

Glass v. the United Kingdom - 61827/00

Judgment 9.3.2004 [Section IV]

Article 8

Article 8-1

Respect for private life

Administration of drugs to disabled child despite mother's opposition: *violation*

Facts: The first applicant is a severely handicapped child; the second applicant is his mother. In July 1998, the child was rushed to hospital and operated on for respiratory complications. The doctors thought he was dying and considered that further intensive care would be inappropriate. As the mother was not happy with this advice, the hospital offered to arrange for an outside opinion on the child's condition, which she refused. The child's condition improved and he was able to return home. He was subsequently re-admitted to the hospital on several occasions with respiratory infections. There were again strong disagreements between members of the hospital staff and the mother on how the child should be treated in the event of an emergency. On one occasion, a crisis situation arose: the doctors believed that the child had entered a terminal phase and, with a view to relieving his pain, administered diamorphine to him against the mother's wishes. Moreover, a "Do Not Resuscitate" notice was added to the child's file without consulting the mother. During this time, disputes broke out in the hospital involving family members and the doctors. The child survived the crisis and was able to be discharged home. The mother applied for judicial review of the decisions made by the hospital with regard to the treatment of her son, but the judge considered that such decisions were not susceptible to review because the situation had passed. Leave to appeal was refused. The mother subsequently complained to the General Medical Council and the police. Investigations into the doctor's actions were opened by both, but did not result in proceedings or the bringing of charges against the doctors involved.

Law: Article 8 – As the child's legal proxy, the mother had the authority to act on his behalf and defend his interests. Imposing a treatment on her son despite her continuing opposition represented an interference with the child's right to respect for his private life. The fact that the doctors were confronted with an emergency did not detract from the fact of interference. In examining whether the interference was "in accordance with the law", the Court did not consider it necessary to assess whether the domestic legal framework to resolve conflicts arising from parental objection to medical treatment of their children met the required qualitative criteria under the Convention. The Court nevertheless noted that the framework in place was consistent with the standards in the Council of Europe Bioethics and Human Rights Convention, and did not confer an excess of discretion to doctors nor did it contribute to unpredictability. The hospital staff had taken decisions in view of what they considered best to serve the interests of the child, so the aim pursued was also legitimate. As to the "necessity" of the interference at issue, it had not been explained to the Court's satisfaction why the hospital had not sought the intervention of the courts at the initial stages to overcome the deadlock with the mother. The onus to take such an initiative and

defuse the situation in anticipation of a further emergency was on the hospital. Instead, the doctors used the limited time available to try to impose their views on the mother. In such circumstances, the decision of the authorities to override the mother's objections to the proposed treatment in the absence of authorisation by a court had resulted in a breach of Article 8.

Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicants, jointly, 10,000 euros in respect of non-pecuniary damage. It also made an award in respect of costs.

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