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

GRAND CHAMBER

CASE OF MAURICE v. FRANCE

(Application no. 11810/03)

JUDGMENT
(Just satisfaction and striking out)

STRASBOURG

21 June 2006

In the case of Maurice v. France,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Luzius Wildhaber, *President,*
Christos Rozakis,
Jean-Paul Costa,
Nicolas Bratza,
Giovanni Bonello,
Lucius Caflisch,
Loukis Loucaides,
Corneliu Bîrsan,
Peer Lorenzen,
Karel Jungwiert,
Volodymyr Butkevych,
András Baka,
Mindia Ugrekhelidze,
Vladimiro Zagrebelsky,
Khanlar Hajiyev,
Renate Jaeger,
Danutė Jočienė, *judges,*

and Lawrence Early, *Section Registrar,*

Having deliberated in private on 7 June 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 11810/03) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two French nationals, Mr Didier Maurice and Mrs Sylvia Maurice ("the applicants"), on 28 February 2003. The applicants were acting both on their own behalf and as the legal representatives of their minor children.

2. The applicants were represented by a partnership of three lawyers practising at the *Conseil d'Etat* and the Court of Cassation, Mr Arnaud Lyon-Caen, Ms Françoise Fabiani and Mr Frédéric Thiriez. The French Government ("the Government") were represented by their Agent, Mrs E. Belliard, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. Following relinquishment of jurisdiction by the Chamber to which the application had initially been assigned, the Court (Grand Chamber) gave judgment on 6 October 2005 ("the judgment on the merits"). In that judgment it held that section 1 of Law no. 2002-303 of 4 March 2002 on

patients' rights and the quality of the health service had infringed the applicants' right to the peaceful enjoyment of their possessions. The Court noted that, following the birth of a child with a disability not detected during pregnancy on account of negligence in carrying out a prenatal diagnosis, the applicants had brought an action for compensation in the French courts. Having regard to the relevant domestic rules governing liability, and bearing in mind in particular the established case-law of the administrative courts, the applicants could legitimately have expected to obtain compensation for the damage they had sustained, including the special burdens arising from their child's disability. But the above-mentioned Law of 4 March 2002, which was applicable to pending proceedings, had had the effect in the case brought by the applicants of excluding the "special burdens" from the damage for which compensation could be awarded. The Court considered that the impugned legislation had deprived the applicants, without sufficient compensation, of a substantial portion of the damages they had claimed, thus making them bear an individual and excessive burden. Consequently, the applicants had been victims of a violation of Article 1 of Protocol No. 1 (see *Maurice v. France* [GC], no. 11810/03, §§ 63-70 and 78-94, ECHR 2005-IX).

Regard being had to that finding of a violation, the Court did not consider it necessary to examine the applicants' complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

Furthermore, regard being had to the particular circumstances of the case and to the reasoning that had led it to find a violation of Article 1 of Protocol No. 1, the Court did not consider it necessary to examine separately the applicants' complaint under Article 6 § 1 of the Convention.

The Court found no violation of Article 13 or of Article 8, even supposing that Article 8 was applicable.

As regards the complaint relating to Article 14 of the Convention taken in conjunction with Article 8, the Court noted that it fell outside the scope of the case as submitted to the Grand Chamber (see *Maurice*, cited above, §§ 100, 104, 106-08 and 114-26).

Lastly, the Court awarded the applicants the sum of 21,400 euros (EUR) for the costs and expenses they had incurred up to that point in the proceedings before it and before the French courts.

4. Under Article 41 of the Convention, the applicants alleged that they had suffered pecuniary damage corresponding to the sums they would have received if the legal situation prior to the Law of 4 March 2002 had continued to obtain. Supplying the relevant vouchers, they claimed a total of EUR 6,211,154.63. They did not submit any claim for non-pecuniary damage.

5. As regards the sum to be awarded to the applicants for any pecuniary or non-pecuniary damage resulting from the violation found, the Court held in the judgment on the merits that the question of the application of

Article 41 was not ready for decision, and accordingly reserved it. It invited the Government and the applicants to submit their written observations on the matter within six months and, in particular, to notify it of any agreement that they might reach (see *Maurice*, cited above, §§ 128-33 and point 7 of the operative provisions).

6. In a letter of 6 April 2006, the Government informed the Court that the parties had reached agreement on the question of just satisfaction.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1962 and 1965 respectively and live in Bouligny.

