



Calvelli and Ciglio v. Italy

Application No. 32967/96; [2002] ECHR 3

Country: Italy

Region: Europe

Year: 2002

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

Health Topics: Child and adolescent health, Chronic and noncommunicable diseases, Hospitals, Medical malpractice, Sexual and reproductive health

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

Facts

Calvelli and Ciglio's baby was transferred to an intensive care unit immediately after its birth, and died two days later of post-asphyxia syndrome. EC, the doctor who had delivered the baby and was a joint owner of the clinic, was found guilty of involuntary manslaughter and received a one year suspended prison sentence under the criminal law. EC then appealed the case, which was remitted for retrial. At retrial, the Court held that too much time had passed since the offence and time-barred the prosecution against the doctor. A separate set of civil proceedings led to an out-of-court settlement awarding compensation to Calvelli and Ciglio, although their claim for compensation under criminal law was rejected.

Calvelli and Ciglio argued that the right to life under article 2 and the right to fair hearing under article 6(1) of the European Convention on Human Rights (ECHR) had been violated. Calvelli and Ciglio maintained that the time bars and the procedural delays made it impossible to prosecute EC in Italy, and that such obstacles to prosecuting homicide were incompatible with article 2's requirement that the right to life be protected by law. Conversely, Italy contended that Calvelli and Ciglio still had civil and administrative remedies available to them, and that article 2 of the ECHR did not require criminal prosecutions. In relation to article 6(1), Calvelli and Ciglio argued that the delay in the Italian legal system was not consistent to the right to a hearing within a reasonable time by a tribunal, as their case had taken over six years to resolve.

Decision and Reasoning

The Court held that article 2 of the ECHR created a positive obligation on states to ensure that there was an effective judicial system to investigate the death of patients in the care of the medical profession and hold accountable those responsible for the deaths, as well as a positive obligation to regulate the provision of medical services. In this case, however, the Court considered that the right to take civil action, including the out-of-court settlement that Calvelli and Ciglio eventually obtained, fulfilled this positive obligation. The Court emphasized that these civil proceedings not only granted plaintiffs compensation, but also led to disciplinary action against medical professionals.

The Court also found no violation of article 6(1) given the complexity of the litigation and prosecution, and the fact that most of the delay in the proceedings was not attributable to the authorities.

Decision Excerpts

“The Court accordingly considers that the applicants denied themselves access to the best means and that, in the special circumstances of the instant case, would have satisfied the positive obligations arising under Article 2 of elucidating the extent of the doctor's responsibility for the death of their child. In that connection, the Court reiterates, mutatis mutandis, that where a relative of a deceased person accepts compensation in settlement of a civil claim based on medical negligence he or she is in principle no longer able to claim to be a victim” Para. 55.

“In the instant case the Court notes that the proceedings concerned were undeniably complex. Further, although after the applicants were initially joined as civil parties to the proceedings on 7 July 1989 the proceedings at first instance were affected by regrettable delays (notably, between E.C.'s committal on 12 June 1991 and the first hearing a year later, on 2 July 1992 see paragraphs 18-19 above), there were no further significant periods of inactivity attributable to the authorities (apart from the adjournment of the first hearing, which was caused by a lawyers' strike). In those circumstances the Court considers that a period of

six years, three months and ten days for proceedings before four levels of jurisdiction cannot be regarded as unreasonable.â€• Para. 65-66.

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