



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

Application no. 72290/11
Yelena Georgiyevna ANDREYEVA
against Russia
lodged on 14 November 2011

STATEMENT OF FACTS

THE FACTS

The applicant, Ms Yelena Georgiyevna Andreyeva, is a Russian national who was born in 1951 and lives in Rostov-on-Don. The applicant is the mother of the late Julia Andreyeva, born in 1982 and died in 2007.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

1. Death of Julia Andreyeva

Since her childhood the applicant's daughter, Julia, suffered from a severe form of diabetes and certain concomitant illnesses. She was hospitalised many times; in 1994 she was attributed the most serious disability category. In 2005 her family moved from Novochoerkassk (Rostov Region) to Rostov-on-Don. However, for administrative purposes Julia remained registered at her former address in Novochoerkassk, where she was receiving insulin treatment in the town hospital. She was covered by the general medical insurance policy.

On Saturday, 22 December 2007, at 7 am, Julia's condition worsened: she felt weak and dizzy, her blood pressure dropped, while cardiac rhythm increased, she complained of pain in the heart area and in the back, short breath, etc. She developed oedemas and started vomiting. Her mother called an ambulance and described the symptoms. However, the only thing noted

by the dispatcher in the ambulance station in the registry of incoming calls was vomiting.

Some time later an ambulance car from the Town Hospital No. 2 arrived. According to the applicant, normally ambulance cars are accompanied by at least one doctor and two paramedics, an aid-man and a driver. In the case the team comprised only a paramedic, Mr R., and Mr F., a driver.

Mr R. examined Julia; he was not prepared to deal with such a serious case so he called his superior and asked for instructions. The superior, chief doctor of the Town Hospital No. 2, Dr Z., told Mr R. to bring the applicant to the Regional Hospital No. 2 (hereinafter – the Regional Hospital).

Mr R., without rendering any assistance to Julia, decided to transport her to the Regional Hospital. She was taken, with the help of a neighbour and the relatives of the applicant, Mr G. and Ms P., to the ambulance car. The ambulance car had no heating, so it was very cold inside.

When the ambulance car arrived to the Regional Hospital, the administrator of the hospital refused to admit Julia, since she was registered in another place. The applicant and her relatives tried to insist, but they were forced to leave by the hospital personnel. It appears that medical personnel did not put on record their refusal to admit a patient.

One hour later the applicant, her relatives and Mr R. returned to the ambulance car. The applicant contacted Dr Z. and asked to send another medical team which would include a doctor. Dr Z. refused. The applicant then asked Dr Z. to admit Julia to the Town Hospital No. 2 which had specialist doctors and necessary equipment, but it was refused as well. Instead, Dr Z. recommended taking Julia to the Town Hospital No. 1 (the “Semashko Hospital”).

When the ambulance car arrived at the Semashko Hospital, the administrator first refused to admit Julia, but, at the applicant’s insistence, a doctor on duty examined Julia in the ambulance car. Having examined her, the doctor concluded that Julia was in critical state, and could not be transported elsewhere. She agreed to admit Julia to the Semashko Hospital, but warned the relatives that the hospital had no doctors specialising in nephrology and endocrinology, and no equipment for haemodialysis.

The doctor on duty placed Julia in the intensive care unit and ordered to get her on a drip. However, soon Julia started to develop oedemas in various parts of her body. She also was unable to breathe otherwise than in a sitting position. According to the applicant, the doctors acknowledged that Julia needed to undergo haemodialysis, but that the hospital had no equipment or personnel for that procedure. The doctor recommended the applicant to arrange such treatment in any other hospital.

According to the applicant, in the Semashko Hospital Julia did not receive injections of insulin of the appropriate type (“short-type” insulin), although information about recommended treatment was in her medical record and the applicant orally told doctors in the Semashko Hospital about the treatment the applicant needed. Her heart condition was not checked with electrocardiogram. The first x-ray of her lungs was made 27 hours after admission to the hospital. As a result, the doctors of the Semashko Hospital failed to find that by that time Julia contracted two-sided pneumonia.

