system and regulation of hiring doctors had led to the death of their father. Further the German authorities had not involved them in the proceedings against the doctor and had not provided an effective investigation into their father's death.

Decision and Reasoning

The Court held that there had been no violation of Article 2 of the Convention. It stated that having regard to the fact that they had brought civil action against the private hospital, NHS and the doctor and their claims had been settled, they could not claim violation of Article 2 of the Convention. The Court considered the decision of the German District Court in line with the legal principles and it was based on the evidence available. The applicant had further not alleged that their father's death was intentional and had not challenged the order of the German District Court in principle.

Decision Excerpts

“In view of these circumstances, the Court is satisfied that the criminal proceedings conducted in Germany enabled the investigative authorities to determine the cause of Mr Gray's death and to establish U.'s responsibility in this respect. Having regard to the available body of evidence taken together, the Court accepts the Government's finding that the prosecution authorities' decision to apply for U.'s conviction in summary proceedings without a main hearing had been justified and that the Witten District Court had available sufficient means of evidence to proceed to a thorough assessment of the circumstances of the case and U.'s guilt. It further notes that there is nothing to suggest that the penal order proceedings were not conducted in accordance with domestic law or that the evidentiary conclusions reached by the prosecution authorities or the trial court had been unfounded. The Court also notes the Government's argument that in view of the fact that there was nothing to establish that U. would commit a similar error of treatment when practicing as a medical doctor in Germany, there had been no grounds to exceptionally hold a main hearing with a view to enabling an enhanced public scrutiny for preventive purposes in the instant case.” (Para 85)

“The Court further finds it relevant to note that in addition to the criminal proceedings conducted against U.,

investigations regarding his fitness to practice as a physician had been conducted by the competent German administrative authorities. Within the scope of the investigations regarding U.'s fitness to practice medicine, the latter had been heard by the competent health authorities on two occasions and the applicants were granted an opportunity to provide further information on the circumstances of the case. Furthermore, as a consequence of the disciplinary proceedings instituted against U. before the Münster Administrative Court on the initiative of the Westphalia-Lippe Medical Association, the latter was reprimanded for having committed a grave error in the treatment of Mr Gray and imposed a fine. The Court recalls in this connection that in the specific sphere of medical negligence disciplinary measures may also be envisaged with a view to satisfying the procedural obligation of Article 2 (see § 81 above). (Para 94)

The Court concludes that in the present case the German authorities have provided for effective remedies with a view to determining the cause of the applicants' father's death as well as U.'s related responsibility. There is further nothing to establish that the criminal investigations and proceedings instituted on the initiative of the German authorities in relation to Mr Gray's death fell short of the procedural guarantees inherent in Article 2 § 1 of the Convention. (Para 95)

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