



Vo v. France

Application No. 53924/00; (2005) 40 EHRR 12; 17 BHRC 1; [2005] Inquest LR 129; (2004) 79 BMLR 71; [2004] 2 FCR 577; [2004] ECHR 326

Country: France

Region: Europe

Year: 2004

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

Health Topics: Health care and health services, Medical malpractice, Sexual and reproductive health

Human Rights: Right to life

Facts

Mrs. Thi-Nho Vo attended Lyons General Hospital for a medical examination during her pregnancy. On the same day, another woman, Mrs. Thi Thanh Van Vo, was at the hospital to have a contraceptive coil removed. When Dr. G, the doctor who was to remove the coil from Mrs. Thi Thanh Van Vo, asked for "Mrs. Vo" in the waiting room, Thi-Nho Vo answered. After a brief interview, where Dr. G noted "Mrs. Vo" difficulty understanding French, Dr. G attempted to remove the coil from Thi-Nho Vo without a prior examination. This led to him piercing Thi-Nho Vo's amniotic sac, causing the loss of a substantial amount of amniotic fluid. As a result, Thi-Nho Vo's pregnancy could not continue further. The pregnancy was later terminated on health grounds.

Thi-Nho Vo and her partner lodged a criminal complaint, together with an application to join the proceedings as civil parties, alleging unintentional injury to Thi-Nho Vo resulting in unfitness for work for a period not exceeding three months and unintentional homicide of her child. The charge of unintentional injury was dismissed under an amnesty law, and the charge of unintentional homicide was dismissed on the basis that homicide did not apply to the death of a non-viable unborn fetus.

Thi-Nho Vo complained of the authorities' refusal to classify the taking of her unborn child's life as unintentional homicide. She argued that the absence of criminal legislation to prevent and punish such an act amounted to a violation of article 2 of the European Convention, which requires protection of the right to life by law. France argued that the application was inadmissible, as article 2 did not apply to the unborn child.

Decision and Reasoning

The Court affirmed that article 2 requires states to regulate hospitals and protect patients, and to set up an effective system to investigate patient deaths and hold responsible parties accountable. However, it decided that a civil remedy for damages was an appropriate redress for medical negligence in the present case, and that there was no need to make criminal sanctions available to the Applicant. In light of this, the Court found no need to decide whether an unborn child qualified for any protection under article 2 and, if so, at what stage in its development this occurred. The Court did, however, state that, given the absence of a European legal, medical, ethical, or religious consensus as to when life begins, the Court doubted whether it was "desirable, nor even possible as matters stand, to answer in the abstract the question whether the unborn child is a person for the purposes of Article 2."

Decision Excerpts

"At European level, the Court observes that there is no consensus on the nature and status of the embryo and/or fetus (see paragraphs 39-40 above), although they are beginning to receive some protection in the light of scientific progress and the potential consequences of research into genetic engineering, medically assisted procreation or embryo experimentation. At best, it may be regarded as common ground between States that the embryo/foetus belongs to the human race. The potentiality of that being and its capacity to become a person – enjoying protection under the civil law, moreover, in many States, such as France, in the context of inheritance and gifts, and also in the United Kingdom (see paragraph 72 above) – require protection in the name of human dignity, without making it a "person" with the "right to life" for the purposes of Article 2. Para. 84.

In conclusion, the Court considers that in the circumstances of the case an action for damages in the

administrative courts could be regarded as an effective remedy that was available to the applicant . Such an action, which she failed to use, would have enabled her to prove the medical negligence she alleged andÂ to obtain full redress for the damage resulting from the doctorâ€™s negligence, and there was therefore no need to institute criminal proceedings in the instant case.â€• Para. 94.

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