In the next hours the applicant contacted a doctor specialising in nephrology from Regional Hospital, but he refused to deal with Julia’s case

until Monday. According to the applicant, doctors from the Semashko Hospital failed to contact specialist doctors in other hospitals and receive necessary advice.

In the morning of Sunday, 23 December 2007, the applicant's husband contacted doctors in the Town Hospital No. 2 asking them to admit Julia for haemodialysis, but they refused.

In the afternoon of the same day the applicant and her relatives managed to arrange for a haemodialysis treatment in a military hospital. At 5 pm Julia was transferred there and underwent the treatment. Although the treatment went well, on the next day she lapsed into uremic coma and developed "polyorganic insufficiency", gastric bleeding, lung and cardiac insufficiency, renal failure, etc. On 25 December 2007, at 10 am, Julia died.

2. Criminal inquiry

In August 2008 the applicant lodged a criminal law complaint with the Pervomaiyskiy District Prosecutor's office. She complained about doctors and paramedics who treated her daughter between 22 and 25 December 2007. She blamed them of gross negligence and breach of various medical standards and protocols, which had resulted in Julia's death.

The District Prosecutor opened a preliminary inquiry. Within that inquiry a number of witnesses were questioned and evidence obtained. It appears that the case was at least once closed and then re-opened. Finally, on 28 March 2011 the applicant was notified by the letter of the Deputy District Prosecutor that at a certain point all the materials of the inquiry had been lost. The Deputy District Prosecutor informed the applicant that measures were being taken to restore the case-file.

3. Civil proceedings

(a) The positions of the parties

In 2008 the applicant lodged with the Pervomaiyskiy District Court of Rostov a tort claim against several defendants: the Ministry of Public Health of the Rostov Region, the Regional Hospital, the Semashko Hospital, and the Town Hospital No. 2. Her claims were formulated as follows.

First, she sought an acknowledgement of various breaches of medical rules by the defendants. She submitted to the court a detailed list of episodes in which, in her opinion, doctors and other medical personnel acted contrary to the accepted protocols and standards of medical assistance: inadequate equipment and composition of the medical team in the ambulance car, lack of medical assistance on the spot, inadequate conditions of transportation to the ambulance car and inside the car itself, failure to obtain help from a better qualified ambulance team, refusal of the Regional Hospital to admit Julia, inadequate examination of Julia in the car by the doctor on duty in the Regional Hospital, failure to record the refusal to admit Julia to the Regional Hospital, conditions and length of transportation of Julia to the Semashko Hospital, placement of Julia to the cardiologic unit of the Semashko Hospital, failure of the Semashko Hospital to carry out haemodialysis, refusal of the Town Hospital No. 2 to carry out haemodialysis, failure to treat the applicant with insulin of appropriate type, prescribed earlier by the specialist doctor, failure to diagnose pneumonia in

a timely manner. The applicant also claimed that the treatment Julia had received in the Town Hospital No. 2 in connection with diabetes, uremic coma, diabetic nephropatology, and gastric bleeding was inadequate.

Second, the applicant sought compensation of non-pecuniary damage related to the death of her daughter as a result of medical negligence. She indicated, in respect of each defendant, the amount of non-pecuniary damages sought.

In support of her claims the applicant produced a number of documents: explanatory memorandums by Mr R. (the paramedic), Mr F. (the driver of the ambulance car) and Dr Z. (the chief doctor of the Town Hospital No. 2). Further, the applicant produced a report on internal inquiry in the hospitals involved in the treatment of Julia, routing record of the ambulance car, and written statements by Ms G. and Ms P., the applicant's relatives. In the applicant's words, their testimony was consonant with her description of the events. The applicant also produced a copy of the report of 25 December 2008 prepared by the expert of the insurance company MAKS-M, Dr Ch., who had examined Julia's case and detected a number of serious defects in the treatment Julia received in the Semashko Hospital.

