



Procedure for allowing medical students to attend the birth of a baby without the explicit consent of the mother was inadequate

In today's **Chamber** judgment¹ in the case of **Konovalova v. Russia** (application no. 37873/04) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned Ms Konovalova's complaint that medical students had been allowed to observe her giving birth, without her explicit consent.

The Court found that the relevant national legislation at the time of the birth of Ms Konovalova's baby – 1999 – did not contain any safeguards to protect patients' privacy rights. This serious shortcoming had been exacerbated by the hospital's procedure for obtaining consent from patients to take part in the clinical teaching programme during their treatment. In particular, the hospital's booklet notifying Ms Konovalova of her possible involvement in the teaching programme had been vague and the matter had in general been presented to her in such a way as to suggest that she had no other choice.

Principal facts

The applicant, Yevgeniya Konovalova, is a Russian national who was born in 1980 and lives in St Petersburg (Russia).

Ms Konovalova, who was pregnant, was hospitalised in the S.M. Kirov Military Medical Academy Hospital on 23 April 1999 after her contractions had begun. Following her admission she was allegedly handed a booklet issued by the hospital which contained a notice warning patients about their possible involvement in the hospital's clinical teaching programme. Ms Konovalova was suffering from complications associated with her pregnancy and was, on two separate occasions, put into a drug-induced sleep because she was suffering from fatigue. She alleges that she was informed prior to being sedated that her delivery was scheduled for the next day and that it would be attended by medical students. On 24 April 1999 she gave birth in the presence of medical students who had been briefed about her health and medical treatment.

She subsequently brought proceedings in the St Petersburg Vyborg District Court, seeking compensation for the presence of non-authorised third parties at the birth and an apology for the intentional delay to her labour. Her claim was dismissed, essentially on the grounds that the Health Care Act, in force at the time, did not require the written consent of a patient to the presence of medical students at the time of delivery. The Court dismissed Ms Konovalova's claim that she had objected to the students' presence during the birth itself. This decision was upheld on appeal in May 2004.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to respect for private and family life), Ms Konovalova complained about the unauthorised presence of medical students during the birth of her child, alleging that she had not given written consent to being observed and had been barely conscious when told of such arrangements.

The application was lodged with the European Court of Human Rights on 5 August 2004.

Judgment was given by a Chamber of seven judges, composed as follows:

Isabelle **Berro-Lefèvre** (Monaco), *President*,
Khanlar **Hajiyev** (Azerbaijan),
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),
Paulo **Pinto de Albuquerque** (Portugal),
Erik **Møse** (Norway),
Ksenija **Turković** (Croatia),
Dmitry **Dedov** (Russia),

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Article 8 (right to respect for private and family life)

The Court found that the birth of Ms Konovalova's child, attended by medical students who had access to confidential medical information concerning her condition, had been sufficiently sensitive to amount to an interference with her private life. That interference had had a legal basis under the domestic law in force at the time, namely Article 54 of the Health Act, which provided that specialist medical students could observe patients' treatment in line with the requirements of their curriculum and under the supervision of the medical staff responsible for them.

However, the Court found that, at the time of Ms Konovalova's delivery, that provision was of a general nature, and was mainly aimed at enabling medical students to take part in the treatment of patients as part of their clinical education. The relevant national legislation in force at the time did not contain any safeguards to protect patients' privacy rights.

Indeed, this serious shortcoming was exacerbated by the way in which the hospital and domestic courts addressed the issue. In particular, the Court considered that the booklet issued by the hospital contained a rather vague reference to the involvement of medical students in the "study process", without specifying the scope and degree of that involvement. Moreover, the involvement of medical students was presented in such a way as to suggest that participation was mandatory and that Ms Konovalova had no choice in the matter.

More importantly, the domestic courts – when dismissing Ms Konovalova's civil claim – did not take into account: the inadequacy of the information in the hospital's booklet; Ms Konovalova's vulnerability at the time of notification of her possible involvement in the clinical teaching programme, having suffered prolonged contractions and drug-induced sleep; and the availability of alternative arrangements in case she had decided to object to the presence of the students during the birth.

The Court therefore considered that the presence of medical students during the birth of Ms Konovalova's child, given the lack of procedural safeguards against arbitrary interference with privacy rights in national law at the time, had not been in accordance with the law, in violation of Article 8.

Article 41 (just satisfaction)

The Court held that Russia was to pay Ms Konovalova 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 200 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.