



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

SECOND SECTION

DECISION

Application no. 5359/23
Natasha PETRAK
against North Macedonia

The European Court of Human Rights (Second Section), sitting on 8 September 2026 as a Committee composed of:

Gediminas Sagatys, *President*,

Jovan Ilievski,

Hugh Mercer, *judges*,

and Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to:

the application (no. 5359/23) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 20 January 2023 by a citizen of the Republic of North Macedonia, Ms Natasha Petrak (“the applicant”), who was born in 1971 and lives in Bitola, and was represented by Mr D. Bogdanov, a lawyer practising in Skopje;

the decision to give notice of the complaint under Article 2 of the Convention concerning the alleged failure of the State to effectively investigate the applicant’s father’s death, which was allegedly caused by medical negligence, to the Government of the Republic of North Macedonia (“the Government”), represented by their Agent, Ms D. Djonova, and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. On 27 December 2015 the applicant’s father died during his hospital stay in a public hospital in Bitola.

A. Criminal proceedings before the Bitola Public Prosecutor's Office

2. On 15 January 2016 the applicant, represented by a lawyer, lodged a criminal complaint with the Bitola Public Prosecutor's Office against the doctors who had treated her father at the Bitola public hospital (hereinafter "Bitola hospital"), alleging that his death had resulted from medical negligence on their part.

3. On 29 January 2016 a prosecutor from the Bitola Public Prosecutor's Office requested the relevant complete medical documentation from the Bitola hospital and obtained statements from the doctors concerned. The evidence obtained indicated that the deceased had been admitted to the Bitola hospital in critical condition and that he had been treated at a public hospital in Skopje one week earlier, where he had undergone a surgical procedure.

4. The prosecutor then requested from the hospital in Skopje the complete medical file concerning the deceased, as well as the autopsy report. The autopsy report indicated that the deceased had suffered from many pathological conditions and that there had been damage to the intestines accompanied by sepsis.

5. Consequently, the prosecutor ordered a forensic medical expert report from the Institute of Forensic Medicine to establish whether any medical malpractice had occurred at the Bitola hospital.

6. The applicant also submitted to the prosecutor a medical expert report prepared by a Croatian specialist, which concluded that there were indications of possible medical negligence. The prosecutor referred the report to the Institute of Forensic Medicine.

7. On 1 March 2017 the Institute of Forensic Medicine completed its expert report. The experts found that the applicant's father had not received timely and appropriate treatment for his acute condition because the complications related to his previous medical procedure should have been diagnosed at an earlier stage at the hospital in Skopje. This had delayed the necessary intervention. Earlier diagnosis and treatment would have improved the prospects of a successful outcome.

8. On 24 May 2017 the Bitola Public Prosecutor's Office dismissed the applicant's criminal complaint against the doctors of the Bitola hospital, finding that the facts did not disclose a criminal offence subject to prosecution and that it had not been established that the accused doctors had committed any criminal offence in the course of her father's treatment.

9. On 28 June 2017 the Bitola Higher Public Prosecutor's Office dismissed an appeal lodged by the applicant against the above-mentioned decision, finding that all relevant facts had been properly established during the investigation.

B. Criminal proceedings before the Skopje Public Prosecutor's Office

10. On 30 August 2017 the applicant, represented by a lawyer, lodged a criminal complaint with the Skopje Public Prosecutor's Office against a doctor and a member of the medical staff of the Skopje University Clinic, alleging that medical negligence had led to a deterioration in her father's health and ultimately to his death. In support of her allegations, she relied on expert opinions, obtained both independently (see paragraph 6 above) and in the course of the criminal investigation conducted by the prosecutor in Bitola (see paragraph 7 above) and which, in her view, established a causal link between the alleged omissions and her father's death.

