EUROPEAN COURT OF HUMAN RIGHTS

IVANOVI v. BULGARIA (European Court of Human Rights)

by admin • April 22, 2020

FIFTH SECTION

DECISION

Application no. 67320/16

Stanimir Tonchev IVANOV and Stanka Dimitrova IVANOVA

against Bulgaria

The European Court of Human Rights (Fifth Section), sitting on 25 February 2020 as a Committee composed of:

Gabriele Kucsko-Stadlmayer, President,
Síofra O'Leary,
Mārtiņš Mits, judges,
and Milan Blaško, Deputy Section Registrar,

Having regard to the above application lodged on 11 November 2016,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Stanimir Tonchev Ivanov and Ms Stanka Dimitrova Ivanova, are Bulgarian nationals who were born in 1975 and 1972 respectively and live in Burgas. They were represented before the Court by Ms N. Dobreva, a lawyer practising in Sofia.

2. The facts of the case, as submitted by the applicants and as appearing on the basis of the documents presented by them, may be summarised as follows.

A. Hospitalisation and death of the applicants' daughter

3. At the relevant time the applicants were married.

4. In the morning of 10 April 2009 their daughter, born in July 1995, complained, as she had done for several days, of pain behind the sternum and general fatigue. The applicants took her to a local health centre, where she was given an X-ray. Then they took her to a cardiologist, who diagnosed her with acute myocarditis[1] and recommended that she be taken to a cardiology ward.

5. The applicants took the child to the Burgas Multi-Profile Active Treatment Hospital. That hospital did not have a pediatric cardiology ward and the child was thus admitted, just after 12 noon, to the pediatric therapy ward. There she was seen by the ward's head and a pediatric cardiologist, given a cardiogram and a blood test, diagnosed with myopericarditis,[2] and prescribed treatment with antibiotics, a corticosteroid and a nonsteroidal anti-inflammatory drug.

6. Since the hospital apparently did not have a functioning echograph, shortly after 2 p.m. the applicants, at the hospital's recommendation, took the child, who was according to them by then feeling worse, to a private medical centre across the

street for an echography. The echography revealed a pericardial effusion[3] of about 450 millilitres.

7. The child was taken back to the hospital and placed in an intensive-care room in the same ward. A heart-rate monitor was set up and attached to her, but according to the applicants no-one noted down the readings until the following morning.

8. The on-duty nurses kept administering the prescribed medicines at fixed intervals. The child's condition remained more or less the same throughout the day and the following night, when she was periodically seen by the doctors on duty. Despite the second applicant's pleas, the child was not seen by a cardiologist throughout the next day, 11 April 2009.

9. At 9 p.m. on 11 April 2009 the on-duty doctor examined the child and found that her condition had got worse, with high pulse, vomiting and nausea. She was given an X-ray and a blood test.

10. At about 11 p.m. the pediatric cardiologist and a cardiologist for adults came in to examine the child and give her a cardiogram. They discussed her condition with the ward's head and the on-duty doctor, and prescribed Cordarone.[4] The ward's head told the second applicant that the child's condition was not improving and that arrangements had been made for her to be seen the following morning by the head of the intensive-care unit of the specialised pediatric cardiology clinic in Sofia, who was in Burgas for a conference.

11. At about twenty minutes past midnight on Sunday 12 April 2009 the child's condition drastically worsened: she went pale, started sweating, had difficulty breathing, and her heartbeat slowed down. A reanimation team came in at 0.35 a.m. and tried to resuscitate her. At 1.15 a.m. she was declared dead.

12. No autopsy was carried out, in line with the wish of the applicants.

B. Administrative investigations

13. Following complaints by the applicants, in 2009-2010 the case was investigated separately by the Burgas regional health centre, the Ministry of Health and the Medical Audit Agency.

14. The Burgas regional health centre came to the view that the child had been properly diagnosed and treated (which had unfortunately been unable to avert the lethal outcome), but that otherwise the hospital had had organisational problems and insufficient equipment. The investigations by the Ministry of Health and the Medical Audit Agency reached similar conclusions.

15. One of the pediatric cardiologists consulted by the Agency opined that the treatment had been correct, but that it might have also been possible to carry out a pericardiocentesis,[5] which would have however only been possible in a university hospital and would have required appropriate transport to one. At the same time, she said that the medical data suggested damage to the myocardium and hence an inevitability of the lethal outcome. Two other pediatric cardiologists consulted by the Agency also said that the child's diagnosis and treatment had been correct, but that more intensive monitoring should have

been envisaged (feasible in an intensive-care ward), and that the course of her treatment upon admission to the hospital had been incomplete.

