



Oyal v. Turkey

App. No. 4864/05, Eur. Ct. H.R. (unpublished) (2010).

Country: Turkey

Region: Europe

Year: 2010

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

Health Topics: Child and adolescent health, Health care and health services, Health systems and financing, HIV/AIDS, Hospitals, Infectious diseases, Medical malpractice, Poverty

Human Rights: Right to due process/fair trial, Right to life

Facts

The primary applicant, the child of the second two applicants, was born prematurely and diagnosed with an "inguinal and umbilical hernia." The child required a number of blood and plasma transfusions during the first two months of life, and the applicant parents purchased the required blood and plasma quantities from the Turkish Red Cross. Four months after hospital staff carried out the blood transfusions, the parent applicants learned that their child had been infected with HIV and that the virus was at risk of developing into Acquired Immune Deficiency Syndrome (AIDS). Later, the Government of Turkey discovered that a blood donor to the Turkish Red Cross was HIV positive and that the particular donor had previously given quantities of blood and plasma. It then became apparent that a unit of plasma given to the child had come from the same HIV-positive donor.

The applicants first filed a criminal complaint with the Public Prosecutor's office, requesting that the Public Prosecutor institute proceedings against the Turkish Red Cross for distributing contaminated blood, as well as against the Ministry of Health for negligently screening and testing the blood. The applicants also requested that the Public Prosecutor institute proceedings against the medical and laboratory personnel involved in carrying out the particular transfusion, as well as against the Director of the Izmir Health Department and the Director of the Kizilay Izmir Branch. The Public Prosecutor did not pursue actions against the entities, determining that there had been no fault on the part of the Turkish Red Cross or that of the medical personnel. The Public Prosecutor also concluded that it did not have jurisdiction to pursue actions against a government ministry. Subsequently, the applicants pursued civil proceedings against the Turkish Red Cross and the Ministry of Health. The Ankara Civil Court of First Instance (Civil Court) issued a decision of non-jurisdiction as against the Ministry of Health, asserting that such cases must be brought before an administrative tribunal. However, the Civil Court did find that the Turkish Red Cross was strictly liable because it chose to forgo HIV testing due to high costs. The Court of Cassation upheld the decision. After a long series of Administrative proceedings, which lasted over twelve years, against the Ministry of Health, the Izmir Administrative Court found that Ministry of Health personnel had negligently performed their duties. However, the administrative court awarded the family, which had fallen into economic hardship, only a single year of medical treatment expenses.

Unsatisfied with the duration of the administrative proceedings, as well as the compensation awarded by the civil and administrative courts, the applicants filed an action with the European Court of Human Rights. In particular, the applicants claimed that insufficient training and poor supervision of staff at the Ministry of Health, as well as the limited treatment expense compensation, constituted a violation of the child applicant's right to life under Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention). The applicants also claimed that the length of the administrative proceedings was excessively long, and therefore, violated their right to a hearing "within a reasonable time" under Article 6, section 1 of the Convention, as well as their rights to an effective remedy under 13 of the Convention.

Decision and Reasoning

The Court found that the actions of Turkey contravened the right to life under Article 2 of the Convention. In its analysis, the Court noted that the Convention does not require criminal law remedies in cases concerning an unintentional infringement of the right to life, but that the Turkish legal system was required to provide appropriate civil redress. The Court found that applicants did have access to civil and administrative courts but that the redress was inappropriate and insufficient. In particular, the Court found it unacceptable that the applicants were left on their own to cover the high costs of the child applicant's continued treatment. Instead,

the Court concluded that the Ministry of Health should have been required to pay the treatment and medication costs for the child applicant for the entirety of his lifetime.

The Court also found that the length of the proceedings had violated the applicants' rights to a hearing "within a reasonable time" under Article 6(1) of the Convention, as well as their rights to an effective remedy under Article 13 of the Convention. In its analysis, the Court considered that the case was not particularly complex because the Ankara Civil Court of First Instance and the Court of Cassation had already established the negligence and responsibility of the authorities, yet the administrative proceedings included several abnormally long procedural periods.

Decision Excerpts

"67. The Court notes that the criminal investigation into the applicants' complaints concerning negligence on the part of the health personnel concerned, the Director General of the KÃ±zÃ±lay and the Minister of Health was terminated on the ground that there was no fault directly attributable to these persons...."

"68. In view of the above-cited principles indicating that Article 2 of the Convention does not necessarily require a criminal-law remedy in cases of unintentional infringement of the right to life or to personal integrity, such as the present case involving medical negligence, the Court must ascertain whether the Turkish legal system afforded the applicants sufficient and appropriate civil redress in order to satisfy the positive obligation under the aforementioned provision."

"76. In that connection, the Court recalls that, apart from the concern for the respect of the rights inherent in Article 2 of the Convention in each individual case, more general considerations also call for a prompt examination of cases concerning medical negligence in a hospital setting. Knowledge of the facts and of possible errors committed in the course of medical care is essential to enable the institutions and medical staff concerned to remedy the potential deficiencies and prevent similar errors. The prompt examination of such cases is therefore important for the safety of users of all health services (see *Å ilih v. Slovenia* [GC], no. 71463/01, Å§ 196, 9 April 2009)."

"89. Notwithstanding the above findings, the Court observes that the main issue in the present case was not whether there had been unreasonable delays imputable to the administrative courts hearing the applicants' case, but whether those courts had acted with "exceptional diligence" in view of the first applicant's condition and the gravity of the overall situation. Furthermore, what was at stake in the proceedings complained of was of crucial importance to the applicants in view of the disease from which the first applicant is suffering (see *X v. France, VallÃ©e, Karakaya, Pailot, Richard, Leterme and Henra* judgments cited above, Å§ 47, Å§ 47, Å§ 43, Å§ 68, Å§ 64, Å§ 68, and Å§ 68 respectively)."