

Doctor refused judicial review against the decision of the Medical Council

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Ahmed v The Fitness to Practise Committee of the Medical Council & Ors, [2018] IEHC 75 (2018)

In February 2018, the High Court refused an application by Dr Ahmed who sought to set aside the report of the Fitness to Practise Committee which found Dr Ahmed guilty of poor professional performance as well as the decision of the Medical Council to impose the sanction of advice.

In addition, the High Court refused to make a declaration that the decision of the Fitness to Practise Committee and/or the Medical Council to find Dr Ahmed guilty of an allegation of poor professional performance and the decision of the Medical Council to impose the sanction of advice, without Dr Ahmed having the right of appeal to the High Court, were contrary to his rights pursuant to the Constitution and the European Convention on Human Rights.

Background

Dr Ahmed was the subject of proceedings before the Fitness to Practise Committee of the Medical Council (the "Committee"). The fitness to practise proceedings related to his practice as an oncology registrar. At the conclusion of the hearing, the Fitness to Practise Committee, found Allegation 7(b) to be proven against Dr Ahmed. Allegation 7(b) related to Dr Ahmed's failure to request "...basic tests to include but not limited to (i) blood test(s); and/or (ii) urine test(s); and/or (iii) kidney function test(s)."

Allegation 7(b) was a sub-part of Allegation 7, which contained a number of allegations relating to Dr Ahmed's treatment of a particular patient. At the hearing, evidence was heard from a number of witnesses including an expert clinical oncologist, who prepared an expert report in respect of the allegations and gave oral evidence during the inquiry in relation to the allegations of poor professional performance and professional misconduct.

At the conclusion of the inquiry, the Committee issued its report in which it listed inter alia all of the allegations that were not proven and or withdrawn, the witnesses who gave evidence before the Committee and the documents considered by the Committee.

In relation to Allegation 7(b), the Committee found that it was proven as to fact and amounted to poor professional performance. The Committee's reason for its finding was on the basis that the evidence of the expert clinical oncologist established that this was a very serious failure to meet the standards of competence that can reasonably be expected of an oncology registrar and it therefore amounted to poor professional performance.

As stated above, Allegation 7(b) formed part of Allegation 7. The Committee was asked to decide if cumulatively, taking all the parts of Allegation 7 together, this would amount to poor professional performance. The Committee decided that Allegation 7 cumulatively did not amount to poor professional performance.

The Committee's report was provided to the Medical Council for its consideration in relation to sanction and the Medical Council decided to impose the sanction of advice.

The proceedings before the High Court

Dr Ahmed instituted judicial review proceedings in the High Court. Dr Ahmed did not have the option of appealing the decision to the High Court in circumstances where the Medical Practitioners Act 2007 (the "2007 Act") does not provide for a right of appeal where the sanction of advice has been imposed by the Medical Council.

Dr Ahmed sought orders quashing the decision of the Committee to find him guilty of poor professional performance and the Medical Council's decision to impose the sanction of advice.

In relation to the absence of an appeal under the 2007 Act, he sought a declaration that the decision of the Committee and/or the Medical Council to find him guilty of an allegation of poor professional performance and the decision of the Medical Council to impose the sanction of advice, without Dr Ahmed having the right of appeal to the High Court, was contrary to his rights pursuant to the Constitution and the European Convention on Human Rights.

Dr Ahmed submitted, in relation to the finding of the Committee that Allegation 7(b) amounted to poor professional performance, that the evidence of the expert clinical oncologist related to the totality of Allegation 7 and that no expert evidence had been given concerning whether Allegation 7(b) on its own was capable of amounting to poor professional performance. Therefore, in summary, the contention was that there was a lack of evidence on which Dr Ahmed could be found guilty of poor professional performance.

Decision of the High Court

Mr Justice Meenan considered the expert evidence that had been before the Committee and the wording of the allegation. He concluded, bearing in mind the clear distinction between an application for judicial review and an appeal, that in relation to the finding of poor professional performance against the applicant, that “...it could not be stated that the finding made by the first named respondent [the Committee] was irrational or unreasonable. There was clearly evidence before the first named respondent upon which it could reach the decision it did.” The High Court therefore refused to quash the report of the Committee.

In relation to Dr Ahmed’s lack of appeal in respect of the sanction of advice imposed by the Council, Mr Justice Meenan, relied on the decision of *Akpeke v Medical Council [2014] 3 I.R. 420*. He found that there was no basis for him to depart from the decision of the then President of the High Court, Mr Justice Kearns, in *Akpeke* where he decided that the lack of an appeal did not render the 2007 Act unconstitutional.

As to whether the absence of an appeal in circumstances where the sanction of an advice has been imposed is in breach of the European Convention of Human Rights, Mr Justice Meenan noted that this issue had been considered by the English courts in the cases of *R. v. General Medical Council, Ex Parte, Kypros Nicolaides [2001] EWHC Admin 625* and *Thompson v. The Law Society [2004] EWCA Civ. 167, (2004) 1 WLR 2522*. Mr Justice Meenan referred to the fact that both of these decisions had been considered by Kearns P. in *Akpeke* wherein he stated: “Thus, where a minor sanction only is imposed, there is ample authority for the proposition that not only does no right of appeal exist when referenced to the provisions of Article 6 of the European Convention on Human Rights, but equally assertions that the applicant’s livelihood and good name have been impermissibly affected under Article 40.3 of the Constitution must equally be seen as misplaced.”

In his submissions, Dr Ahmed had sought to rely on the case of *Ghosh v. General Medical Council [2001] 1 WLR 1915*. However, Mr Justice Meenan found that, in his view, this case was not an authority for the submission that an appeal ought to lie in a situation where the sanction imposed is “advice”.

Although in the *Akpeke* case the applicant did not specify the breach of any particular rights under the Convention and did not seek a declaration of incompatibility of the 2007 Act with the European Convention on Human Rights Act 2003, Mr Justice Meenan was satisfied that, on the basis of the authorities and the wording of Article 6, Dr Ahmed was not entitled to the declarations that he had sought.

Therefore, he refused to declare that the decision of the Committee and/or the Medical Council to find Dr Ahmed guilty of an allegation of poor professional performance and the decision of the Medical Council to impose the sanction of advice, without Dr Ahmed having the right of appeal to the High Court, were contrary to his rights pursuant to the Constitution and the European Convention on Human Rights.

A link to the full judgment can be found [here](#).

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