8. In 1990 the applicants had their first child, A., who was born with type 1 infantile spinal amyotrophy, a genetic disorder causing atrophy of the muscles.

9. In 1992 Mrs Maurice became pregnant again. A prenatal diagnosis conducted at Nancy University Hospital revealed that there was a risk of the unborn child's being afflicted by the same genetic disorder. The applicants chose to terminate the pregnancy.

10. In 1997 Mrs Maurice, who was pregnant for the third time, again requested a prenatal diagnosis. This was conducted at Briey General Hospital, which sent the sample to the molecular diagnosis laboratory of the Necker Children's Hospital Group, run by Assistance publique-Hôpitaux de Paris ("AP-HP"). In June 1997, in the light of that laboratory's diagnosis, Briey General Hospital assured the applicants that the unborn child was not suffering from infantile spinal amyotrophy and was "healthy".

11. C. was born on 25 September 1997. Less than two years after her birth it became apparent that she too suffered from infantile spinal amotrophy. On 22 July 1999 a report by the head of the laboratory at the Necker Children's Hospital in Paris revealed that the mistaken prenatal diagnosis was the result of transposing the results of the analyses relating to the applicants' family and those of another family, caused by the switching of two bottles.

12. According to the medical reports, C. presents grave disorders and objective signs of functional deficiency – frequent falls from which she is unable to get up unassisted, unsteady walk, tiredness at any effort. She needs the assistance of another person (particularly at night in order to turn her over so as to prevent her from suffocating, since she is unable to turn over alone). She cannot sit on her own and moves around with an electric

scooter. She has to receive treatment several times a week and cannot be admitted to school because the latter is not suitably equipped. Her family doctor has expressed the view that "one must have reservations until the time of puberty both about motor and respiratory functions and about possible orthopaedic deformations". These facts gave rise to several sets of proceedings.

A. Applications under the urgent procedure

13. On 13 November 2000 the applicants submitted a claim to AP-HP seeking compensation for the pecuniary and non-pecuniary damage suffered as a result of C.'s disability.

14. They also submitted to the urgent applications judge at the Paris Administrative Court a request for an interim award and for an expert to be appointed. The latter was appointed by an order issued on 4 December 2000.

15. In an order made on 26 April 2001, the urgent applications judge at the Paris Administrative Court dismissed the request for an interim award on the ground that, as the expert had not yet delivered his report, "AP-HP's obligation to pay [could] not be regarded as indisputable".

16. The expert submitted his report on 11 June 2001, concluding that on the occasion of the prenatal diagnosis conducted at the AP-HP laboratory there had not been medical negligence, because "the techniques employed [had been] consistent with the known scientific facts", but there had been "negligence in the organisation and functioning of the service causing the transposition of results between two families tested at the same time".

17. The applicants lodged a further application, asking for the hospital to be ordered to pay them an advance of EUR 594,551. In an order made on 19 December 2001, the urgent applications judge at the Paris Administrative Court ordered AP-HP to pay an advance of EUR 152,499. He observed in particular:

> "... it is apparent from the investigation that in May 1997, at Briey General Hospital, a sample of amniotic fluid was taken from [Mrs Maurice] ...; that the analysis of that amniotic fluid was carried out by Assistance publique-Hôpitaux de Paris; that while the results given [to the applicants] indicated that the unborn child was not suffering from infantile spinal amyotrophy, they related to a sample taken from another family tested at the same time and did not mention that, the sample of amniotic fluid having been contaminated by the mother's blood, they were attended by uncertainty; that [the applicants] are therefore entitled to argue that Assistance publique-Hôpitaux de Paris was guilty of negligent acts or omissions; that those negligent acts wrongly led [the applicants] to the certainty that the child conceived was not suffering from infantile spinal amyotrophy and that [Mrs Maurice's] pregnancy could be carried to term in the normal way; that these negligent acts must be regarded as the direct causes of the damage sustained by [the applicants] from the disorder from which C. suffers; and that, this being the case, the existence of the obligation claimed by [the applicants] is not seriously open to challenge."

