



E.M. and others v. Romania

Application no. 20192/07 E.M. and others against Romania

Country: Romania

Region:

Year: 2007

Court: The European Court of Human Rights

Health Topics: Chronic and noncommunicable diseases, Environmental health, Health care and health services, Hospitals, Infectious diseases, Informed consent, Medical malpractice

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

Facts

The applicants in this case were the wife and children of Mr. I.M. who was diagnosed with icterus and went through investigations and treatment. After being hospitalized, it was confirmed that he had "cholestatic jaundice due to cholestatic calculus" left renal lithiasis clinically significant for approximately three days; he and his family had not been informed of this diagnosis. [Para. 5] Although the jaundice disappeared after two days of treatment, Mr. I.M. continued to be treated for two more days. In the meantime, he was diagnosed with pancreatic tumor and underwent computerized tomography and an ultrasound endoscopy. MRI test had been planned but not carried out. The applicants were not informed of the examination and treatments although they had stayed with Mr. I.M.

The applicants alleged that they had not been informed by the medical team of the diagnosis, the nature of the operation and its risks or how long it was going to take them to operate on Mr. I.M. by the time the medical team had decided to perform a surgery for the pancreatic tumor. They stated that the medical team only mentioned it would be a "routine" operation that would last for an hour and a half with 100% chance of success. [Para. 6] After the tumor had been removed with parts of Mr. I.M.'s pancreas, stomach and duodenum, tests showed that the tumor was no longer harmful and Mr. I.M. was transferred to the ICU. Days after, Mr. I.M.'s conditions started to deteriorate as he developed bacterial infections and later got in to coma. In the same condition, another operation for the removal of an abscess and blood clots was performed on Mr. I.M. In the meantime, the applicants were informed by the anesthetist on duty about the diagnosis and operation Mr. I.M. underwent and the bacterial infection suspected. On the same date, Mr. I.M. died due to "septic shock and multiple organ dysfunctions". Following his death, the third applicant signed a discharge form confirming that there was no need of performing autopsy and absence of complaints regarding the treatment provided for the deceased. [Para. 12] Soon after, the applicants noticed that the medicine they brought in had not been administered to Mr. I.M. Before the deceased's body left the hospital, the second applicant complained to the Bucharest branch and the National Chamber of the College stating that her father had contracted a bacterial infection during his treatment at the hospital and requested for an order of autopsy. The Bucharest College of Doctors stated that they haven't found a medical error but reprimanded the surgeon (Dr. R.P) for not obtaining the patient's informed consent as required by the law. They failed to respond to the request for conducting autopsy on the deceased's body. The applicants appealed to the Superior Disciplinary Committee of the National College of Doctors which discontinued the disciplinary proceedings against Dr. R.P after hearing statements of two physicians and establishing that the deceased's consent had been obtained although the form had been lost.

The second applicant complained before the Ministry of Defense which decided that there had been no error in the medical treatment provided to the deceased as it was adequate and done in accordance with treatment guidelines and principles in place.

The second applicant appealed to the Bucharest County Court stating that neither the deceased nor the applicants were informed of the diagnosis and associated risks, that the consent of the deceased had not been obtained, and Dr. R.P and the anesthetist had failed to perform the MRI test for the deceased before his operation. She also stated that the post-operation care had not been sufficient and the bacterial infection the deceased had contracted from the hospital was one of the causes of his death. The Court upheld the decision of the National College of Doctors and dismissed the applicants' claims. On appeal, the Bucharest Court of Appeal dismissed the appeal and upheld the decisions of the County Court.

An investigation on involuntary manslaughter had been opened by the military prosecutor against the treating physicians and the anesthetist up on the second applicant's complaint. The prosecutor sought opinion from the National Forensic Institute which reported back stating that the cause of the deceased's death had been "multiple organ failure and sepsis occurring during the evolution of a post-surgical abscess", and that no medical error had been committed at any stage during the treatment. [Para. 26] The prosecutor then decided not to prosecute the accused. The first and the second applicants complained that the report failed to address the question regarding the bacterial infection and the consent for the operation. The Chief prosecutor dismissed the complaints stating that the report hadn't supported their allegations.

The applicants' complaint before the Bucharest Military Court had been dismissed as manifestly ill-founded based on the medical report. Contesting the accuracy of the expert medical report and requesting a new examination, the second applicant appealed before the Bucharest Territorial Military Court. She stated that the family had been misinformed regarding the surgery due to which her brother had mistakenly signed the discharge form, that autopsy should have been performed with or without their consent when bacterial infection had been suspected, and that they had appealed demanding autopsy as soon as they knew of the misinformation. Considering the decision of the College of Doctors as an exhaustive specialist opinion, the Court dismissed the applicants' appeal.

The applicants complained before the European Court of Human Rights (the ECHR) under Articles 2 (right to life), 3 (prohibition of torture), 6 (right to fair trial), 8 (right to respect for private and family life), and 14 (prohibition of discrimination) of the European Convention on Human Rights (the Convention) stating that the deceased's death had resulted from the hospital's "inaccurate diagnosis and inadequate medical care" and that the investigation into his death had been ineffective, leaving them without any means of obtaining redress for the loss incurred. [Para. 38]

The government argued that it was only the second applicant who went through domestic proceedings and had a standing to lodge a complaint before the ECHR. They also argued that the applicants failed to lodge a tort liability claim under the Hospital Act. The government also argued that the nosocomial infection couldn't be completely avoided despite the efforts for preventing hospital infections under national programmes run by the Ministry of Health. They further stated that the deceased's infection had been properly treated. Because the applicants had failed to let the hospital perform autopsy, the circumstances of the deceased's death couldn't be ascertained. Nonetheless, the expert opinions given on the issues confirmed what had caused the death and the appropriateness of the treatment provided. [Para. 43]

Decision and Reasoning

The ECHR noted that the positive obligation of States (under Article 2) to provide for independent effective judicial system for the determination of causes of death in medical treatment doesn't mandate the provision of a remedy under criminal law in all cases. It stated that in the absence of intentionally perpetrated death in medical negligence claims, this obligation would be assumed as complied with by the State if the legal system provided disciplinary and civil remedies with or without criminal remedy. The ECHR thus noted that the applicants hadn't mentioned the death had been intentional. The ECHR noted that the outcomes of the disciplinary, civil, and criminal proceedings as well as the results of the investigation by the Ministry of defense found the treatment to be adequate and confirmed the absence of medical error. The ECHR also noted that the medical opinion and the letter from the Ministry of Defense had covered the treatments provided to address the nosocomial infection. It further stated that as to the issue of the infection, the applicants could have lodged a separate tort action against the hospital as the reports and the decisions had confirmed its existence.

As regards the issue of informed consent, the ECHR noted that the form's absence had been complemented by written statements of the two Doctors who performed the surgery. The ECHR couldn't find a reason to conclude that the State Party had failed to provide legal mechanisms for the applicants for determining criminal, civil or disciplinary liabilities on the part of the hospital and its staffs. The application had been declared inadmissible.

Decision Excerpts

"...the Contracting States are bound, by virtue of this obligation, to adopt the necessary regulatory measures to ensure that doctors consider the foreseeable impact of a planned medical procedure on their patients' physical integrity and to inform patients of these consequences beforehand in such a way that the latter are able to give informed consent. In particular, as a corollary to this, if a foreseeable risk of this nature materializes without the patient having been duly informed in advance by doctors, the State Party concerned

may be held directly liable under Article 8 for this failure to provide informationâ€• [Para. 54]

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