The defendants did not acknowledge the claims. The Regional Hospital claimed that they had not refused to admit Julia. They maintained that the registration book of the hospital did not contain any entry concerning that episode. Furthermore, they referred to the "conclusions of the prosecutor's office" in this respect. The Semashko Hospital claimed that Julia had received adequate medical care there. The Town Hospital No. 2 claimed that ambulance team acted in accordance with accepted standards, was properly equipped and staffed. The Ministry of Public Health of the Rostov Region claimed that they could not be held responsible for the actions of municipal hospitals (i.e. subordinate to the Rostov town, as opposed to regional, authorities).

(b) First expert examination report

The court, sitting in the single-judge formation, heard the parties, examined written evidence produced by them and heard a witness, Mr R. It is unclear whether the court examined other witnesses.

On an unspecified date the judge, at the request of the applicant, commissioned a forensic medical examination of the circumstances of Julia's death. The examination was entrusted by the judge to a private forensic bureau in St Petersburg, "*Sevzapexpert*". The court formulated ten questions which concerned, in particular, causes of Julia's death, the degree of the doctor's responsibility for her death, and the compliance with the rules and standards of medical assistance by the doctors and paramedics who had treated Julia at different stages. One of the questions was formulated as follows: "Would the medical condition of [Julia] be different if she was hospitalised an hour earlier?"

The examination was conducted by two doctors from St-Petersburg: Prof M. and Dr P., both specialists in emergency medicine, having 49 and 34 years of professional experience respectively. They were provided with medical documents from the applicant's file, in particular her medical history from fifteen various hospitals, the reports of the post-mortem examination of the body, x-ray photos, ambulance car routing information,

hospital registration books, court decisions, etc. In particular, the doctors had at their disposal a report by a doctor who had earlier conducted the autopsy of Julia's body and examined histological sections of tissues.

On 16 April 2010 the first expert report (hereinafter – “the first expert report”) was ready. Its conclusions can be summarised as follows. The report started with the description of medical causes of Julia's death. The report noted that the pneumonia was one of the primary causes of Julia's death, whereas other conditions, some of them of a chronic nature, such as diabetes, were also mentioned.

The report further concluded that there was an indirect causal link between Julia's death and the actions of the ambulance paramedic, Mr. R., on 22 December 2007. There was a direct causal link between the inactivity of the doctors of the Regional Hospital and the applicant's death, which amounted to a criminal negligence. As to the pneumonia, it could have been caused by Julia's transportation in a cold car, although other causes (related to her chronic illnesses) were also not excluded either. As to the court's question about what would happen if the hospitalisation had taken place an hour earlier, the experts refused to answer this question because it was “ill-formulated”. The experts further concluded that the emergency treatment procedures in the Semashko Hospital were inadequate, both as regards medical and normative standards of medical care, and that there was a direct causal link between those negligent actions and Julia's death. The report noted that the doctors in the Semashko Hospital failed to diagnose pneumonia and adjust the treatment accordingly. The report also concluded that the doctors failed to use the “short-term” insulin which was recommended in Julia's case. The report, however, noted that due to the limited stock of such type of insulin it could simply not be available in the intensive care unit of the Semashko Hospital. The report also concluded that the doctors of the Semashko Hospital failed to use appropriate methods of treatment of uremic coma.

The defendant objected to the report. They claimed that an additional examination was required, in view of the complexity of the case. They also claimed that the first report was incomplete because the experts failed to examine immediately histological sections of the tissues of the deceased, but based their conclusions on the report of the doctor who had conducted autopsy. They also claimed that the number of experts in the team, with the view of their qualification, was clearly insufficient.

The judge agreed with the arguments of the defendants and commissioned another expert examination of Julia's case. It was entrusted to the Bureau of Forensic Medical Expertise of the Stavropol Region. The court formulated seven additional questions to the experts.

