



Mitkus v. Latvia

CASE OF MITKUS v. LATVIA

Country: Latvia

Region:

Year: 2013

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

Health Topics: Health information, HIV/AIDS, Infectious diseases, Medical malpractice, Prisons

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial, Right to life, Right to privacy

Facts

The applicant had been imprisoned in Latvia's Central Prison in 1999 due to his conviction on charges of extortion and robbery. In 2003, the prisons administration notified him of the results of the tests performed for him which showed that he was HIV positive. Subsequent tests also showed that the applicant was infected with Hepatitis C. The HIV test he had in 1999 showed that he was HIV negative. The applicant claimed that he had contracted the infections while he was in the Central Prison due to the negligence of the medical staff who performed blood tests for him. He then initiated civil proceedings with the RĀ«ga Regional Court seeking damages from the central prison. He stressed that he was not homosexual and never used intravenous drugs.

The central prison responded that the time the applicant had his first HIV test in 1999 could have been the window period during which the presence of HIV antibodies could not be determined in the blood of an infected person, or that he must have contracted the viruses in prison due to his failure to preserve personal hygiene or engaging in sexual intercourse. The central prison also stated that only single-use vacuum containers had been used for blood samples at that time, and there was no chance for the applicant to be infected when taking his blood samples. The applicant contended that the medical staff at the central prison used multiple-use glass syringe for taking his blood sample in 1999. The central prison denied this allegation stating that only single-use syringes had been used since in the prison since the beginning of 1990s.

The court rejected the applicant's claim on the ground that imprisonment by itself posed the risk of being infected with HIV and Hepatitis C; the court also found that the prison used single-use syringes by the time the applicant was tested, and that it was impossible to locate the time when the applicant was infected with Hepatitis C virus as he hadn't been tested for it before going to the prison.

The applicant's appeal to the Supreme Court's civil chamber against the Regional court's decision was dismissed with the same conclusions. The civil chamber stated in its judgment that the applicant was not present during the hearing because he was detained; it made no further discussion as to his absence. The applicant then lodged an appeal on points of law complaining that he wasn't taken to the civil chamber's hearing.

On 22 December 2004, the applicant requested the Prosecutor GeneralĀ to initiate criminal proceedings against the persons responsible for his infection. The Prosecutor General forwarded the request to the Ministry of Justice that refused the opening of an investigation on the ground that the applicant's case was pending on appeal, on matters of law, before the Senate of the Supreme Court. On 20 December 2004, the Senate dismissed the appeal on points of law without addressing the issue of the applicant's absence at the appeal court's hearing.

At the hearing held onĀ 24 November 2003 between the applicant and the Central Prison, the Riga Regional Court had allowed for the trial to be open to public as per the request of the applicant. The applicant, however, expressed his desire for public trial as long as no photos of him were taken. The next day, a daily news paper came out with the trial's details including the name and the photo of the applicant. The applicant then lodged a claim of damages against the publisher of the article with the same court on 16 June 2004. The court dismissed his claim stating that he had failed to prove the existence of any damages and to show the legal basis for his claims of the same.

His appeal on the court's decision to the Civil Chamber of the Supreme Court was heard on 2 February 2006

in his absence. The Civil Chamber held that "the media were not subject to the data protection legislation and that there were no legal grounds for compensating the non-pecuniary damage allegedly caused to the applicant by the publication". [Para 46]

On 26 April 2006, the Senate of the Supreme Court decided on the applicant's appeal on points of law by which he had complained, among other things, that the appeal court heard his case in his absence. "The Senate considered that the applicant had merely disputed the assessment of facts by the first-instance and appeal courts and therefore his appeal on points of law did not meet the procedural requirements. The decision did not mention the applicant's complaint about his absence from the appeal hearing". [Para 48]

Then the applicant lodged his complaint to the European Court of Human Rights (the ECHR), claiming that he had been infected with HIV and hepatitis C while he was in Latvia's Central Prison. He complained that his complaints had not been adequately investigated by Latvia's national authorities in violation of Article 3 of the European Convention on Human Rights (the convention). He relied on Article 3 of the Convention that protects the right not to be subjected to torture or inhuman or degrading treatment or punishment; he also alleged violations of the rights to fair trial and to privacy under Articles 6 and 8 respectively of the Convention.

Â The government of Latvia argued mainly that there was no way for the applicant to be infected at the time his blood tests were taken in prison and that he had failed to prove his contraction at the time his blood sample was drawn. The applicant denied the government's assertion stating the possible reasons why he could not have contracted the viruses before being imprisoned.

Decision and Reasoning

The ECHR reiterated that it required proof beyond reasonable doubts in deciding an alleged violation of Article 3 of the Convention. It held that the government failed to meet this standard in arguing about the time starting from which the use by the medical service of the central prison of reusable syringes. The ECHR also noted that it was doubtful whether the applicant contracted the viruses after being imprisoned as it could not be proved that the first time the samples were taken, was the "windows period", and also because the applicant hadn't been tested for the Hepatitis C virus before he was imprisoned. The ECHR held that it could not conclude beyond reasonable doubts that the applicant was infected with the viruses after his imprisonment.Â

Regarding the applicant's complaint on the state's failure to investigate his allegations, the ECHR concluded that domestic civil proceedings had failed to give him the chance to make his case and prove how he actually contracted the infections. His request for a criminal investigation by the Office of the Prosecutor General was justified and the domestic authorities were obligated to provide criminal-law remedies available under their mandates. The ECHR also noted that domestic authorities were obligated to conduct thorough investigations toward serious allegations regarding treatment in violation ofÂ Article 3 of the Convention. The ECHR thus found a violation of the procedural aspect of Article 3 of the convention, particularly because the Office of the Prosecutor's General failed to conduct an investigation as required by the domestic law.

Regarding the applicant's claim under Article 6(1) of the Convention, the ECHR had found that he was disadvantaged in the civil proceedings he had with the Central Prison as well as with the publisher of the newspaper. Both respondents were present and given an opportunity to make oral submissions to the appeal courts in both civil proceedings while the applicant was not transported to the hearings. The ECHR concluded that there was a violation of this provision due to the applicant's absence during the hearings.

Regarding the applicant's claim of Article 8's violation, the ECHR held that the notion of Private Life under this Article encompassed a patient's personal information including his name and/or his photograph. It held that the domestic authorities failed in their positive obligation to protect the confidential information of the applicant from abuse by the newspaper in violation of his right to respect for private life under Article 8 of the Convention.

Decision Excerpts

"... the positive obligation imposed under the Convention to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case. In the specific sphere of medical

negligence the obligation may, for instance, also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any liability of the doctors concerned to be established and any appropriate civil redress, such as an order for damages and for the publication of the decision, to be obtained. Disciplinary measures may also be envisaged." [Para 76]

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