



Sentges v. Netherlands

Application No. 27677/02

Country: Netherlands

Region: Europe

Year: 2003

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

Health Topics: Chronic and noncommunicable diseases, Disabilities, Health care and health services, Health systems and financing

Human Rights: Right to privacy

Facts

S, a Netherlands national, was born in 1986. S suffered from Duchenne Muscular Dystrophy (DMD), a disease characterized by progressive muscle degeneration, loss of the ability to walk and often the loss of lung or cardiac functions. S was unable to stand, walk, or lift his arms and his manual and digital functions were virtually absent. For every act he needed or wished to perform he was completely dependent on assistance from third parties. S was represented by his mother who exercises parental authority over him.

On 20 July 1999, S's parents requested their health insurance fund to provide him with a MANUS Manipulator, a robotic arm specifically designed to be mounted on electric wheelchairs in order to give people with disabilities more autonomy in handling objects in their environment. The request was supported by the rehabilitation specialist who urged that the robotic arm would enable S to perform many acts unassisted, and possibly reduce his need for carers by at least one to three hours a day.

On 10 August 1999, the health insurance fund rejected the request on the ground that the provision of a robotic arm was covered neither by the Health Insurance Act, the Exceptional Medical Expenses Act nor by any other social insurance scheme. S's parents filed an objection but, on 18 May 2000, were rejected by the health insurance fund on the ground that the robotic arm was not part of the medical devices designated by the Minister of Health and listed in the Health Insurance (Treatment and Services) Decree.

S's parents lodged an appeal against this decision to the Regional Court of Rotterdam. On 12 December 2000, the Court held that the fund had given too narrow an interpretation to certain provisions of the Regulation and ordered the health insurance fund to come to a new decision on the request for the robotic arm. The health insurance fund appealed against the judgment to the Central Appeals Tribunal, which, on 29 January 2002, rejected the appeal asserting that the Regulation did not entitle S to be provided with a robotic arm.

On 16 July 2002, S lodged an application with the Court, complaining that the state's refusal to provide him with a robotic arm constituted a breach of Article 8, which guarantees the right to respect for his private life, and that this right entailed a positive obligation for the state to provide him with, or pay for, this medical device.

[Adapted from INTERIGHTS summary, with permission]

Decision and Reasoning

The Court held that:

(1) Art 8 may impose positive obligations on a state where there was a direct link between the measures sought by an applicant and the latter's private life, but it did not apply to situations concerning interpersonal relations of such broad and indeterminate scope that there could be no conceivable link between the measures the state was urged to take and an individual's private life;

(2) Art 8 cannot be considered applicable each time an individual's everyday life was disrupted, but only in the exceptional cases where the state's failure to adopt measures interferes with that individual's right to person

development and his or her right to establish and maintain relations with other human beings and the outside world;

(3) regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole and to the wide margin of appreciation enjoyed by states in this respect in determining the steps to be taken to ensure compliance with the European Convention on Human Rights;

(4) in view of their familiarity with the demands made on the health care system as well as with the funds available to meet the demands, the national authorities were in a better position to carry out this assessment than an international court;

(5) S had access to the standard of health care offered to all persons insured under the Health Insurance Act and the Exceptional Medical Expenses Act;

(6) in the circumstances of the present case, it cannot be said that the state exceeded the margin of appreciation afforded to it; and

(7) the complaint being manifestly ill-founded, the application was inadmissible.

Decision Excerpts