

European Convention on Human Rights and consent



Aisling Gannon writes that Irish courts are obliged to interpret Irish laws in a way that gives effect to our obligations under the European Convention on Human Rights

The European Court on Human Rights (ECHR) recently ruled that the taking of blood samples and photographs by medical authorities in the absence of the parents' consent, (even in circumstances where there is a justified suspicion of abuse of a child by her parents) violates the child's and parents' rights to respect for their private and family life under Article 8 of European Convention on Human Rights (the Convention) (MAK and RK v United Kingdom [2010] ECHR 363).

The Convention is an international treaty that protects human rights and fundamental freedoms in Europe. The European Court of Human Rights is one of three mechanisms designed to enforce the



Convention. In the MAK case, the parents took their nine-year-old daughter RK to their family doctor because they were concerned about bruising on her legs.

They followed it up by a visit to a paediatrician in a public hospital, who had blood samples and pictures of the girl taken in the absence of her parents, despite the father's indi-

cation that any tests should be done in the mother's presence or with her consent.

The paediatrician concluded, after an examination, that the girl had been sexually abused and informed social workers. When the girl's parents then attempted to visit her, a nurse prevented the father from seeing her.

The following day, hospital staff were informed that there could be no restrictions on visitors. The father was then allowed to visit under supervision.

On the day after admission to hospital, the mother told the paediatrician of an incident that had happened three days earlier, when RK had complained that she hurt herself when riding her bike. The doctor reiter-

ated that there was no doubt the girl had been abused. A few days later, after noticing marks on the girl's hands, her mother brought her to a dermatologist, who diagnosed her with a rare skin-disease. The parents brought unsuccessful proceedings in England for negligence against the local authority and hospital trust claiming compensation for personal injury and financial loss. They then appealed to the ECHR.

ECHR decision

The court noted that the authorities, both medical and social, had duties to protect children and could not be held liable every time genuine and reasonably held concerns about the safety of children vis-à-vis members of their family were proved, retrospectively, to have been misguided.

The court found, however, that while it had been justified for the authorities to suspect abuse at the time of RK's admission in hospital, the delay in consulting a dermatologist had undermined their efforts to protect her from harm.

In addition, domestic law and practice clearly required the consent of parents/guardians before any medical intervention could take place. There was no evidence to suggest that RK's condition had been critical or that that her mother would have withheld consent. Even if she had, the hospital could have

applied for a court order requiring the tests to be conducted.

The court found no justification for the decision to take a blood test and intimate photographs of RK, against the express wishes of both her parents, while she had been alone in the hospital.

They therefore held that there had been a violation of their right to respect for their family life under Article 8.

Irish implications

By virtue of the European Convention on Human Rights Act 2003, the Irish courts are obliged to interpret Irish laws in a way that gives effect to Ireland's obligations under the Convention and State organs (such as Government ministers and State bodies) must act in compliance with the Convention.

In Ireland, if the child is under the age of 16, the consent of the child's parents or guardians must be obtained for any medical treatment. If the parent or guardian refuses, an application should be made to court if a medical practitioner feels that treatment is in the child's best interests. This case highlights the importance of obtaining proper consent when treating children.

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