C. Criminal investigation

16. In September 2009 the prosecuting authorities opened a criminal investigation into the child's death. It was discontinued in December 2010, on the basis that the available expert and other evidence did not suggest that the death had been due to medical negligence.

17. The applicants sought judicial review, and in January 2011 the Burgas Regional Court quashed the discontinuance. It held that the experts had not sufficiently elucidated the propriety of administering Cordarone and whether it had been necessary to transfer the child to a cardiology clinic. It also expressed doubts in relation to the experts' opinion about the precise cause of death, and found that another expert report was required. Following an appeal by the prosecuting authorities, in February 2011 the Burgas Court of Appeal upheld that decision.

18. Having obtained another expert report, in October 2011 the prosecuting authorities again discontinued the investigation. The applicants sought judicial review, and in November 2011 the Burgas Regional Court again quashed the discontinuance, holding that the prosecuting authorities had failed sufficiently to verify a number of points, including a possible falsification of hospital records relating to the case, and that the second expert report was deficient in a number of ways.

19. Having obtained yet another expert report, in January 2013 the prosecuting authorities again discontinued the investigation. The applicants sought judicial review and in March 2013 the Burgas Regional Court quashed the discontinuance for a third time, holding that even though the experts had duly addressed all points raised by the applicants and there was no reason to doubt their independence, the prosecuting authorities had then not given enough reasons for their decision.

20. In August 2015 the prosecuting authorities again discontinued the investigation. The applicants sought judicial review, and in September 2015 the Burgas Regional Court upheld the discontinuance. It found that according to all expert reports obtained during the investigation, including the ones drawn up after the decisions quashing the earlier discontinuances, the child had been correctly diagnosed and treated, and her death had not been due to medical negligence.

21. The applicants appealed, but in a final decision of 13 November 2015 the Burgas Court of Appeal upheld the lower court's decision. It noted that altogether sixteen medical experts, whose professional competence and objectivity it had no reason to doubt, had worked on the case, and that their evidence had led the prosecuting authorities to discontinue the investigation on the basis that none of the medical doctors who had treated the child had, by acting negligently, directly contributed to her death. No further evidence could call that finding into question.

D. Proceedings for damages against the hospital

1. At first instance

22. Meanwhile, in June 2013 the applicants brought a claim for damages against the hospital, alleging that their daughter's death had been due to negligence by the medical professionals employed by it. They set out their allegations about the events of 10-12 April 2009 in detail and referred to the expert evidence from the earlier investigations. Their allegations were under four headings: (a) that the child had not been hospitalised in a suitable ward; (b) that she had not been properly monitored and given intensive treatment, as required by her condition; (c) that the hospital had not duly envisaged transporting her to a hospital having a pediatric cardiology ward, or at least attempted to bring in an outside pediatric cardiology specialist; and (d)that the details about the child's condition and treatment had not been properly brought to their attention.

23. The applicants enclosed with their statement of claim a number of documents, including witness statements and expert reports from the earlier investigations, and requested an expert report on eight questions formulated by them.

24. In its reply to the statement of claim, the hospital also requested an expert report on ten questions formulated by it.

25. The Burgas Regional Court refused to admit the witness statements and the expert reports from the earlier investigations, on the basis that they were not admissible evidence in the proceedings before it. It dealt with the parties' requests for expert evidence after hearing the witnesses called by them, so as to enable the experts to have regard to the witness statements as well. It instructed the experts it appointed – all three of whom were specialists from the pediatric cardiology clinic of the National Cardiology Hospital in Sofia – to answer all questions formulated by the parties, except for some questions formulated by the defendant hospital.

26. In their report, which ran to thirteen pages, the experts dealt separately with the eight questions formulated by the applicants and the ten questions formulated by the hospital. In doing so, they had regard to the written and witness evidence gathered so far in the proceedings.

