Selected Legislation and Jurisprudence

European Court of Human Rights

ECHR 2014/8 Case of Valeriy Fuklev v. Ukraine, 16 January 2014, no. 6318/03 (Fifth Section)

The Facts

On 4 July 2001 the applicant’s wife was admitted to the gynaecological ward of a hospital with metrofibroma. An operation was scheduled for 5 July 2001. According to the medical file, she signed a written consent to undergo the operation. On that date she underwent an unsuccessful intubation of the trachea for the purpose of anesthetisation. The operation was therefore postponed to 9 July 2001. The applicant’s wife was discharged until that date.

On 9 July 2001 the applicant’s wife underwent the operation. According to the medical file, she signed a written consent to undergo that operation. After the operation her condition started to deteriorate rapidly. On 15 July 2001 a panel of doctors found that the applicant’s wife was suffering from postoperative peritonitis. Although she was then treated for peritonitis, she died of peritonitis and sepsis on 18 July 2001.

A local commission set up by the local healthcare authorities, consisting of three members, a hospital commission and a ministerial commission investigated the incident. Next, the Health Department carried out an inspection of the gynaecological ward of the hospital and found no substantial deficiencies

* These summaries are based on the provisional text of the judgements of the European Court of Human Rights. These judgments are still subject to editorial revision before their reproduction in Reports of Judgments and Decisions. For the full provisional text, see: http://www.echr.coe.int.
in its functioning. However, the head of the ward was reprimanded and the doctors who treated the applicant’s wife were sent for an extraordinary assessment by the qualification commission. It appeared that the doctor who had been in charge of the treatment of the applicant’s wife had resigned of his own volition. Several times criminal proceedings for medical malpractice were started and subsequently closed, without any result.

This summary is restricted to the issues raised under Article 2 of the Convention.

The Law

**Alleged Violation of Article 2 of the Convention**

Relying on Article 2 (right to life), the applicant complained that the investigations into the circumstances of the death of his wife had been ineffective.

The Court notes that the results of the investigations conducted by the health-care institutions were contradictory: the first two reports prepared by the local commissions suggested that the medical treatment had been adequate and the death of the applicant’s wife inevitable. On the other hand, the conclusions of the ministerial commission suggested that there had been shortcomings on the part of the doctors at the hospital.

This question was further addressed in a confusing manner. In particular, in the correspondence between the Health Department and the Ministry of Health, the latter referred to the substantial mistakes made by the medical staff and concluded that the medical treatment of the applicant’s wife had been unsatisfactory. By contrast, the Health Department suggested to the applicant that his wife had been treated adequately.

It is true that at a certain point the Health Department reported to the Ministry of Health that measures had been taken in respect of the medical staff. However, it does not appear that the reprimand issued to the head of the gynaecological ward of the hospital was somehow connected with the case of the applicant’s wife. Moreover, as to the assertion that the doctors treating the applicant’s wife would be sent for an extraordinary assessment by the qualification commission, no further information was provided to show that they had undergone such assessment or what were the results of these assessments.

Accordingly, it does not appear that the health-care authorities made an appropriate attempt to examine all the relevant facts concerning the death of the applicant’s wife, establish the persons responsible and, if necessary, take further measures, as required by Article 2 of the Convention.