



K.H. and Others v. Slovakia

App. No. 32881/04, 49 Eur. Ct. H.R. 34 (2009).

Country: Slovakia

Region: Europe

Year: 2009

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

Health Topics: Health care and health services, Health information, Health systems and financing, Hospitals, Informed consent, Medical malpractice, Poverty, Sexual and reproductive health

Human Rights: Right of access to information, Right to due process/fair trial, Right to family life

Facts

The eight applicants were women of Roma ethnicity, who suspected that they had been sterilized during caesarian section deliveries at two different hospitals. The applicants obtained legal representation, who attempted to examine and obtain copies of their medical records. These requests were denied by the hospitals. The applicants then brought actions against the hospitals in different district courts.

The PreÅ¡ov district court and the district court in SpiÅ¡skÅ¡ NovÅ¡ Ves ordered the hospitals to allow access to the applicants' medical records, and allow handwritten excerpts to be taken. Both district courts dismissed the applicants' request to make photocopies of their records. The applicants appealed the dismissal aspect of the district courts' decisions to the Regional Court in PreÅ¡ov and KoÅ¡jice, respectively. The Regional Courts upheld the decisions of the district courts.

The applicants that had brought suit in PreÅ¡ov then initiated an action under Article 127 of the Constitution; the Constitutional Court upheld the decision of the lower court. The remaining applicants also brought an action under Article 127 of the Constitution; the Constitutional Court found the complaint to be premature. Subsequently, the applicants' legal representatives were permitted to make copies of the applicants' medical records, due to the passage of new legislation, the Health Care Act of 2004, with the exception of one of the applicants, who was informed that her records had been lost, she was given a summary of her surgical procedure which confirmed she had been sterilized during her caesarian section.

The applicants argued under Article 8 that their right to respect for their private and family life had been violated by the hospitals' refusal to allow the production of copies of their medical records. The applicants asserted that handwritten excerpts were not a sufficient representation of their medical records, given that issues such as consent and signatures could not be reproduced. The applicants argued under Article 6, that the denial of photocopies of their medical records had violated their right to access a court, because without such evidence, they could not establish potential civil liability. The applicants also argued under Article 13, that no effective remedy would be provided to them under Article 6 or 8, and requested damages.

The State argued that the Health Care Act of 1994 prohibited allowing legal representatives of the applicants to photocopy their records, and noted that the applicants had been permitted to view their records and make handwritten copies thereof. The State argued that preventing the photocopying of medical records was required to prevent potential abuse of the records.

Decision and Reasoning

The European Court of Human Rights found that access to information pertaining to an individual's health and reproductive status was relevant to an individual's private and family life under Article 8. The Court opined that it is not the responsibility of a patient to justify access to their medical information, but that a refusal to provide access to such information must be supported by compelling reasons. In this case, the Court did not find the State's argument that prevention of photocopying the records was required to protect personal information from abuse to be sufficiently compelling. The Court therefore found that the State had violated the applicants' right to respect for their private and family life under Article 8 of the Convention.

The Court further found a violation of the applicants' right of access to a court under Article 6. The Court found no violation of the applicants' right to an effective remedy under Article 13 in conjunction with Article 8, because the contested legislation could be challenged domestically. The Court did not consider it necessary

to examine the applicants' argument under Article 13 in conjunction with Article 6. Under Article 41, the Court awarded the applicants EUR 3.500 each in non-pecuniary damages, and awarded the applicants their costs of bringing the action.

Decision Excerpts

¶48. It can be accepted that it is for the file holder to determine the arrangements for copying personal data files and whether the cost thereof should be borne by the data subject. However, the Court does not consider that data subjects should be obliged to specifically justify a request to be provided with a copy of their personal data files. It is rather for the authorities to show that there are compelling reasons for refusing this facility. • Page 10.

¶53. The arguments put forward by the domestic courts and the Government are not sufficiently compelling, with due regard to the aims set out in the second paragraph of Article 8, to outweigh the applicants' right to obtain copies of their medical records." Page 11.

"54. In particular, the Court does not see how the applicants, who had in any event been given access to the entirety of their medical files, could abuse information concerning their own persons by making photocopies of the relevant documents. • Page 11.

¶65. The Court accepts the applicants' argument that they had been in a state of uncertainty as regards their health and reproductive status following their treatment in the two hospitals concerned and that obtaining the relevant evidence, in particular in the form of photocopies, was essential for an assessment of the position in their cases from the perspective of effectively seeking redress before the courts in respect of any shortcomings in their medical treatment. • Page 13.

¶67. It is true that the statutory bar at the material time on the making available of copies of the records did not entirely bar the applicants from bringing a civil action on the basis of information obtained in the course of the consultation of their files. However, the Court considers that section 16(6) of the Health Care Act 1994 imposed a disproportionate limitation on their ability to present their cases to a court in an effective manner. It is relevant in this respect that the applicants considered the original form of the records, which could not be reproduced manually and which, in accordance with the above-cited provision, could not be made available to either the applicants or the courts (compare and contrast in this connection the McGinley and Egan case (cited above, ¶ 90)), decisive for the determination of their cases. • Page 13.