(c) Second expert examination report; expert opinions of Dr Zh. And Dr V.

The second expert report was prepared by a team comprised of fourteen doctors in different fields of medicine. The conclusions of the second expert reports can be summarised as follows. The second report also described medical condition of the applicant, in particular, her chronic illnesses. It also concluded that Julia's death was triggered by the pneumonia; however, according to the report the pneumonia had started more than ten days before Julia's first hospitalisation. The second report concluded that actions of the

paramedic had no relation to the death of Julia. The report (as quoted in the judgment) continued as follows:

“Unjustified refusal of the doctor on duty in the Regional Hospital to hospitalise [Julia] during that period of time, exacerbated her condition and hastened the unavoidable death. The doctor on duty was obliged to hospitalise the patient, to secure her examination by the specialist doctors, and, in the case of their absence – to take care of the patient himself and inform the administration of the hospital about admission of a patient in grave condition”.

The second report did not consider that the pneumonia could have been caused by the patient’s transportation in a cold car, since it was a pre-existing medical condition. Hospitalisation of Julia an hour earlier might have postponed her death; however, the gravity of her condition did not leave her any chances of survival in any event. Therefore, the applicant’s death was not related in any manner to the emergency treatment applied to the applicant in the Semashko Hospital, or with her belated admission to that Hospital. The second report further examined treatment prescribed to Julia before her hospitalisation, namely on 11 December 2007 and found no connection between that recommendation of the doctor-endocrinologist and Julia’s death. The report indicated that the applicant was not subjected to haemodialysis because her condition was too grave and she must have remained in the intensive care unit.

At the request of the defendants, the court called and heard two experts in medicine, both working in the Rostov State Medical University: Dr Zh. and Dr. V. They testified that, in their opinion, the main cause of the death of Julia was her diabetes and various complications. Those conditions appeared long before her hospitalisation to the Town Hospital no. 2 on 22 December 2007. They testified that the treatment she received was adequate in the circumstances.

(d) The court’s judgment

On 11 March 2011 the Pervomaiyskiy District Court of Rostov dismissed the applicant’s claims. In the judgments the court described the parties’ position and conclusions of the two expert reports. The court further noted that the two expert reports contradicted each other in many respects. The court found that the second expert report was admissible and reliable evidence. First, it was prepared by fourteen specialist doctors in various medical fields, as well as the ambulance team doctors. Second, the second expert examination included a separate analysis of the histological sections of tissues. The court qualified findings of the second report as “professional and conclusive”. The court noted that there was no evidence that the second report should not be considered as reliable.

On the contrary, the first expert report, in the opinion of the court, was not reliable, because the two experts had not examined the histological sections of the tissues, and, therefore, had been unable to establish convincingly the causes of death, which was an essential element of the applicant’s claim.

The court also referred to the testimony of Dr Zh. and V. who confirmed the conclusions of the second expert report.

The court further noted that the applicant “had failed to produce to the court any admissible evidence that would prove that the Regional Hospital

had refused to admit [Julia]. The Pervomaiyskiy District Prosecutor's office had examined the lawfulness of [the actions of the personnel of the Regional Hospital], scrutinised the patient admission books of the Regional Hospital, and did not find any breach of the applicable legislation on the part of the defendant". The court referred to the findings of the District Prosecutor as "having importance for the establishment of the facts of the case". According to the court, the second report also noted that the materials of the case-file did not contain any document proving that the applicant had been indeed refused admission of her daughter Julia in the Regional Hospital.

The court rejected the testimony of paramedic Mr R., who had confirmed that Julia had been denied admission in the Regional Hospital. According to the judgment, Mr R., due to the long period of time elapsed since the events under examination, was unable to identify who exactly had prevented him from transporting the patient inside the hospital, and whether that person had had any authority to give such orders. In the court's opinion, that made the testimony of Mr R. unreliable.

