



Ionit v. Romania

Application no. 81270/12

Country: Romania

Region: Europe

Year: 2017

Court: The European Court of Human Rights

Health Topics: Child and adolescent health, Chronic and noncommunicable diseases, Health care and health services, Health information, Hospitals, Informed consent, Medical malpractice

Human Rights: Right to due process/fair trial, Right to life

Facts

The applicants' minor son underwent surgery for the removal of a polyp in a public emergency hospital. The child was transferred to the ICU unit under a staff nurse who had assisted in the surgery. Due to a hemorrhage and a number of failed attempts to resuscitate, the child died. There were contrary reports of the causation of death. The Autopsy report stated that there had been a link between the post-operative care and the death of the applicants' child. The deflation of the catheter was stated to be a probable cause of the presence of blood in the child's lungs. The surgeon stated that the death was caused to the pre-existing medical conditions. A disciplinary committee found that the examinations and testing of the child's condition before the surgery was insufficient and imposed a fine upon them. Although, criminal proceedings were also ensued, the Public Prosecutor decided to discontinue the proceedings stating there was a lack of evidence. The applicants lodged a complaint and the Public Prosecutor's decision was quashed by the District Court and it examined the evidence. The District Court dismissed the case. The Court of Appeal remitted the case back to the District Court, which in turn acquitted the surgeon again. The Court of Appeal dismissed the appeal. The applicants ensued civil action, which was stayed due to the criminal proceedings. However, the applicants withdrew the case after the stay was lifted.

The applicants alleged a violation of Article 2(Right to life) stating that the criminal proceedings had been ineffective, had been long and strenuous and had failed to provide a proper investigation of their son's death.

Decision and Reasoning

The Court held that there had been a violation of the applicants' rights under Article 2 of the Convention. It was stated that no other scientific report had been provided to counter the autopsy. Further, the authorities could not prove that the doctor and the nurse had carried out their duties properly. Further, the surgeon had failed to take informed written consent from the applicants for the surgery of their minor son. Although the Romanian law is clear about informed consent, domestic courts failed to impose a duty of care and liability on the doctors and hold them responsible for the death of the applicants' son.

Decision Excerpts

Moreover, the Court notes that the investigating authorities never elucidated whether P.V.I. (the attending nurse) had diligently carried out her duties during the post-operative monitoring of the child. In this respect the Court points out that according to the forensic reports one of the main hypotheses for the presence of blood in the child's lungs was the deflation of the balloon of the catheter (whose role had been to prevent the ingress of blood into the child's airways) while under the surveillance of either Dr P.A. or P.V.I. After P.V.I. had been heard as a witness immediately following the child's death, she resigned from the hospital and left the country for Italy (see paragraph 37 above). The prosecuting authorities also dismissed the applicants' requests to extend the criminal proceedings and to investigate whether she could be held accountable for their son's death (see paragraph 48 above). The Court notes that although her testimony was quite important in determining the cause of the child's death no special measures had been taken by the authorities to identify her domicile in Italy to have her return to testify. (Para 83)

In the Court's opinion the informed consent of the parents in the present case was even more relevant given that the doctors involved in the applicants' son's surgery could and should have been aware that the child suffered from serious congenital medical conditions which suggested that post-operative complications should have been envisaged. Therefore, these conditions should have imposed a careful examination of all

available options.â€• (Para 86)

â€œBearing in mind that the prosecuting authorities and the domestic criminal courts excluded medical negligence as a cause of death and dismissed their civil claim to be compensated for the damage suffered without providing additional reasons (see paragraph 47 above), although based on the same medical documents and reports with which the National College of Doctors had imposed disciplinary sanctions on both doctors involved in the intervention (Dr C.B. and Dr P.A.), the Court finds it even more difficult to see how the separate civil claim, lodged on 28 October 2008 (see paragraphs 50-52 above), could have been effective in practice in the applicantsâ€™TM particular situation.â€• (Para 93)

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