18. AP-HP appealed. In its submissions it argued that, while the transposition of the analyses had indeed constituted negligence in the organisation and functioning of the public hospital service, the only result of that negligence had been to deprive the applicants of information apt to enlighten their decision to seek a termination of the pregnancy. On the basis of the above-mentioned expert report, AP-HP submitted that even if the samples had not been transposed the results would have been uncertain, having regard to the presence of the mother's blood in the sample taken. Consequently, the applicants would not in any case have had reliable information available to them.

19. In a judgment of 13 June 2002, the Paris Administrative Court of Appeal varied the order issued by the urgent applications judge, reducing from EUR 152,449 to EUR 15,245 the amount of the interim award to the applicants. In its judgment it observed:

> "Liability:
>
> ... after the birth [of C.], as the child had been found to be suffering from [infantile spinal amyotrophy], it emerged that the reason incorrect information had been given to the parents was that the results of the analyses carried out on two patients had been switched. It is not contested that the results were switched by the staff of [AP-HP] ... The negligence thus committed, as a result of which [Mrs Maurice] had no reason to request an additional examination with a view to termination of the pregnancy on therapeutic grounds, must be regarded as the direct cause of the prejudice suffered by [the applicants]."

The court went on to say:

> "Entitlement to the interim award requested:
>
> ... the infantile spinal amyotrophy from which the child C. suffers is not the direct consequence of the above-mentioned negligence ... Accordingly, pursuant to the provisions ... of paragraph I of section 1 of the Law of 4 March 2002 [on patients' rights and the quality of the health service – 'the Law of 4 March 2002'], [AP-HP] would only be required to compensate the damage sustained by [the applicants], to the exclusion of the 'special burdens arising throughout the life of the child' from the latter's disability, compensation for disability being a matter for national solidarity according to those same provisions. That being so, [AP-HP]'s plea that, for assessment of [the applicants'] right to compensation, the above-mentioned provisions of the Law of 4 March 2002 should have been applied to the dispute constitutes a serious defence against the applicants' claim at first instance, in the amount awarded by the court below. If the above-mentioned legislative provisions ... are held to be applicable in the main proceedings now pending in the Paris Administrative Court, the only obligation [on AP-HP] which could be regarded as not seriously open to challenge would be the obligation to compensate [the applicants] for their non-pecuniary damage, which should be fixed, in the circumstances of the case, at 15,245 euros. Consequently, the interim award [AP-HP] is required to pay should be reduced to that sum ..."

20. The applicants and AP-HP appealed on points of law. The applicants submitted only one ground of appeal to the *Conseil d'Etat*. Relying on

Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, they argued that the immediate applicability of the Law of 4 March 2002 to pending proceedings was contrary to the Convention.

21. Having been seised in the context of a similar case (*Draon*, also submitted to the Court, application no. 1513/03), the *Conseil d'Etat* ruled, in an opinion delivered on 6 December 2002, that the Law of 4 March 2002 was indeed applicable to pending proceedings and was compatible with the provisions of the Convention (see paragraph 52 of the judgment on the merits).

22. In a judgment of 19 February 2003, the *Conseil d'Etat*, ruling on the above-mentioned appeal on points of law, followed the line set out in that opinion, observing:

> "It is not seriously open to challenge that such facts constituting gross negligence [*faute caractérisée*] which deprived [the applicants] of the possibility of terminating the pregnancy on therapeutic grounds, confer entitlement to compensation pursuant to section 1 of the Law of 4 March 2002, which came into force after the ruling of the urgent applications judge at the Paris Administrative Court and is applicable to pending proceedings. It is appropriate, in the particular circumstances of the case, to set at 50,000 euros the amount of the interim award [AP-HP] is required to pay on account of the prejudice sustained by [the applicants] personally."

B. The main proceedings (action for damages against AP-HP)

23. Having received no reply from AP-HP two months after submitting their claim on 13 November 2000, and in the absence of any reply amounting to implicit rejection, the applicants brought proceedings in the Paris Administrative Court. In their application they requested that the implicit rejection be set aside and AP-HP ordered to pay them, in particular, the following amounts: 2,900,000 French francs (FRF) (EUR 442,102) for the construction of a house and the purchase of a vehicle and a wheelchair; FRF 500,000 (EUR 76,225) in respect of non-pecuniary damage and disruption to their lives; FRF 10,000,000 (EUR 1,524,490) for pecuniary damage; and FRF 30,000 (EUR 4,573) in respect of the non-pecuniary damage suffered by their eldest daughter.

