



Ivanovi v. Bulgaria

[2020] ECHR 67320/16

Country: Bulgaria

Region: Europe

Year: 2020

Court: European Court of Human Rights

Health Topics: Child and adolescent health, Health care and health services, Health systems and financing, Hospitals, Medical malpractice

Human Rights: Right to health, Right to life

Facts

The applicants are parents of a child who died being treated at Burgas Multi-Profile Active Treatment Hospital. They alleged that the hospital's failure to provide their daughter with adequate medical care led to her death, amounting to a breach of Article 2 of the European Convention on Human Rights.

On April 10, 2009, the applicant's daughter was diagnosed with myopericarditis (heart muscle inflammation) and admitted to a pediatric therapy ward at Burgas Multi-Profile Active Treatment Hospital. The hospital did not have a dedicated pediatric cardiology ward. The child was taken for an echography that revealed fluid accumulated in her heart. Hospital nurses took care of the child during April 10; the child was not seen by a cardiologist until April 11, 2009. A pediatric cardiologist and an adult cardiologist examined the child and administered a cardiogram. They prescribed Cordarone, an anti-arrhythmic drug used to treat irregular heartbeat. The child's condition deteriorated the evening of April 11, 2009 and drastically worsened in the early hours of April 12, 2009. The child was declared dead at 1:15am on April 12, 2009.

In 2009-2010, an administrative investigation led by the Burgas regional health centre found that the child had been properly diagnosed and treated, but the hospital had organisational problems and insufficient equipment. From 2009 until 2015, a series of criminal investigations took place, culminating in their discontinuance on the basis that the child was appropriately diagnosed and treated. This decision to discontinue the criminal investigation was upheld in 2015 by the Burgas Court of Appeal.

On May 22, 2015 the Burgas Regional Court dismissed a claim for damages against the hospital on the grounds that, based on extensive expert evidence, the medical doctors who had treated the child had not acted out of line with accepted medical practice and thus the hospital bore no liability for the child's death. The court observed that experts who testified, who were from the only hospital in the country with a specialized pediatric cardiology ward, said they would have treated the child in the same manner. The Burgas Court of Appeal and the Supreme Court of Cassation both upheld the lower court's judgement on similar grounds.

Decision and Reasoning

On the issue of whether the hospital had failed to provide the daughter with adequate medical care, therefore breaching her rights under Article 2, the court held that the Bulgarian state could not be held directly liable. The applicants failed to satisfy both of the criteria for determining whether a state can bear direct liability under Article 2 of the Convention for a death allegedly due to deficient healthcare. The first criterion is whether the patient's life had been knowingly put in danger through denial of access to healthcare. On this point, the Court found no suggestion that the daughter's life had knowingly been put in danger through denial of access to life-saving emergency treatment. The applicant's criticisms were based on medical negligence, not denial of treatment. The second criterion is whether a systemic or structural dysfunction had resulted in a

patient being deprived of access to treatment, and that the authorities knew or ought to have known about the risk, and failed to take necessary measures to prevent it from materializing. On this point, the court could not find a systemic or structural hospital dysfunction that resulted in the patient being deprived of access to life-saving emergency treatment. Although it was found that the hospital was unable to perform some types of treatment, such as pericardiocentesis (a procedure for removing fluid from the heart), due to inadequate staffing and equipment, experts testified that in a specialized clinic she would have been treated in a similar way. Furthermore, a hospital, due to insufficient resources, not attempting some forms of treatment that would have increased the child's survival rate is not a systemic or structural dysfunction. The Court observed that there was no positive right to health guaranteed in the Convention, and that public funds allocation in healthcare is a decision for contracting states to make, not for the Court to decide on.

Decision Excerpts

The general principles governing the assessment of whether a Contracting State can bear direct liability under Article 2 of the Convention for a death allegedly due to deficient healthcare were recently restated: This is possible, exceptionally, either when (a) a patient's life has knowingly been put in danger through denial of access to life-saving emergency treatment, or when (b) a systemic or structural dysfunction in hospital services has resulted in a patient being deprived of access to life-saving emergency treatment and the authorities knew about or ought to have known about that risk and failed to take the necessary measures to prevent it from materialising (para 43 - 44). A case will, however, only fall in the second category if: (a) the healthcare providers' acts and omissions went beyond mere error or medical negligence, but those providers denied emergency treatment despite being fully aware that the patient's life would be at risk if it is not given; (b) the dysfunction is genuinely identifiable as systemic or structural rather than just comprising individual instances where something may have been dysfunctional; (c) there is a link between the dysfunction and the harm suffered by the patient; and (d) the dysfunction was due to the State's failure to regulate, which in this context is to be understood in a broad sense and includes supervision and enforcement (para 45). It must be emphasised in this connection that (a) the right to health is not as such among the rights guaranteed by the Convention or its Protocols, and that (b) the allocation of public funds in the area of healthcare is not a matter on which the Court should take a stand, since the competent authorities of the Contracting States are better placed to evaluate the relevant demands, take responsibility for the difficult choices which have to be made between worthy needs, and decide how their limited resources should be apportioned. (para 49)