



Z v. Finland

App. No. 22009/93, 25 Eur. H.R. Rep. 371 (1997).

Country: Finland

Region: Europe

Year: 1997

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

Health Topics: Health information, HIV/AIDS, Infectious diseases, Sexual and reproductive health, Violence

Human Rights: Right to family life, Right to privacy

Facts

The applicant, a Finnish national, had been married to X, who was not a Finnish national, at the time the events occurred. They were both infected with the human immunodeficiency virus (HIV). X was convicted for rape and during the criminal proceedings the court gave orders requiring the applicant's medical advisers to give evidence. In addition, the applicant's confidential medical records disclosing her HIV positive status were seized by the prosecution and included in the investigation file without her prior consent. The City Court held the trial in camera and ordered that the documents submitted in the case remain confidential for a period of ten years. Later on, the applicant's identity and information about her HIV status were published in a court judgment. The applicant complained to the European Court of Human Rights that she had been a victim of violations of Article 8 of the Convention (respect for private and family life).

Decision and Reasoning

The Court found that Finland did not violate Article 8 of the Convention. Although a patient has an important interest in protecting the confidentiality of his or her medical records, that interest may be outweighed by the Government's interest in investigating and prosecuting a crime. In the present case, Finland properly struck that balance when requiring the applicant's medical advisers to give evidence, to seize the applicant's medical records, and to include them in the investigation file. However, making the medical data concerned accessible to the public as early as 2002 would, if implemented, give rise to a violation of Article 8 of the Convention insofar as the limitation did not grant sufficient weight to the applicant's interests and that of her family. Under the same rationale, Finland violated Article 8 insofar as the Court of Appeals published the applicant's identity and her HIV positive status after she had clearly stated her wish to keep that information confidential. The Court found it was unnecessary to separately examine the matters under Article 13.

Decision Excerpts

"96. The above considerations are especially valid as regards protection of the confidentiality of information about a person's HIV infection. The disclosure of such data may dramatically affect his or her private and family life, as well as social and employment situation, by exposing him or her to opprobrium and the risk of ostracism. For this reason it may also discourage persons from seeking diagnosis or treatment and thus undermine any preventive efforts by the community to contain the pandemic (see the above-mentioned explanatory memorandum to Recommendation no. R (89) 14, paragraphs 166-68). The interests in protecting the confidentiality of such information will therefore weigh heavily in the balance in determining whether the interference was proportionate to the legitimate aim pursued. Such interference cannot be compatible with Article 8 of the Convention (art. 8) unless it is justified by an overriding requirement in the public interest. In view of the highly intimate and sensitive nature of information concerning a person's HIV status, any State measures compelling communication or disclosure of such information without the consent of the patient call for the most careful scrutiny on the part of the Court, as do the safeguards designed to secure an effective protection (see, *mutatis mutandis*, the *Dudgeon v. the United Kingdom* judgment of 22 October 1981, Series A no. 45, p. 21, para. 52; and the *Johansen v. Norway* judgment of 7 August 1996, Reports of Judgments and Decisions 1996-III, pp. 1003-04, para. 64)." Page 23.