The court also noted that the testimony of Mr R. contradicted other materials in the case-file. In such circumstances that testimony was not sufficient to conclude that Julia had been refused hospitalisation in the Regional Hospital. On this ground the court held that the findings of the second report, insofar as it criticised the refusal of the Regional Hospital to admit Julia, were also unreliable.

The judgment did not refer to any other witness testimony.

In the final paragraphs of the judgment the court endorsed conclusions of the second expert examination. It found that (1) the pneumonia had appeared before 22 December 2007 and had no relation to conditions of transportation of Julia in the ambulance car or the treatment she had received in the hospitals; (2) there was no evidence that the ambulance car had not been improperly equipped or technically unfit; (3) as to the fact that the team included only a paramedic, and not a doctor, it had not resulted in any violation of the applicant's rights under the law; (4) the applicant's claims towards the Ministry of Public Health were unfounded since the Ministry had no relation to the municipal hospitals which had taken part in rendering medical assistance to Julia. The court finally noted that if had invited the applicant to clarify her claims, but she had failed to do so.

(e) The judgment by the court of appeal

The applicant appealed. She claimed, in particular, that the first instance court had disregarded evidence supporting her position, in particular, witness evidence by Mr R. (the paramedic), Ms P. and Ms G. (the applicant's relatives who had accompanied Julia on 22 December 2007 to the hospital). Furthermore, the first instance court did not explain why a second expert examination was needed. The fact that the defendants did not like the conclusions of the first report was not sufficient to commission another expert examination. The applicant also maintained that the conclusions of the second report run counter to the conclusions of the report by the insurance experts which had found, on 25 December 2008, that the quality of medical assistance to Julia had been unsatisfactory. The applicant also indicated that the court failed to address all the questions raised by her in her statement of claim, or give reasoning.

On 26 May 2011 the Rostov Regional Court examined the applicant's appeal and dismissed it. The Regional Court found that the applicant suffered from a serious form of diabetes, with many complications. The Regional Court further repeated, almost word by word, the District Court's findings that there had been no evidence that Julia had been refused admission to the Regional Hospital, that testimony of Mr R. had been unreliable, that the second report had been more trustworthy than the first one, except for the finding concerning non-admission of Julia to the Regional Hospital, that there had been no link between conditions of transportation of the applicant in the ambulance car and the pneumonia, that the ambulance car had been properly equipped and staffed, that the Ministry of Public Health could not be held responsible for the municipal health institutions, and that the applicant's claims had been, therefore, unfounded. The Regional Court noted that the judgment of the District Court was well-founded, supported by evidence and taken with due regard to the parties' arguments. The applicant's position had not been supported by evidence, and had been rightly dismissed. The District Court had not found doctors responsible of breaching their professional duties and causing death of Julia. The proceedings before District Court had not been flawed procedurally to the extent calling for the review of the judgment. The applicant's criticism of the second expert report was unfounded. It had been the task of the trial court to accept or reject opinions of the experts. The trial court had rightly accepted the second report, while rejecting the first one, because the second report had also been based on the examination of histological sections of tissues. The second expert examination was needed because the first one did not answer all the questions put by the court. Furthermore, the court had had to put additional questions. The first expert report had not been sufficiently clear and comprehensive. The fact that the second expert report contradicted the insurance experts' report of 25 December 2008, did not cast doubt into the veracity of the former. Mr R. had failed to identify the person who had prohibited him to take Julia into the hospital; at the same time there was other evidence in the materials of the case which contradicted Mr R.'s testimony. In such circumstances the trial court had had all reasons not to accept that testimony as reliable. The Regional Court concluded that the findings of the trial court were sound and lawful.

COMPLAINTS

The applicant complains under Articles 2 and 3 of the Convention that her daughter Julia suffered and died as a result of medical negligence.