11. The Skopje Public Prosecutor's Office obtained the case file from the investigation conducted by the prosecutor in Bitola and heard evidence from the suspected doctor from the Skopje University Clinic. In her statement, the doctor submitted that the applicant's father had been treated on multiple occasions at the clinic for pre-existing medical conditions and had had a history of repeated hospitalisations, and that during his last admission, all medical procedures had been carried out in accordance with applicable standards and protocols.

12. On 24 November 2017 the Skopje Public Prosecutor's Office ordered a forensic medical expert report from the Institute of Forensic Medicine to determine whether, in the course of the medical treatment of the applicant's late father at the Skopje University Clinic, the medical staff had acted in accordance with the principles of medical science and whether any criminal offence had occurred.

13. The Institute of Forensic Medicine also took into account the autopsy report (see paragraph 4 above) and the expert report prepared in the context of the investigation conducted by the prosecutor in Bitola (see paragraph 7 above). On the basis of the medical documentation from the hospitals in Skopje and Bitola, the experts found that the applicant's father had suffered from perforation of the large intestine, which was a known and inherent risk of colonoscopy procedures, the occurrence of which depended on both the nature of the intervention and patient-specific factors, including pre-existing pathology of the digestive tract. They further noted that such risk might be increased in the presence of underlying conditions and that the patient's serious, pre-existing illness might have masked early clinical signs of complications, thereby delaying a diagnosis. They also stated that the patient had been in a severely compromised general condition at the time of his subsequent hospital admission, as confirmed by the post-mortem findings identifying an unrelated underlying cause of death. At the same time, they did not exclude the possibility that the perforation had contributed to a deterioration of the patient's already critical condition.

14. On 24 December 2018 the Skopje Public Prosecutor's Office dismissed the applicant's criminal complaint against the doctor and the

member of staff of the Skopje University Clinic. It considered that their conduct did not amount to negligent treatment or any criminal offence and referred to the medical findings concerning the patient's serious underlying condition. It concluded that there was no basis for finding that a criminal offence subject to prosecution had been committed.

15. On 27 March 2019 the Skopje Higher Public Prosecutor's Office upheld an appeal lodged by the applicant and ordered the first-instance prosecutor to continue the investigation. It found that the expert report of the Institute of Forensic Medicine did not address all relevant questions as to whether the conduct of the accused amounted to medical negligence and whether it had caused a deterioration in the applicant's father's health.

16. Acting on the instructions of the Higher Public Prosecutor's Office, the first-instance prosecutor requested the Institute of Forensic Medicine to supplement its expert report accordingly.

17. In a supplementary expert report of 26 October 2020 the experts from the Institute of Forensic Medicine reaffirmed their previous conclusions that the applicant's father had been treated in accordance with accepted medical standards and protocols, including hygiene requirements, and that appropriate diagnostic and therapeutic measures had been taken. They stated that no obviously inappropriate medical means or methods had been used and reiterated that perforation of the large intestine was a known and foreseeable complication of colonoscopy and biopsy, particularly in patients with pre-existing intestinal pathology, which could occur even where medical standards were respected, and concluded that, although complications and diagnostic delays had occurred, these did not amount to negligent medical treatment or any breach of professional standards.

18. On 30 September 2021 the Skopje Public Prosecutor's Office again dismissed the applicant's criminal complaint. In its reasoning, referring to the medical findings in the case file concerning the patient's serious underlying condition, it reaffirmed its conclusion that the conduct of the medical staff did not amount to negligent treatment or any criminal offence.

19. On 21 February 2022 the Skopje Higher Public Prosecutor's Office dismissed an appeal lodged by the applicant against the first-instance decision of the prosecutor of 30 September 2021, finding that the latter had acted in accordance with its instructions, that it had obtained a supplementary expert report addressing the outstanding questions relevant to the investigation, and that its decision was lawful and justified. The final decision was served on the applicant on 21 October 2022.

