



Keenan v. United Kingdom

App. No. 27229/95, 33 Eur. H.R. Rep. 913 (2001).

Country: United Kingdom

Region: Europe

Year: 2001

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

Health Topics: Health care and health services, Health systems and financing, Medical malpractice, Medicines, Mental health, Prisons

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Freedom of movement and residence, Right to bodily integrity, Right to due process/fair trial, Right to life

Facts

The applicant brought an action on behalf of her mentally ill son, Mark Keenan, who killed himself in prison, alleging the State was in violation of Articles 2 (right to life), 3 (prohibition of torture) and 13 (right to an effective remedy) of the European Convention. The applicant alleged that her son, who was known exhibit self-harming and suicidal behaviour, had died from suicide in prison due to a failure by the prison authorities to protect his life, and that he had suffered inhuman and degrading treatment due to the conditions of his detention. The applicants submit that independent medical opinions from two consultant psychiatrists who reviewed the case suggested that Keenan was wrongly diagnosed, that the prison doctor (not a psychiatrist) adjusted Keenan's medication despite recommendations by consulting psychiatrists, that his symptoms were overlooked and finally, allege that he was exposed to situations that would agitate his condition such as the imposition of punishment including segregation.

Decision and Reasoning

The Court upheld the violation of Article 3 because it found the standard of care with which Mark Keenan was treated in the days before his death was inadequate, especially because he was mentally ill and known to be a suicide risk—this amounted to a failure on the part of the authorities to fulfill their obligations under Article 3 to protect Mark Keenan from inhuman and degrading treatment and punishment. The authorities also violated Article 13 because despite the aggregate of remedies referred to by the Government, no effective remedy was available to the applicant in the circumstances of the case which would have established where responsibility lay for the death of Mark Keenan. This is an essential element of a remedy under Article 3 for a bereaved parent.

The Court found the State in violation of Articles 3 and 13 of the Convention.

Regarding Article 2 § 1 of the Convention, the Court reiterated the principle that States have a positive obligation to safeguard the lives of those within its jurisdiction if they knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual. Notably, the Court considered this principle applicable to situations where the risk to a person derives from self-harm, despite the Government's argument that special considerations arise where a person takes his own life. The Court recognized that, while restraints inevitably exist on potential preventive measures available to authorities, they must take general measures and precautions to diminish opportunities for self-harm. The Court noted that the authorities ought to have known that Mark Keenan posed a real and immediate risk of suicide and that the authorities responded in a reasonable way to Mark Keenan's conduct, placing him in hospital care and under watch when he exhibited suicidal tendencies. He was under daily medical supervision by the prison doctors who consulted with external psychiatrists. The prison doctors approved of his treatment and, for example, found him fit for segregation. As such the Court did not consider the State in violation of Article 2 § 1 of the Convention.

The Court then assessed issues surrounding the standard of care with which Mark Keenan was treated in the days before his death under the examination of Article 3 of the Convention. In assessing whether ill-treatment attained a minimum level of severity so as to fall within the scope of Article 3, the Court had special regard to the authorities' positive obligation to protect the health of persons deprived of liberty and of the distinctive vulnerability of mentally ill persons. Moreover, the Court pointed out that lack of appropriate medical care may amount to treatment contrary to Article 3.

The Court noted that there were ample indications that Mark Keenan demonstrated suicidal tendencies and was in anguish and distress during his incarceration and up until his death. The Court also noted that treatment of mentally ill persons may be incompatible with the standards imposed by Article 3 in the protection of fundamental human dignity, even if particular ill-effects on that person cannot be perceived. While a number of prison doctors were involved in caring for Mark Keenan, they failed to display inadequate concern in maintaining full and detailed records of his mental state and undermined the effectiveness of any monitoring process. The lack of reference to and conformity with the visiting psychiatrist's suggestions were also noted. The court found that a lack of effective monitoring and the lack of informed psychiatric input assessment and treatment represented significant defects in the medical care provided Mark Keenan, a mentally ill person known to be a suicide risk. The Court noted that the delayed return of the subject to normal location (despite the visiting psychiatrist's suggestion that Mark Keenan be kept from association until paranoid feelings decreased), the reversion to previous medication without reference to the psychiatrists's recommended change by the prison doctor (unqualified in psychiatry), and the week of segregation and additional sentencing following the assault on the two prison officers may have "threatened his physical and mental resistance" and "was not compatible with the standard of treatment required in respect of a mentally ill person." As such, it constituted inhuman and degrading treatment and punishment within the meaning of Article 3 of the Convention.

Finally, the Court found violations of Article 13. Mark Keenan himself had no remedy in respect of the punishment inflicted on him. The judicial review process was not available or sufficiently timely, internal avenues of complaint were also too delayed and no expeditious avenue of complaint for prisoners existed. The Court highlighted that, if Mark Keenan was not in a fit mental state to make use of remedies, this would simply heighten the need for the automatic review of his situation. The Court also noted its belief that an effective recourse against the adjudication may have influenced the course of events. Furthermore, there was no available remedy after Mark Keenan's death for determining the liability of the authorities for any alleged ill-treatment or for providing compensation.

The applicant was awarded non-pecuniary damage and costs throughout.

Decision Excerpts

"111. It is relevant in the context of the present application to recall also that the authorities are under an obligation to protect the health of persons deprived of liberty (see *Hurtado v. Switzerland*, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, Â§ 79). The lack of appropriate medical care may amount to treatment contrary to Article 3 (see *Aohan v. Turkey* [GC], no. 22277/93, Â§ 87, ECHR 2000-VII). In particular, the assessment of whether the treatment or punishment concerned is incompatible with the standards of Article 3 has, in the case of mentally ill persons, to take into consideration their vulnerability and their inability, in some cases, to complain coherently or at all about how they are being affected by any particular treatment (see, for example, *Herczegfalvy*, cited above, pp. 25-26, Â§ 82, and *Aerts v. Belgium*, judgment of 30 July 1998, Reports 1998-V, p. 1966, Â§ 66)."

Copyright © 2015 www.GlobalHealthRights.org