27. With reference to the applicants' questions, the experts stated that:(a) at the time of her hospitalisation the child had not been in a critical condition; (b) in the absence of histological data it could not be categorically said whether her myocardium and pericardium had been acutely inflamed; (c) the 450-millilitre pericardial effusion could, in view of the child's anatomy, be seen as moderate, and there was no data suggesting a lethal cardiac tamponade[6] at the time of her admission to the hospital; (d) on10 April 2009 it had not been necessary to give her heart stimulating drugs; (e) the only hospital in Bulgaria which had a pediatric cardiology ward was in Sofia, but the treatment did not necessarily have to take place in such a ward and could have been done in an intensive-care unit; (f) the surest method of spotting changes in a pericardial effusion was by way of an echography but in some respects an X-ray could also work; and (g) there were no established treatment "standards" in pediatric cardiology, and treatment was done on the basis of "recommendations". Myopericarditis was generally treated in two ways: treatment of the heart failure, and treatment of the disturbances of the cardiac rhythm and conduction. In the absence of heart failure, it was not advisable to use inotropes[7] owing to the possible lethal risks, especially when the myocardium was suspected to be inflamed. There was no need fully to immobilise the patient or use a catheter (except for babies). Cordarone was a widely used anti-arrhythmia drug, including in pediatric cardiology, and one of the options for children with myopericarditis and displaying signs of arrhythmia.

28. With reference to the hospital's questions, the experts said, inter alia, that if myopericarditis developed quickly, cardiogenic shock could occur within a few hours, with a fatality rate of up to 50%. They described in detail the steps taken to treat the child between her admission and death, and said that she had been correctly diagnosed with myopericarditis, properly monitored and tested throughout her stay in the hospital, and given adequate medicinal treatment. It had not been possible to forecast how quickly the myopericarditis would develop. The worsening of her condition in the late evening of 11 April 2009 suggested heart failure culminating in cardiogenic shock. Everything pointed towards this being due to myocarditis, and there was no etiological treatment which could arrest its course. It had not been necessary to carry out a pericardiocentesis in the evening of 11 April 2009, as the X-ray had not shown an increase of the pericardial effusion. This was in any event a highly risky procedure, to be carried out in an intensive-care unit. The only place in Bulgaria which had the conditions in which it could be properly performed was the intensive-care unit of the pediatric cardiology clinic in Sofia. The use of Cordarone had been correct and had not contributed to the lethal outcome. All in all, the child's diagnosis and treatment had been correct. The available data suggested that the cause of her death had been the rapid development of the myopericarditis, which had affected the heart muscle and had resulted in heart failure and cardiogenic shock, rather than the pericardial effusion. An autopsy and a histological examination, which had not been carried out, would have enabled a categorical finding, but the available data gave cause to think, with a high degree of probability, that the death had been due to fulminant myocarditis.[8]

29. When presenting their report in open court, the experts were heard by the judge and explained their findings in detail, including why they did not consider that a pericardiocentesis had been advisable. They also answered questions by counsel for the parties, and said that they would have treated the child in the same way as their colleagues in Burgas, that they would not have administered inotropes, and that Cordarone was often used for heart patients. Counsel for the applicants did not contest the report, but said that in her view it left some points – such as the lethality rate in myopericarditis patients who had undergone a pericardiocentesis – unelucidated. She asked the court to either ask the experts to supplement their report or to

give her leave to present medical literature which would, according to her, show that had the child been given a pericardiocentesis her chances of survival would have been quite high. To that, the experts retorted that in view of the way in which the child's condition had progressed, a pericardiocentesis would have been counterproductive. The court also gave the applicants leave to present the medical articles they wished to adduce.

30. At the following hearing, counsel for the applicants asked the court to vary its earlier decision not to admit the expert reports from the earlier investigations – in particular, four of them. She noted that their conclusions differed in some respects from those of the experts appointed by the court – for instance with respect to the use of heart stimulating drugs, the use of Cordarone, and the presence of complications already at the time of admission to the hospital – and that these divergences would give her a basis to contest the expert report obtained by the court. She explained that she had not done so at the previous hearing because she had not had a proper comparative basis to do so. Counsel for the hospital objected. The court declined to vary its decision, reiterating that the expert reports from the earlier investigations were not admissible evidence in the proceedings before it. It refused, for the same reason, to admit two of the judicial decisions which had quashed discontinuances of the criminal investigation. The court admitted the medical articles presented by the applicants, but noted that they could not formally be seen as evidence.

