



Lopes De Sousa Fernandes v. Portugal

Application no. 56080/13

Country: Portugal

Region: Europe

Year: 2017

Court: The European Court of Human Rights

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

Human Rights: Right to bodily integrity, Right to health, Right to life

Facts

The applicant's husband underwent a surgery to remove nasal polyps. He suffered from severe headaches and went back to the emergency department. The duty doctor prescribed him some tranquilizer stating it was some psychological problem. As the headaches did not subside, a medical team examined him the next day and found that he was suffering from bacterial meningitis. Thereafter he was transferred to the ICU. After a couple of days, he was transferred to the general ward. He was diagnosed with two duodenal ulcers and treated by the doctor. He was discharged more than two weeks after his first admission. As the pain persisted, he constantly visited the emergency department and was hospitalized on two occasions. It was found that there was a presence of bacteria, was prescribed medicines and was told to follow up as an outpatient.

After 3 months, the applicant's husband was admitted in another hospital where he died. The death certificate stated that he died from septicaemia. The applicant wrote a letter to the Ministry of Health and the Regional Health Authority stating that there was no proper explanation given for the state of her husband's health and his death. An investigation report stated the decision to treat her husband, as an outpatient department was not the correct course of action and he should have been kept under close medical supervision. Disciplinary proceedings were started but stayed due to pending criminal proceedings. The doctor was charged with homicide but acquitted by the District Court due to lack of evidence. The disciplinary proceedings were also dropped. The applicant's subsequent appeals were also dismissed. The applicant alleged that there had been a violation of Article 2 (Right to life), Article 6(1) (Right to a fair hearing) and Article 13 (Right to an effective remedy)

Decision and Reasoning

The Court (majority opinion) held that there had been no violation of Article 2 of the Convention. The Court stated that a violation of Article 2 would occur only if the regulatory framework was inadequate in protecting the patient's life. The Court further stated that the applicant had never alleged or adduced any evidence pointing to the fact that her husband's death was caused intentionally. Further, she had not alleged there was any denial of health care services or medical treatment. The Court stated that the applicant's complain was that an error and delay in diagnosis had led to the death of her husband and for that, there was not enough evidence adduced.

With respect to the procedural ineffectiveness and delays, the Court stated that the applicant had not contested the impartiality and the independence of expert witnesses or the judicial authorities. However, the Court found a violation of the procedural limb of Article 2 as the domestic system as a whole failed to provide the applicant with a prompt and effective remedy. The proceedings took approximately nine years and also did not conduct proper examination of the cause of death.

The first dissenting opinion stated that the majority had failed to appreciate the evidence on record, which pointed to the failure of the health care system. The second dissenting opinion also stated that the State had failed to fulfill its substantive obligation under Article 2 of the Convention as it had failed to secure and protect the life of the applicant's husband.

Decision Excerpts

“The Court observes that in the present case the applicant did not complain that her husband had been

denied access to medical treatment in general or emergency treatment in particular. Nor is there any information in the case file which would suggest such an issue in the present case. Rather, the applicant complained that the medical treatment provided to her husband had been deficient because of the negligence of the doctors who had treated him. In the Court's view, an alleged error in diagnosis leading to a delay in the administration of proper treatment, or an alleged delay in performing a particular medical intervention, cannot in themselves constitute a basis for considering the facts of this case on a par with those concerning denial of healthcare. (Para 200)

Moreover, the Court considers that no sufficient evidence has been adduced in the present case to demonstrate that there existed, at the material time, any systemic or structural dysfunction affecting the hospitals where the applicant's husband was treated, which the authorities knew or ought to have known about and in respect of which they failed to undertake the necessary preventive measures, and that such a deficiency contributed decisively to the death of the applicant's husband (compare *Asiye Gençiş*, ¶ 80, and *Aydogıdu*, ¶ 87, both cited above). In this respect, while the Court does not disregard the critical remarks which were made by the infectious-diseases panel (see paragraph 53 above), it observes, firstly, that this panel neither mentioned any supporting evidence for these general remarks nor considered that this alleged deficiency contributed decisively to the death of the applicant's husband. Secondly, these views were not endorsed by the Medical Association's regional disciplinary council for the North region in its decision, which was given after having examined the conclusions of five different specialist panels, including that of the infectious-diseases panel. Finally, no similar views were mentioned by any other experts who gave evidence in the different proceedings at the national level. (Para 201)