



Csoma v. Romania

Application No.8759/05

Country: Romania

Region: Europe

Year: 2013

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

Health Topics: Health care and health services, Health information, Hospitals, Sexual and reproductive health

Human Rights: Right to privacy

Facts

The applicant, Ms. Julia Kinga Csoma, alleged that her gynecologist had committed "egregious unintentional bodily harm and negligence" due to serious medical errors in her treatment.

Csoma became pregnant in January 2002. Her pregnancy was monitored by a gynecologist at the town hospital where Csoma worked as a nurse. The fetus was diagnosed with hydrocephalus, and it was decided that the pregnancy should be aborted. Csoma received a drip and medication to induce an abortion, but the attempt failed. The next day, to induce the abortion, concentrated glucose was injected into Csoma's stomach. The next day Csoma had a fever and shivers. She was given painkillers, but no doctor saw her during that time. The day after that, she expelled the fetus and started bleeding. Two curettages were performed on her, but they did not stop the bleeding. Csoma was then diagnosed with disseminated intravascular coagulation (DIC), a rare and serious complication that can arise from glucose injection, and transferred to the county hospital. She was accompanied by a nurse during the transfer. At the county hospital, she received a total hysterectomy and bilateral adnexectomy, which saved her life, but rendered her permanently unable to bear children.

Afterwards, Csoma discovered that she was not provided with the required information and consent forms for undergoing a procedure involving risk. In addition, the documents included in Csoma's medical records did not sufficiently confirm the hydrocephalus or the DIC diagnosis. The medical records also lacked documentation of the necessary lab tests to be conducted prior to the procedure. This included an ultrasound to locate the placenta prior to the injection of glucose and the ultrasound monitoring of the injection.

Csoma first submitted a complaint with the Covasna County College of Doctor, and was assigned a doctor to assess the matter from the College of Doctors. The College of Doctors concluded that, although there were procedural problems, because the DIC diagnosis was made correctly and Csoma's condition was appropriately resolved, there was no medical negligence.

Csoma then filed a criminal complaint alleging "egregious unintentional bodily harm and negligence in the conduct of a profession." A medical expert report concluded that no medical negligence had been committed. Csoma contested the report, stating that it did not address her concerns about whether the risk could have been minimized and whether she should have been provided with information about the potential risks. A second opinion was issued, which stated that Csoma's medical records were lacking. Both reports concluded that the gynecologist did not provide Csoma with the required information about the procedure, including the risks, and did not obtain Csoma's written consent. The Court did not find the evidence sufficient for medical negligence and the charges against Dr. P.C. were dismissed.

Csoma then brought a complaint in the European Court of Human Rights under Articles 2,6, and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("Convention").

Decision and Reasoning

Although Csoma brought the complaint based on Articles 2, 6, and 13 of the Convention, the Court decided to examine the complaint under Article 8, which discusses the right to private life.

The Court held that by withholding the relevant information about the medical procedure and the associated

risks, Csoma was unable to make an informed decision about her medical treatment.Â The procedural failures included the omission of her written consent.Â Therefore, her right to private life was infringed upon, a violation of Article 8.

The Court held that, under Article 41, if a violation of the Convention was found and domestic law did not allow for full reparations to be made, the court could award full damages to the plaintiff.Â Because the domestic court had claimed that there would be no amount of damages due in any case, the Court needed to find any violation in order to award damages.Â The plaintiff was awarded EUR 6,000.

Decision Excerpts

â€œMoreover, the Court has underlined that it is important for individuals facing risks to their health to have access to information enabling them to assess those risks. It has considered it reasonable to infer from this that the Contracting States are bound, by virtue of this obligation, to adopt the necessary regulatory measures to ensure that doctors consider the foreseeable consequences of a planned medical procedure on their patientsâ€™ physical integrity and to inform patients of these consequences beforehand, in such a way that the latter are able to give informed consent. In particular, as a corollary to this, if a foreseeable risk of this nature materialises without the patient having been duly informed in advance by doctors, the State Party concerned may be directly liable under Article 8 for this lack of information . . .â€• Para. 42.

â€œThe foregoing considerations are sufficient to enable the Court to conclude that by not involving the applicant in the choice of medical treatment and by not informing her properly of the risks involved in the medical procedure, the applicant suffered an infringement of her right to private life. Furthermore, the system in place as at the date of the facts of the present case made it impossible for the applicant to obtain redress for the infringement of her right to respect for her private life. The respondent State has therefore failed to comply with its positive obligations under Article 8 of the Convention.â€• Para. 68.