31. On 22 May 2015 the Burgas Regional Court dismissed the claim for damages. It summarised in detail the parties' submissions and the witness and expert evidence, including the explanations given by the experts in open court in response to the parties' questions. The court then proceeded to find, essentially on the basis of the expert evidence, which it fully credited, that the medical doctors who had treated the child had not acted out of line with good medical practice and that they, and the hospital, thus bore no liability for the child's death. The court noted in particular that the experts, who worked in the only hospital in the country which had a specialised pediatric cardiology ward, had said that they would have treated the child in the same way as the medical doctors who had taken care of her. It also observed that a transfer to another hospital would not have been practicable, either at the time of the child's admission or later on. Lastly, the court noted that even though it had been established (based on a graphological report) that the informed-consent form for the child's medical treatment had not been signed by the applicants, this had no direct link with her death.

2. On appeal

32. The applicants appealed. They argued that the court had made several errors. First, it had refused to admit evidence from the earlier criminal and other investigations, thereby ignoring divergences between the earlier expert reports and the one presented to it. It was precisely those divergences which would have given the applicants a proper basis to contest the expert report obtained by the court and seek another one. Those divergences concerned: (a) whether the general diagnosis and the diagnosis of fulminant myocarditis were one and the same, and whether they had required different treatment; (b) at what point the child's condition had started to develop rapidly; (c) whether it had then become necessary to transfer her to a specialised cardiology clinic; (d) whether it had been necessary to prescribe heart stimulating drugs; and (e) whether it had been necessary to give her Cordarone and whether this had caused her death. Secondly, the court had refused to ask the experts to supplement their report. Thirdly, the court had not analysed for itself the relevant medical standards, which was the only way for it to ascertain the presence or absence of wrongful conduct as a constitutive element of the tort alleged by the applicants, and thus a crucial point in the case; it had instead fully deferred to the experts on that point. Lastly, the court had not duly analysed the expert report, including by reference to the medical articles which the applicants had presented, but had instead simply summarised it, thus fully deferring to the experts' findings.

33. The applicants asked the Burgas Court of Appeal to admit all written documents enclosed with their statement of claim, to find that they cast doubt on many aspects of the expert report obtained by the lower court, and on that basis to order another expert report, asking the experts to deal with all questions set out in their statement of claim and six further questions.

34. The Burgas Court of Appeal refused to order another expert report or admit the evidence which the lower court had turned down. It noted that under the rules of procedure it could only do so if the lower court's decisions on these points had been

tainted by irregularities, which was not the case. In particular, the applicants had not duly contested the expert report obtained by the lower court.

35. On 14 December 2015 the Burgas Court of Appeal upheld the lower court's judgment. It likewise summarised in some detail the findings of the experts appointed by the lower court, which it deemed credible, and on their basis held that the child had been correctly diagnosed and treated, and that the medical specialists in charge of her treatment had not acted out of line with the relevant medical standards. The court noted that the burden to make out the assertion that this was not the case fell on the applicants, in their capacity as claimants, and held that they had failed to discharge it. In this connection, it found no error in the lower court's decisions not to admit evidence from the earlier investigations, to disregard the medical articles presented by the applicants, and to abstain from ordering another expert report. The applicants had not contested the first expert report, and in any event the experts, all of whom were pediatric cardiologists from a specialised hospital, had answered in detail all their questions, including those featuring in their appeal.

3. Before the Supreme Court of Cassation

36. The applicants appealed on points of law. They argued that the court of appeal had erred by refusing to admit the evidence presented by them and to obtain a fresh expert report. Also, like the regional court, it had omitted to analyse for itself the relevant medical standards, which was a question of law that should not have been abandoned to the experts. It had also erred by not duly analysing the evidence and focusing only on the actual treatment provided to the child, thus failing to address several distinct aspects of the claim: her hospitalisation in an unsuitable ward, the lack of proper monitoring of her condition, the failure to transfer her to another hospital or to provide enough information about her condition and treatment. Another error had been the court of appeal's failure duly to analyse the expert report against the backdrop of the remainder of the evidence in the case. The applicants went on to analyse the facts of the case in some detail, and on that basis argued that the court of appeal's judgment was unfounded and that the hospital was in effect liable for their daughter's death.

37. As required by the rules of procedure, the applicants enclosed with their appeal on points of law submissions on the salient points which, according to them, the court of appeal had decided out of line with the Supreme Court of Cassation's case-law. In their view, these were: (a) the court of appeal's refusal to admit the expert and other evidence that the regional court had turned down in error; (b) the court of appeal's failure to analyse for itself the relevant medical standards; and (c) the court of appeal's choice to confine its analysis to the expert evidence.

