



Case EKD/0077/11/12

Case No. EKD/0077/11/12

Country: Armenia

Region: Europe

Year: 2013

Court: Court of Cassation (Հայաստանի Հանրապետության Կասսացիոն Կոլեգիա)

Health Topics: Health care and health services, Hospitals, Infectious diseases, Medical malpractice, Sexual and reproductive health

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

Facts

Arman Antonyan, the son of the applicant Susanna Antonyan, died upon receiving treatment at a medical institution. A. Antonyan's death was caused by acute liver failure resulted from the fulminant viral malignant hepatitis B.

On May 31, 2010, S. Antonyan reported to the RA General Prosecutor's Office that after her son A. Antonyan received treatment at the relevant medical institution, his state deteriorated rapidly. Afterwards, criminal proceedings were instigated, with investigation launched; however, later the proceedings were stopped due to absence of an element of crime. Upon the supplementary investigation at the request of the General Prosecutor, the criminal case was dismissed once again. Throughout the investigation, S. Antonyan (the mother of late A. Antonyan) reiterated that her son had contracted the disease causing his death in course of his examination and treatment.

Despite a number of petitions submitted to the agency responsible for the criminal prosecution, S. Antonyan was not recognized as the successor to the aggrieved party and, consequently, lost the possibility to enjoy her procedural rights. Only 15 days before closing the criminal proceedings was the investigator assigned to recognize Susanna Antonyan, late Arman Antonyan's mother, as the successor to the aggrieved party, and only a week before closing the proceedings was she notified of this.

The investigator's decree to close the criminal proceedings was appealed before the RA First Instance Court of General Jurisdiction, Second Instance Court of Appeal and was ultimately dismissed.

The applicant stated at the Court of Cassation that the agency responsible for the criminal prosecution failed to conduct a thorough, comprehensive and impartial investigation.

Decision and Reasoning

The Court of Cassation stated in its ruling that the investigation into the death of A. Antonyan had not been available to his family, and in fact, no efficient criminal and procedural investigation had ever been carried out.

The Court of Cassation referred to the Constitution, Criminal Procedure Code, the Council of Europe Committee of Ministers Recommendation N R(85)11 of 1985 on The Position of the Victim in the Framework of Criminal Law and Procedure, the United Nations Resolution N 40/34 on Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the ECtHR ruling on Jankovic v. Croatia to state that the criminal proceedings aim not only to reveal the crime and bring the guilty person to criminal responsibility, but also to ensure protection of the rights and legal interests of crime victims. This ranges among the most critical issues of criminal procedure. As it appears impossible to exercise one's procedural rights in criminal proceedings without being a participant to the trial, it is essential to involve the person in question as a victim to ensure the protection of his/her rights and legal interests.

Meanwhile, the Code of Criminal Procedure defines the institute of the successor to the victim/aggrieved party, and by doing so makes it possible to protect the rights of the dead victim.

Upon analyzing the law, the Court of Cassation also concluded that while the person can be involved in proceedings as a victim if he/she suffered moral, physical or property damages in consequence of a crime or the potential risk of suffering any such damage was proven, however, the interpretation below cannot hold

true: for a person to be recognized as a victim/aggrieved party, it is necessary to prove all elements of crime or collect exhaustive evidence on damages. Also, the availability of all the evidence necessary to initiate criminal proceedings and consequently, the launched criminal proceedings come to constitute a sufficient ground for the potential crime victim to be recognized at this stage as the aggrieved party and to be involved in the investigation by the competent agency.

The court also stated that it was actually quite formal to recognize the victim as the aggrieved party when only very little time was left till closing of the criminal case.

In its assessment of how efficient the investigation into the death of A. Antonyan was, the RA Court of Cassation referred to a number of ECtHR rulings and the Constitution and ultimately concluded that the agency responsible for the preliminary criminal investigation failed to conduct an efficient criminal and procedural investigation into the death of A. Antonyan. In fact, the competent agency failed to take the immediate investigative actions, particularly, to seize from the medical institution the documents on A. Antonyan and other items of essential significance for the case (medical records, research findings, medical instruments, etc.), as well as to consistently seek clarification and answers to the questions covered in its enquiries/official letters that were submitted to the Ministry of Health and remained unanswered and to question the nurse who personally performed the treatment on A. Antonyan.

Decision Excerpts

«... 22-24-...»

25. Guided by the legal provisions and approaches in Paras. 22-24 of the above ruling, the Court of Cassation states that criminal procedure aims not only to reveal the crime and bring the guilty person to criminal responsibility, but also to ensure protection of the rights and legal interests of crime victims. In other words, protection of the rights and legal interests of victims ranges among the most critical issues of criminal procedure.

«...»

27. Thus, Article 182(1) of the RA Criminal Procedure Code stipulates that under available reasons and grounds for criminal proceedings, the public prosecutor, investigator and the investigative agency shall decide to initiate criminal proceedings. For the purposes of this Article, grounds for criminal proceedings cover the data in support of the elements of crime. In other words, to start criminal proceedings, the competent official must consider the collected data sufficient to deem the fact of a crime (objective aspect of criminal element and object) established. And if the victim of the alleged crime comes up at the stage of instigating criminal proceedings, the investigating agency is obliged to recognize the latter as the aggrieved party and involve him/her in the investigation. Likewise, at this stage, the investigating agency must recognize as a legal successor a close relative (if they express such a wish) of the victim who died or lost his/her ability to express his/her will.

«...»

32. A. Antonyan's mother, S. Antonyan, reiterated at the agencies responsible for the preliminary criminal investigation and its legal supervision that her son had contracted the disease causing his death in course of his examination and treatment by Dr. A. Baghdasaryan (see Para 6 above). This statement by the legal successor to the aggrieved party is not explicitly baseless and suggests that in order to assess the efficiency of the investigation into the death of A. Antonyan, it is necessary first of all to find out whether the agency

