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A patient's involvement in medical education without consent

Konovalova v. Russia (ECHR October 9th 2014, appl. no. 37873/04) – observation of child birth by medical students without written consent (Article 8 ECHR, right to respect for private life)

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1. The facts (paragraphs 6-16)

The applicant, Ms. Yevgeniya Konovalova, alleged, in particular, that she had been compelled to give birth to her child in front of medical students, and that this was in breach of domestic law and incompatible with the Convention. The applicant argued that the unauthorized presence of medical students during her childbirth interfered with her right to respect for private life (Article 8 (1) ECHR) and was neither necessary nor proportionate to the needs of a democratic society (Article 8 (2) ECHR).

The applicant was taken to the gynaecology ward of the S.M. Kirov Military Medical Academy Hospital in the morning of April 23rd 1999 after her contractions started. She was forty weeks pregnant. At 9 a.m. the applicant was examined by a doctor, who established complications and put the applicant in a drug-induced sleep. Some moment between arrival at the hospital and the drug-induced sleep, the applicant received a notice that read: "*We ask you to respect the fact that medical treatment in our hospital is combined with teaching for students studying obstetrics and gynaecology. Because of this, all patients are involved in the study process.*" The delivery was planned for the next day and the applicant was informed that it would be attended by medical students. The applicant objected in the delivery room to the presence of medical students. The birth lasted from 10 to 10.35 a.m. on April 24th 1999 in the presence of doctors and medical students, who also received some information about her state of health and medical treatment.

2. Relevant domestic law (paragraph 29-31)

According to the Russian Health Care Act Article 54 students of secondary and higher medical educational institutions were allowed to assist in medical treatment in line with the requirements of their curriculum and under the supervision of the medical personnel responsible for their professional studies. Student's involvement in medical treatment was to be regulated by a special set of rules to be issued by an executive agency in charge of healthcare. However, and this is important for the outcome of this case, such rules were not issued until 15 January 2007 (almost eight years later). Furthermore, Article 61 of the Health Care Act provided that information about an individual, the state of his or her health, a

diagnosis of disease, or other data obtained as a result of his or her examination and treatment constituted confidential medical information.

3. Interference with Article 8 (1) of the Convention (paragraph 39-41)

The applicant argued that the presence of the students during the delivery constituted an interference with her Article 8 rights, in particular the right to respect for her private life. The applicant claimed further that the interference could not be justified under Article 8 (2) of the Convention because the interference was unlawful as she had not given written consent, and it was also neither necessary nor proportionate, because the notification about the possible presence of the public had been belated and had resulted in her inability to choose another hospital. According to her, she had only learned of the presence of the students at 3 p.m. on 23 April 1999. She was nearly unconscious at the time and had no access to a telephone to contact her relatives to arrange to have the child elsewhere. Moreover, given her physical condition she could not have left the hospital on her own.

The Court reiterates that under its Article 8 case-law, the concept of 'private life' is a broad term not susceptible to exhaustive definition.[1] It covers, among other things, information relating to one's personal identity, such as a person's name, photograph,[2] or moral integrity[3] and generally extends to the personal information which individuals can legitimately expect to not be exposed to the public without their consent. It also incorporates the right to respect for both the decisions to become and not to become a parent and, more specifically, the right of choosing the circumstances of becoming a parent.[4] Moreover, Article 8 encompasses the physical integrity of a person,[5] since a person's body is the most intimate aspect for private life,[6] and medical intervention,[7] even if it is of minor importance, constitutes an interference with this right. (Not necessary medical intervention without consent can also violate Article 3 of the Convention because it's an affront to human dignity.[8]) All the aforementioned aspects fall within the scope of the concept of 'private life' (and sometimes also within the concept of

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[1] See inter alia ECHR March 15th 2012, appl. no. 4149/04 & 41029/04 (Aksu v. Turkey) and ECHR September 12th 2012, appl. no. 10593/08 (Nada v. Switzerland) and ECHR December 13th 2012, appl. no. 39630/09 (El-Masri v. the Former Yugoslavian Republic of Macedonia) and ECHR April 18th 2013, appl. no. 7075/10 (Ageyevy v. Russia) and ECHR June 6th 2013, appl. no. 18071/05 (Maskhadova and others v. Russia) and ECHR June 6th 2013, appl. no. 38450/05 (Sabanchiyeva and others v. Russia) and ECHR January 16th 2014, appl. no. 7988/09 (Zalov & Kakhulova v. Russia).

[2] See for example ECHR November 13th 2012, appl. no. 24029/07 (M.M. v. the United Kingdom) and ECHR April 18th 2013, appl. no. 7075/10 (Ageyevy v. Russia) and ECHR April 18th 2013, appl. no. 19522/09 (M.K. v. France).

[3] ECHR October 16th 2008, appl. no. 39058/05 (Kyriakides v. Cyprus) and ECHR July 24th 2012, appl. no. 41526/10 (Dordevic v. Croatia).

[4] ECHR January 22nd 2008, appl. no. 43546/02 (E.B. v. France).