38. On 1 July 2016 the Supreme Court of Cassation refused to admit the appeal for examination. It held that the court of appeal had not contravened its case-law with respect to any of the points mentioned by the applicants. It was settled that expert reports obtained in criminal investigations were not admissible evidence in separate civil proceedings. This had already been explained by the Supreme Court of Cassation in 2012 (see paragraph 39 below). The court went on to say that medical articles and opinions given in other proceedings were not official documents capable of shedding light on the facts of the case. Nor had the court of appeal erred by refusing to obtain another expert report. It had also given enough reasons on all essential points in the case.

RELEVANT LEGAL FRAMEWORK

39. The rule that a civil court must not discuss or base its decision on expert reports obtained in other proceedings rather than those before it was articulated by the former Supreme Court in 1977 (see реш. № 636 от 24.03.1977 г. по гр. д. № 3017/1976 г. ВС, I г. о.). The Supreme Court of Cassation more recently reiterated it, specifically with reference to expert reports obtained in earlier criminal investigations, in a 2012 judgment (see реш. № 133 от 04.04.2012 г. по гр. д. № 1243/2011, ВКС, II г. о.). In that case, the court pointed to two reasons for the rule. The first was that experts, who were auxiliaries to the court, had to be directly appointed by it and be capable of being trusted by it, including on the basis of the pledge that they made in person before the court to give an unbiased conclusion. The second reason was that under the rules of civil procedure experts had the duty not simply to draw up a written report but also to appear before the court to explain that report and answer, if need be,

questions by the parties and the court about it; those answers could then provide a basis to the parties effectively to challenge the report.

COMPLAINTS

40. The applicants complained under Article 2 of the Convention that the hospital in which their daughter had died had failed to provide her with adequate medical care. They alleged, in particular, that the hospital staff (a) had underestimated the child's diagnosis; (b) had not been properly equipped and trained, in particular for intensive care; (c) had not informed them of a possibility to transfer the child to a suitably equipped pediatric cardiology ward; (d) had failed duly to monitor the child's condition; (e) had not administered heart stimulating drugs or attempted pericardiocentesis; and (f) had given the child an inappropriate medicine (Cordarone).

41. The applicants also complained under Article 6 § 1 of the Convention that the proceedings for damages that they had brought against the hospital in relation to their daughter's death had been unfair because the courts: (a) had refused to admit and have regard to the expert evidence from the earlier investigations; (b) had based their judgments solely on the expert report which they had obtained, and had moreover simply summarised that report rather than analyse it critically and with reference to the remainder of the evidence; and (c) had not analysed for themselves the relevant medical standards and the question whether they had been duly followed by the hospital staff, instead fully deferring to the experts' opinion on that point. According to the applicants, all this made the courts' judgments in their case unfounded and arbitrary.

THE LAW

A. Complaint concerning the death of the applicants' daughter

42. In respect of their complaint relating to the death of their daughter in the hospital, the applicants relied on Article 2 of the Convention, which provides, so far as relevant:

"1. Everyone's right to life shall be protected by law. …"

1. General principles

43. The general principles governing the assessment of whether a Contracting State can bear direct liability under Article 2 of the Convention for a death allegedly due to deficient healthcare were recently restated by the Court in the case of Lopes de Sousa Fernandes v. Portugal ([GC],no. 56080/13, §§ 186-96, 19 December 2017).

44. This is possible, exceptionally, either when (a) a patient's life has knowingly been put in danger through denial of access to life-saving emergency treatment, or when (b) a systemic or structural dysfunction in hospital services has resulted in a patient being deprived of access to life-saving emergency treatment and the authorities knew about or ought to have known about that risk and failed to take the necessary measures to prevent it from materialising (ibid., §§ 191-92).

45. A case will, however, only fall in the second category if: (a) the healthcare providers' acts and omissions went beyond mere error or medical negligence, but those providers denied emergency treatment despite being fully aware that the patient's life would be at risk if it is not given; (b) the dysfunction is genuinely identifiable as systemic or structural rather than just comprising individual instances where something may have been dysfunctional; (c) there is a link between the dysfunction and the harm suffered by the patient; and (d) the dysfunction was due to the State's failure to regulate, which in this context is to be understood in a broad sense and includes supervision and enforcement (ibid., §§ 194-96).

