



Pentiacova and Ors. v. Moldova

Application No. 14462/03; (2005) 40 EHRR SE23

Country: Moldova

Region: Europe

Year: 2005

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

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

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, Right to property

Facts

Applicants filed a complaint with the European Court of Human Rights alleging that the Moldovan government's inadequate financing of hemodialysis treatments violated their right to life, caused them significant pain and suffering, and negatively affected their families' lives.

Applicants were a group of patients suffering from liver failure and receiving hemodialysis treatments. They alleged that between 1997 and 2004, the Moldovan government significantly cut funding to the local clinic (Spitalul Clinic Republican) resulting in inadequate medical care to which Moldovan citizens were constitutionally entitled. Applicants alleged that they were forced to purchase basic medicines that, while not crucial for successful hemodialysis treatments, prevented significant physical pain and suffering. Additionally, many applicants who would have normally qualified for three treatments per week were forced to accept a reduction in sessions from three to two causing serious negative effects. Applicants further asserted that they sometimes had to pay for blood transfusions and were not always properly compensated for their transportation to and from treatment (also guaranteed by the State), another example of inhuman and degrading treatment resulting from budgetary shortfalls.

Applicants filed this application with the European Court of Human Rights because they believed that Moldovan law did not provide them with adequate channels through which to seek interim relief for negatively affected patients.

Decision and Reasoning

The Court held that it was not necessary to decide whether applicants had properly exhausted all domestic remedies available (per Article 13 of the Convention) because the application was "manifestly ill-founded."

Although the Court noted that an Article 8 claim could be relevant to complaints about public funding, it held that the Moldovan government did not violate Article 8 of the Convention regarding an impairment of family life caused by increased costs of hemodialysis. The Court conceded that while increased medical cost burdens on individual families were not an ideal situation, in light of scarce resources, the Moldovan government did "strike a fair balance between competing interests" when it came to funding decisions. The Court noted that applicants were provided with basic medical care and basic medication before January 1, 2004 and benefitted from almost full medical coverage after that date.

The Court held that based on the evidence offered by the Government and applicants' lack of comment on it, the Government did provide for all necessary patient transportation costs as a matter of law, and there was therefore no breach under Article 1 (Protection of property) of Protocol No. 1 to the Convention.

The Court also determined that the Moldovan government did not violate Article 2 of the Convention regarding applicants' right to life. Applicants did not provide sufficient evidence that their lives were put at risk by lack of adequate funding.

The Court held that the Moldovan government did not violate Article 3 of the Convention regarding a prohibition on torture, inhumane, or degrading treatment because there wasn't even enough evidence to sustain a claim of violation of Article 8. The Court also noted that the applicant's claim regarding Article 13 of the Convention (guaranteeing a right to remedy) failed as the applicants had not raised any arguable

grievances.

The Court held that the Moldovan government did not violate Article 14 of the Convention regarding equal protection from discrimination. While applicants alleged that other hospitals were better funded than Spitalul Clinic Republican (resulting in disparate medical treatment), the Court noted that applicants did not provide any evidence to show that other hospitals were better financed or that those patients received better treatment.

Decision Excerpts

“While the Convention does not guarantee as such a right to free medical care, in a number of cases the Court has held that Article 8 is relevant to complaints about public funding to facilitate the mobility and quality of life of disabled applicants The margin of appreciation referred to above is even wider when, as in the present case, the issues involve an assessment of the priorities in the context of the allocation of limited State resources In view of their familiarity with the demands made on the health care system as well as with the funds available to meet those demands, the national authorities are in a better position to carry out this assessment than an international court.” Page 13.

“In the present case the Court notes that the applicants had access to the standard of health care offered to the general public both before and after the implementation of the medical care system reform. It thus appears that they were provided with basic medical care and basic medication before 1 January 2004, and have been provided with almost full medical care after that date. The Court by no means wishes to minimise the difficulties apparently encountered by the applicants and appreciates the very real improvement which a total haemodialysis coverage would entail for their private and family lives. Nevertheless, the Court is of the opinion that in the circumstances of the present case it cannot be said that the respondent State failed to strike a fair balance between the competing interests of the applicants and the community as a whole” Page 14

“Turning to the facts of the instant case, the Court notes that the applicants have failed to adduce any evidence that their lives have been put at risk. They claim that a number of patients have died in recent years and cite the case of Gheorghe Lungu, but they have not adduced any evidence that the cause of death was the lack of any specific drug or the lack of appropriate medical care. The Court notes that chronic renal failure is a very serious progressive disease with a high rate of mortality, not only in Moldova but throughout the world. The fact that a person has died of this disease is not, therefore, in itself proof that the death was caused by shortcomings in the medical care system” Page 15.