



Erdirin Kurt and Others v. Turkey

Application no. 50772/11

Country: Turkey

Region: Europe

Year: 2017

Court: The European Court of Human Rights

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

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

Facts

The applicants' daughter suffered from cardiac problems when she was 1 year old and received treatment for it in children's hospital. The first applicant (father) signed a consent form for a surgery of her daughter. The consent form entailed the risks. A further operation was conducted after obtaining a similar form from the father. After 4 years, doctors at another children's hospital stated that the child suffered from severe and incurable delayed psychomotor development, caused by hypoxic-ischaemic encephalopathy, and assessed her level of disability at 92%.

The applicants lodged a complaint against the surgeon. An internal investigation report stated that the doctors had not acted negligently. Thereafter the Public Prosecutor discontinued the proceedings. The applicants filed in the Court of First Instance. An expert panel report, constituted by the Court stated that the child suffered from a rare congenital disease. Further the parents had signed the consent form and the doctors had not acted negligently. The Court refused the applicants request to contest the report and for a second expert medical report. The applicants appealed to the Court of Cassation, which dismissed their application and request.

The applicants alleged that there had been a violation of Article 2 (right to life), Article 6 (right to fair hearing) and Article 13 (right to an effective remedy) and in particular Article 8 (Right to a private and family life). They stated that the condition of their daughter was caused by the doctors and they did not have any effective recourse of action against the doctors.

Decision and Reasoning

The Court held that there had been a violation of Article 8 of the Convention. The Court observed that the applicants' child underwent two complicated surgeries and the second surgery was done to remedy the complications arising out of the first surgery. The Court stated that the reliance on the expert report was misplaced and the applicants were not wrong in asking for a second report as the first one lacked reasoning.

The Court observed that the expert report although talked about the child's condition, the highly complex surgeries and the risk surrounding such surgeries. The expert opinion failed to assess the matter at hand in respect of if the doctors had contributed to the damage irrespective of the risk. There was a lack of discussion on the standard medical principles and the actual medical procedure conducted. It further fails to assess whether the doctors acted without negligence and adhered to the utmost standard of care.

Decision Excerpts

“The Court notes that Duru Kurt's illness necessitated highly complex cardiovascular surgery. It therefore accepts that, in the specific circumstances of the present case, the applicants cannot be blamed for having requested that the domestic courts commission a second expert assessment in general terms, criticising in particular the lack of reasoning in the 31 July 2009 report and the absence of an explanation of the correlation between the relevant applicable standards and the actual medical treatment undergone by the patient.” (Para 65)

“The fact is that the 31 July 2009 expert report does not at all refer to this matter, given its failure to consider

whether or to what extent the doctors in question acted in accordance with the standards of modern medicine before, during and after the operation. For example, it does not describe the medical acts actually performed by the doctors during the operation and the post-operative follow-up, when the neurological accident would appear to have occurred, comparing the steps taken with the rules and protocols governing such matters.â€• (Para 67)

â€œWhile the aforementioned report ultimately concludes that the doctors did not commit any error or fault, it does not specify the concrete facts, apart from bibliographical references attesting to the existence of risks, on which it bases that conclusion, which is therefore more akin to affirmation than to demonstration. Consequently, the report is insufficiently reasoned in terms of the question on which it was supposed to shed technical light (see, mutatis mutandis, Eugenia Lazari v. Romania, no. 32146/05, Â§ 82 to 85, 16 February 2010).â€• (Para 68)

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