2. Application of those principles

46. In the present case, there is no suggestion that the life of the applicants' daughter was knowingly put in danger through a denial of access to emergency treatment. It must hence be established whether the situation at issue falls within the second of the above exceptional categories.

47. The bulk of the applicants' criticisms against the hospital – the alleged underestimation of the child's diagnosis, the alleged failure to inform them of a possibility to transfer her to a pediatric cardiology ward, the alleged failure duly to monitor her condition, and the choice of treatment (see paragraph 40 above) – touches on points which all relate to medical negligence rather than a denial of treatment. Indeed, errors in diagnosis leading to a delay in the administration of proper treatment, or delays in carrying out a medical intervention do not in themselves amount to a denial of healthcare (see Lopes de Sousa Fernandes, cited above, § 200 in fine).

48. Nor can it be said that the case involves a systemic or structural dysfunction of the kind contemplated in Lopes de Sousa Fernandes (cited above, §§ 192 and 195). It is true that the applicants argued at domestic level that some forms of medical treatment had not been attempted because the hospital in Burgas was not sufficiently equipped and staffed. In addition, some shortcomings in the hospital in which the applicants' daughter was treated were noted in the early phases of the investigations (see paragraphs 14 and 15 above). It cannot be overlooked, however, that the experts from the specialised pediatric cardiology clinic later appointed and heard in the course of the proceedings for damages against the hospital specifically stated that they would have treated the applicants' daughter in the same way as their colleagues in Burgas, and in particular would not have opted for a pericardiocentesis (see paragraphs 22 and 29 above). The contrary view, expressed by the expert consulted earlier, during the investigation by the Medical Audit Agency, appears to have been much more tentatively formulated (see paragraph 15 above).

49. But even if it is assumed that some forms of treatment would have given the child a better chance of survival but were not attempted because the hospital in Burgas was not sufficiently equipped and staffed to provide them, the resulting situation, though undeniably tragic for the child and her parents, cannot be seen as a systemic or structural dysfunction resulting from the State's failure to regulate the provision of healthcare. It must be emphasised in this connection that (a) the right to health is not as such among the rights guaranteed by the Convention or its Protocols, and that (b) the allocation of public funds in the area of healthcare is not a matter on which the Court should take a stand, since the competent authorities of the Contracting States are better placed to evaluate the relevant demands, take responsibility for the difficult choices which have to be made between worthy needs, and decide how their limited resources should be apportioned (see Lopes de Sousa Fernandes, cited above, §§ 165 and 175, with further references).

50. It follows that the case does not fall within the second exceptional category either. There is therefore no basis on which to hold the Bulgarian State directly liable under Article 2 of the Convention for the death of the applicants' daughter.

51. The applicants have not argued – and there is no evidence – that their daughter's death was due to shortcomings in the relevant regulatory framework or its implementation (see Lopes de Sousa Fernandes, cited above, § 204, and Tülay Yıldız v. Turkey, no.61772/12, § 60, 1 December 2018, and contrast Sarishvili-Bolkvadze v. Georgia, no. 58240/08, §§ 75-76, 19 July 2018).

52. It follows that, while recognising the tragic loss which the applicants have had to endure, the Court must reject this this complaint as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaint concerning the proceedings for damages

53. The Court finds that the complaint that the proceedings for damages against the hospital were flawed in various respects falls to be examined under the procedural limb of Article 2 of the Convention rather than by reference to Article 6 § 1 (see Altuğ and Others v. Turkey, no. 32086/07, § 47, 30 June 2015; Tülay Yıldız, cited above, § 39; and Bıçaklı and Others v. Turkey (dec.) [Committee], no. 36680/11, §§ 70-71, 5 March 2019).

54. The relevant part of the text of Article 2 of the Convention has been set out in paragraph 42 above.

1. General principles

55. It is settled that the Contracting States have a positive obligation under Article 2 of the Convention to set up an effective and independent judicial system, so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible made accountable (see, among many other authorities, Lopes de Sousa Fernandes, cited above, § 214).

56. The requirement of independence, both formal and de facto, concerns also the experts involved in such proceedings, since their evidence is likely to carry crucial weight in a court's assessment of the highly complex issues of medical negligence (ibid., § 217, with further references).