She further complains that the circumstances of Julia's death were not properly examined, neither by the prosecution authorities, nor by the courts. She refers to Articles 6 and 13 in this respect. In particular, the criminal inquiry had no effect since the materials of the case were lost by the prosecutor's office. As a result, she was unable to support her case in the civil court with the evidence obtained in the course of the criminal inquiry. The examination of the facts of the case by the civil court was procedurally flawed, incomplete and not thorough. First, the court in its judgment failed

to address most of the very specific allegations she had made. The situation in this respect was not remedied by the court of appeal. Second, the court ordered the second expert examination only because it was dissatisfied with the first one. The decision of the court to commission a second examination was not properly reasoned and was contrary to the domestic law. The court failed to call and question experts who had participated in the preparation of the first and second expert reports. The court did not refer in its judgment to other evidence which contradicted its findings, namely witnesses statements referred to by the applicant, and documentary evidence. The applicant complained that the court was not impartial and favoured the opposite party. In addition, the second expert team was biased in favour of the defendants, since the Bureau of Forensic Medical Expertise of the Stavropol Region belongs to the same system of the Ministry of Public Health as the hospitals responsible for Julia's treatment, as well as the two experts whose oral opinions have been heavily relied on by the court.

Finally, the applicant refers to Article 14 in connection with the above facts.

QUESTIONS TO THE PARTIES

A. Factual questions

1. Was there any criminal investigation into the circumstances of Julia's death (in the form of an inquiry or a full-scale criminal investigation)? What was the result of that investigation/inquiry? Is it true that the materials of the case were lost? In such circumstances, was it possible for the applicant to request continuation of the inquiry or obtain its reopening, and, if so, how? The Government are requested to produce all documents pertinent to the investigation/inquiry, which are in their possession, in particular, (1) expert evidence, (2) witness statements, (3) documentary evidence, and (4) decisions of the investigative authorities relevant to the case, including written replies and letters sent to the applicant or third parties in connection with the case.

2. The Government are requested to produce the materials of the civil proceedings before the Pervomaiyskiy District Court of Rostov and the Rostov Regional Court, in particular (1) the hearing record, (2) all procedural decisions by the courts (concerning attendance of witnesses, ordering expert examinations, refusing or granting procedural motions of the parties, etc.), (3) parties' written submissions, if any, (4) written evidence, submitted by the parties and obtained by the court (in particular, the second expert report), (5) the applicant's statement of appeal.

B. Legal questions

3. Was the right to life of the applicant's daughter, guaranteed by Article 2 of the Convention, respected in the present case? In particular, did the State take necessary positive measures to (1) guarantee adequate medical aid to the applicant's daughter, and (2) to afford the applicant an appropriate remedy (civil, criminal, or other), in connection with her

complaint that her daughter had died as a result of negligence of the medics? In particular, was the refusal of the Regional Hospital to admit the applicant compatible with the requirements of Article 2 of the Convention?

4. Was the applicant's daughter subjected to inhuman and degrading treatment in view of the allegedly inadequate medical assistance she received between 22 and 25 December 2007 (in particular, but not exclusively, the conditions in which she was transported in the ambulance car and the allegedly delayed medical assistance due to the refusal of the Regional Hospital to admit her)? If so, was there a violation by the State of its positive obligations under Article 3 of the Convention in this respect?

5. Did the applicant have a "fair hearing" of her tort claim by an "independent and impartial tribunal" before the Pervomaiyskiy District Court of Rostov and the Rostov Regional Court, as required by Article 6 of the Convention? In particular, did the courts properly address all the questions and arguments raised by the applicant and assessed evidence submitted by her? Was the applicant capable of adducing additional evidence, on the same footing with the defendants, or asking the court to assist her in the discovery of evidence she could not obtain by herself? Was the applicant capable of examining witnesses or experts on whose opinion the court later based its findings? Was the second expert report prepared by an institution independent from the defendants?

6. In view of the outcome of the criminal and civil proceedings initiated by the applicant in the present case, did the applicant have an effective domestic remedy in respect of her complaints under Article 2 and 3 of the Convention, as required by Article 13 of the Convention?