[5] See for example ECHR March 20th 2007, appl. no. 5410/03 (Tysiąc v. Poland) and ECHR September 12th 2012, appl. no. 10593/08 (Nada v. Switzerland) and ECHR December 13th 2012, appl. no. 39630/09 (El-Masri v. the Former Yugoslavian Republic of Macedonia).

[6] ECHR October 22nd 1981, appl. no. 7525/76 (Dudgeon v. the United Kingdom).

[7] ECHR December 19th 2013, appl. no. 45872/06 (Yuriy Volkov v. Ukraine).

[8] See inter alia ECHR June 12th 2012, appl. no. 29518/10 (N.B. v. Slovakia) and ECHR November 13th 2012, appl. no. 15966/04 (I.G. and others v. Slovakia).

'family life'). In this particular case, the medical students saw the applicant giving birth without written or any other form of explicit consent and had access to medical information, which by their nature are very sensitive. So there was an interference with the applicant's physical and moral integrity and personal identity and information, i.e. details from her medical record, as aspects of the 'private life'.

4. Justification of the interference under Article 8 (2) of the Convention (paragraph 42-50)

Under the Court's case-law, the expression 'in accordance with the law' in Article 8 (2) requires, among other things, that the measure in question should have some basis in domestic law,[9] but also refers to the quality of the law in question,[10] requiring that it should be accessible to the person concerned and foreseeable as to its effects.[11] In order for the law to meet the criterion of foreseeability, it must set forth with sufficient precision the conditions in which a measure may be applied, to enable the persons concerned – if need be, with appropriate advice[12] – to regulate their conduct.[13] In the context of medical treatment, the domestic law must provide some protection for the individual against arbitrary interference with his or her rights under Article 8.

The presence of the students during the birth of the applicant's child was authorised in accordance with Article 54 of the Health Care Act (mentioned above), which provided that students of specialist medical educational institutions were allowed to assist in medical treatment in line with the requirements of their curriculum and under the supervision of the medical personnel responsible for their professional studies. Thus, it cannot be said the interference with the applicant's private life was devoid of *any* legal basis.

At the same time, the Court observes that Article 54 was a legal provision of a general nature, principally aimed at enabling medical students to participate in treatments for educational purposes. It delegated regulatory matters in this area to a competent executive agency, and as such did not contain specific rules protecting patient's private sphere. It is a commonly accepted standard in the Court's case law that a general basis is no adequate legal basis for more severe interferences with the right to respect for privacy.[14] What specially attracted the Court's attention is that the provision did not contain any safeguards capable of providing protection to patients' private lives in such situations. Especially procedural safeguards to

[9] See for example ECHR May 10th 2001, appl. no. 25781/95 (Cyprus v. Turkey).
[10] See for example ECHR November 26th 2013, appl. no. 27853/09 (X. v. Latvia).
[11] See for example ECHR April 18th 2013, appl. no. 19522/09 (M.K. v. France). Also D.J. Harris, M. O'Boyle, E.P. Bates & C.M. Buckley, *Harris, O'Boyle & Warbrick: Law of the European Convention on Human Rights*, Oxford: Oxford University Press 2009, p. 346-347.
[12] See for example ECHR March 14th 2013, appl. no. 24117/08 (Bernh Larsen Holding AS and others v. Norway).
[13] See for example ECHR August 2nd 1984, appl. no. 8691/79 (Malone v. the United Kingdom) an ECHR April 18th 2013, appl. no. 19522/09 (M.K. v. France).
[14] See for example ECHR September 25th 2001, appl. no. 44787/98 (P.G. & J.H. v. the United Kingdom).

protect citizens against arbitrary interferences are an essential part of the quality of the law. Already mentioned above, Article 54 Health Care Act states that students' involvement in medical treatment was to be regulated by a *specific* set of rules. The relevant, specific rules were only adopted almost eight years after the events.

In the Court's view, the absence of any safeguards against arbitrary interference with patient's rights in the relevant domestic law at the time constituted a serious shortcoming. Firstly, the information notice referred to by the hospital contained a rather vague reference to the involvement of students in 'the study process' without specifying the exact scope and degree of this involvement. Secondly, the information was presented in such a way as to suggest that the participation was mandatory and seemed not to leave any choice for the applicant to decide whether or not to refuse to allow the students to participate. In such circumstances, it is difficult to say that the applicant had received prior notification about the arrangement and could foresee its exact consequences. Thirdly, the applicant only learned of the presence of medical students during the birth the day before, between two sessions of drug-induced sleep, when she had already been time in a state of extreme stress for some. She was also fatigued on account of her prolonged contractions. It is unclear whether the applicant was given any choice regarding the participation of students and whether she was at all capable of making an intelligible informed decision.

In the light of the above, the Court finds that the presence of medical students during the birth of the applicant's child on 24 April 1999 did not comply with the requirement of lawfulness of Article 8 (2) of the Convention, on account of the lack of sufficient procedural safeguards against arbitrary interference with the applicant's Article 8 rights in the domestic law at the time. The Russian Health Care Act didn't meet the quality requirements set forth by the Court at that time. There has therefore been a breach of Article 8 of the Convention in the present case. *A contrario*, a domestic law with sufficient safeguards, inter alia mandatory consent of the patient in question to allow students examine and treat the patient, would probably be a just interference with the right to respect of privacy.