57. It is also required that the experts examine carefully all relevant points and set out in enough detail the reasons for their conclusions (see Baldovin v. Romania, no. 11385/05, § 23, 7 June 2011, and Altuğ and Others, cited above, §§ 78-81), and that the courts then scrutinise properly those conclusions (Altuğ and Others, cited above, § 82). This latter requirement cannot, however, extend to imposing an unnecessary or disproportionate burden on the national authorities. The intensity of the work required of the courts in terms of evaluation of the expert evidence should be assessed on a case-by-case basis, having regard to the nature and complexity of the medical issues concerned and to whether those alleging negligence by medical practitioners have made concrete assertions requiring a reply from the experts (see Erdinç Kurt and Others v. Turkey, no. 50772/11, § 63, 6 June 2017; Erkan Birol Kaya v. Turkey, no. 38331/06, § 53, 23 October 2018; and Kanal v. Turkey, no. 55303/12, § 40, 15 January 2019, all of which made the point under Article 8 of the Convention, whose requirements in this domain are the same as those of Article 2).

2. Application of those principles

58. The applicants did not take issue with the administrative and criminal investigations into the circumstances relating to death of their daughter (see paragraphs 13-21 above); their complaint concerned solely the proceedings for damages against the hospital (see paragraphs 22-38 above).

59. Nor did the applicants seek to challenge the independence of the experts who gave evidence in those proceedings, and there is indeed no evidence of any issues in this regard (see, mutatis mutandis, Vasileva v. Bulgaria, no. 23796/10, §§ 72-73, 17 March 2016).

60. The applicants' reproach was rather directed towards the manner in which the courts approached the expert evidence in the case. In the light of the case-law summarised in paragraph 57 above, this raises the questions whether (a) that expert evidence – the expert report obtained by the Burgas Regional Court and the subsequent explanations of the experts in open court – was sufficient to enable the courts properly to assess the relevant issues, and whether (b) the courts duly scrutinised that evidence.

61. In their report – which they prepared on the basis of the written materials in the case but also of the witness evidence obtained at trial – the experts dealt in some detail with the questions formulated by the applicants and the defendant hospital (see paragraphs 26-28 above). When presenting their report in open court, the experts gave explanations on it and answered questions by counsel for the parties (see paragraph 29 above). Counsel for the applicants did not contest the report as such and on that basis seek another one, but later on sought to impugn some of the experts' conclusions on the basis of allegedly divergent views expressed by the experts consulted in the earlier investigations and in medical articles (see paragraphs 29 and 30 above).

62. The Court does not consider that the Bulgarian courts' refusal to admit and have regard to that evidence owing to their interpretation of the relevant rules of evidence raises an issue. The Contracting States have a broad margin of appreciation in choosing how to organise their judicial systems and meet their procedural obligations in relation to alleged medical negligence (see Vasileva, cited above, § 70, and Jurica v. Croatia, no. 30376/13, § 87, 2 May 2017). Moreover, despite some possible divergences between the views of the various experts who had dealt with the case, the fact remains that the earlier

investigations to which the applicants referred had likewise ended with the conclusion that there had been no medical negligence (see paragraphs 13-14 and 20-21 above).

63. This is, furthermore, not a case in which the experts, whose competence and objectivity have not been called into doubt, eluded key points (contrast Altuğ and Others, §§ 78-82; Erdinç Kurt and Others,§§ 64-68; and Erkan Birol Kaya, §§ 55-57, all cited above) or tendered merely conclusory opinions. Their report and subsequent oral explanations were detailed, and dealt with the main issues in the case: whether the medical treatment provided to the applicants' daughter had been deficient and whether her death had been a direct result of any such deficiency. The experts also addressed many specific points raised by the applicants, such as the need for a pericardiocentesis and heart stimulating drugs and the use of Cordarone (see paragraphs 27-29 above). The Court is mindful of the applicants' disagreement with many of the experts' conclusions, but it is not its role to question those conclusions or speculate on their scientific accuracy (see Erdinç Kurt and Others, § 63; Erkan Birol Kaya, § 52; and Kanal, § 40, all cited above).

64. It cannot therefore be said that, in the circumstances, the Burgas Regional Court's refusal to order an additional expert report, or its subsequent choice fully to accept the experts' findings, and the higher courts' refusal to interfere with those decisions, disclose a lack of sufficient judicial scrutiny of the expert evidence (see, mutatis mutandis, Kanal v. Turkey, no. 55303/12, §§ 42-43, 15 January 2019; Durak v. Turkey (dec.) [Committee], no. 36105/17, §§ 32-33, 5 March 2019; and Bıçaklı and Others, cited above, § 93).