20. The Government submitted copies of final domestic court judgments in which damages for non-pecuniary loss had been awarded in cases concerning medical negligence in childbirth and surgical treatment in public hospitals (they referred to the judgments of the Supreme Court, the Strumica Court of First Instance and the Bitola Court of Appeal, file nos. *Pe62.6p.323/2021*, *II4.6p.46/19* and *ГЖ-305/23*). In those cases, the

domestic courts had awarded damages notwithstanding that no criminal proceedings had been brought against the responsible medical staff.

21. The applicant complained under Article 2 of the Convention that the State had failed to effectively investigate her father's death, which had allegedly been caused by medical negligence.

THE COURT'S ASSESSMENT

22. The general principles concerning the procedural obligations of the Contracting States under Article 2 of the Convention in the context of health care were summarised in *Lopes de Sousa Fernandes v. Portugal* ([GC], no. 56080/13, §§ 214-21, 19 December 2017, and the cases cited therein).

23. In particular, the Court reiterates that if the right to life or to personal integrity has not been infringed intentionally, the procedural obligation imposed by Article 2 does not necessarily require the provision of a criminal-law remedy in every case. In the specific sphere of medical negligence, the positive obligation may be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any liability of the doctors concerned to be established and any appropriate civil redress, such as an order for damages and for the publication of the decision, to be obtained. Disciplinary measures may also be envisaged (see *Lopes de Sousa Fernandes*, cited above, § 215, and *V.V.G. v. the former Yugoslav Republic of Macedonia* (dec.), no. 55569/08, § 41, 20 January 2015, and the cases cited therein).

24. From the facts of the case, the Court finds that there is no indication that the infringement of the right to life of the applicant's father was caused intentionally or that the fault allegedly attributable to the health-care providers went beyond a mere error or medical negligence. Therefore, the Court considers that the positive obligation imposed under the Convention does not necessarily require the provision of a criminal-law remedy, but may be satisfied if the domestic legal system affords victims a civil-law remedy.

25. In that regard, the Court has already established that the domestic legislation in the respondent State concerning medical negligence provides two avenues of redress: criminal and civil. The criminal avenue of redress concerns criminal charges that can be brought against the medical staff, and the civil avenue of redress concerns a civil action for damages, which can be pursued in the civil courts. Both avenues may be used either alone or in conjunction with each other. The law also provides for the simultaneous use of both remedies (see *V.V.G. v. the former Yugoslav Republic of Macedonia*, cited above, § 42).

26. In the present case, the Court notes that the applicant initiated two sets of criminal proceedings, one against the medical staff of the Bitola hospital (see paragraph 2 above) and the other against the medical staff of the Skopje University Clinic (see paragraph 10 above). The prosecutors gathered

evidence and obtained expert reports but concluded that the available evidence did not warrant criminal prosecution.

27. Following the dismissal of her criminal complaints or in parallel to the criminal proceedings, the applicant could have initiated civil proceedings against the medical staff or the hospitals in Skopje and Bitola where her father had been treated prior to his death. However, there is no evidence that she did so. Furthermore, she has not put forward any grounds for concluding that a civil claim would not constitute an effective legal avenue in the circumstances of the present case. The Court notes in this connection that domestic case-law confirms that victims of medical malpractice may obtain monetary compensation even in the absence of criminal proceedings against the doctors concerned (see paragraph 20 above).

28. Accordingly, and in line with the conclusion reached in *V.V.G. v. the former Yugoslav Republic of Macedonia* (cited above, § 46), the Court considers that in the examination of the case, the action for damages could be regarded as an effective remedy which was available to the applicant. Such an action, which she failed to pursue, would have enabled her to argue the medical negligence she alleged and to claim redress for the possible damage resulting from such negligence. The Court accordingly finds that the present case does not disclose any appearance of a violation of the respondent State's obligations under the procedural limb of Article 2 of the Convention.

29. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 1 October 2026.

Dorothee von Arnim
Deputy Registrar

Gediminas Sagatys
President