65. Lastly, it is not for this Court, which is not a court of appeal from the Bulgarian courts, to gainsay the way in which they interpreted and applied the provisions of Bulgarian law which governed the case before them. It does not appear that their decisions were manifestly unfounded or arbitrary. As regards in particular the case-law on expert reports applied by the Supreme Court of Cassation (see paragraphs 38 and 39 above), the Court has repeatedly held pursuant to Article 6 § 1 of the Convention that it is not its role to say whether particular types of evidence may be admissible in domestic proceedings (see Mantovanelli v. France, 18 March 1997, § 34, Reports of Judgments and Decisions 1997-II; García Ruiz v. Spain [GC], no. 30544/96, § 28, ECHR 1999-I; and Storck v. Germany, no. 61603/00, § 134, ECHR 2005-V).

66. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 March 2020.

Milan Blaško — Deputy Registrar
Gabriele Kucsko-Stadlmayer — President

---

[1] Inflammation of the heart muscle (myocardium)
[2] Inflammation of both the myocardium and the pericardium (the double-walled sac around the heart)
[3] Accumulation of fluid in the pericardial cavity (the potential space between the two layers of thepericardium)
[4] Antiarrhythmic drug used to treat and prevent irregular heartbeat
[5] An invasive procedure involving using a needle and catheter to remove fluid from thepericardium (the double-walled sac around the heart)
[6] Buildup of fluid in the pericardiumresulting in compression of the heart
[7] Drugs which can alter the force or energy of the contractions of the heart muscle
[8] Inflammatory process occurring in the myocardium and causing acute-onset heart failure

← CASE OF KUZHIL v. RUSSIA (European Court of Human Rights)

Abukauskai v. Lithuania (European Court of Human Rights) →

Leave a Reply

Your email address will not be published.

Comment

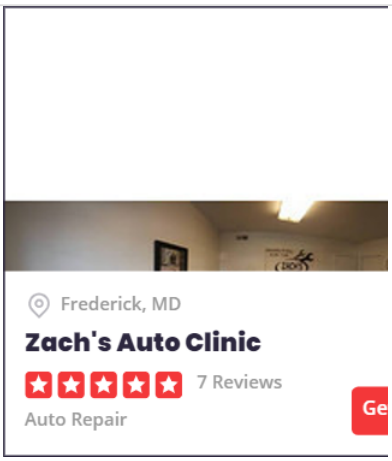
Name

Captcha *

Type the text displayed above:

Post Comment

Search …



APPLY TO THE COURT

EUROPEAN COURT OF HUMAN RIGHTS

How to make a valid application

If you decide to apply to the Court, please ensure that your application complies with Rule 47 of the Rules of Court, which sets out the information and documents that must be provided.

	Common Mistakes in Filling in the Application Form and How to Avoid Them
	Notes for filling in the application form (How to fill out the correct application form to apply to the European Court of Human Rights)
	Institution of proceedings – Practice Directions “Rules of the European Court of Human Rights”
	Rule 47 of the Rules of the European Court of Human Rights

LawEuro

- European Court of Human Rights
- Overview of the Case-law
- European Convention on Human Rights
- ECHR Available in French
- Official Journal of the European Union
- Factsheet
- European Union laws
- Public and Private Laws U.S.
- Science articles

RECENT POSTS

- F.O. v. Croatia (European Court of Human Rights)
- CASE OF YEVDOKIMOV v. UKRAINE (European Court of Human Rights) Application no. 24635/14
- CASE OF POLTORATSKYY v. UKRAINE (European Court of Human Rights) Application no. 11551/13
- CASE OF MORDVANYUK v. UKRAINE (European Court of Human Rights) Application no. 1199/16
- CASE OF KOVRIZHNYKH v. UKRAINE (European Court of Human Rights) Application no. 28943/15
- CASE OF ILLYASHENKO v. UKRAINE (European Court of Human Rights) Application no. 8562/13
- CASE OF VASILIY IVASHCHENKO v. UKRAINE (No. 2) (European Court of Human Rights) Application no. 1976/13
- CASE OF KRAVCHUK v. UKRAINE (European Court of Human Rights) Application no. 77435/12

CATEGORIES

Select Category