24. Following the opinion given by the *Conseil d'Etat* on 6 December 2002, the applicants submitted supplementary observations to the Administrative Court asking it not to consider itself bound by the Judicial Assembly's opinion and to declare the Law of 4 March 2002 incompatible with the provisions of the Convention. AP-HP, for its part, again submitted that the prenatal diagnosis communicated to the applicants would have been uncertain even if the results had not been transposed.

25. In a judgment of 25 November 2003, the Paris Administrative Court ordered AP-HP to pay the applicants a total of EUR 224,500 (EUR 220,000 on their own behalf and EUR 4,500 on behalf of their eldest daughter) in

respect of non-pecuniary damage and the disruption to their lives. It observed in particular:

"LIABILITY:

[The applicants] seek to establish [AP-HP's] liability for the damage they suffered on account of the fact that their daughter C. was born with a disability not detected during pregnancy.

...

The provisions of section 1 of the Law of 4 March 2002, in the absence of any provisions in the Law providing for deferred entry into force, are applicable under the conditions of ordinary law following publication of the Law in the Official Gazette of the French Republic. The rules which it lays down, as decided by the legislature on general-interest grounds relating to ethical considerations, the proper organisation of the health service and the equitable treatment of all disabled persons, are not incompatible with the requirements of Article 6 of the Convention ..., with those of Articles 13 and 14 of the Convention or with those of Article 1 of Protocol No. 1 to [the] Convention. ... The general-interest ground which the legislature took into account when laying down the rules contained in the first three sub-paragraphs of paragraph I justifies their application to situations which arose prior to the commencement of pending proceedings. Having regard to the wording of the Law of 4 March 2002, neither the fact that the system of compensation has not yet entered into force nor the fact that the mistaken diagnosis is alleged to have resulted from negligence in the organisation and functioning of the service are such as to bar application of the above-mentioned provisions to the present proceedings brought on 16 March 2001.

The administrative courts do not have jurisdiction to determine the constitutionality of statute law. The appellants cannot therefore validly assert that the above-mentioned Law of 4 March 2002 is unconstitutional.

[The applicants], whose eldest daughter suffers from infantile spinal amyotrophy, and who decided in 1992 to terminate another pregnancy after a prenatal diagnosis had revealed that the unborn child was afflicted by the same pathology, had a daughter named C. in 1997 who was discovered during 1999 to be likewise suffering from that disorder despite the fact that, in view of the results of the amniocentesis conducted on [Mrs Maurice], they had been told that the foetus was healthy. That information proved to have been incorrect because the results from two patients had been transposed. The investigation showed that the switch was imputable to [AP-HP], which runs the Necker Children's Hospital on whose premises the sample had been analysed. The switching of the results constituted gross negligence [*faute caractérisée*] for the purposes of the Law of 4 March 2002. In order to absolve itself of liability, Assistance publique-Hôpitaux de Paris cannot effectively argue that, even in the absence of negligence, the diagnosis would not have been reliable because of the presence of the mother's blood in the foetal sample, since in such circumstances it was incumbent on the practitioner responsible for the analysis to inform [the applicants] accordingly, so that they would then have been able to have a new sample taken. The gross negligence mentioned above deprived the applicants of the possibility of terminating the pregnancy on therapeutic grounds, for which there is no time-limit. Such negligence entitles them to compensation under the conditions laid down in section 1 of the Law of 4 March 2002 ..."

26. As regards assessment of the damage suffered, the court ruled as follows:

> "... firstly, the amounts sought in respect of treatment, special education costs and the costs of building a new house and purchasing a vehicle and an electric wheelchair relate to special burdens arising throughout the life of the child from her disability and cannot therefore be sums for which [AP-HP] is liable, regard being had to the above-mentioned provisions of section 1 of the Law of 4 March 2002;
>
> ... secondly, [the applicants] are suffering non-pecuniary damage and disruptions to their lives, particularly their work, of exceptional gravity, regard being had to the profound and lasting change in their lives resulting from the birth of a second severely disabled child. In the circumstances of the case, these two heads of damage must be assessed at 220,000 euros. Consequently, [AP-HP] is ordered to pay that sum to [the applicants], after deducting the interim award paid;
>
> ... thirdly, the above-mentioned provisions of the Law of 4 March 2002 do not bar payment of compensation, under the rules of ordinary law, for the non-pecuniary damage suffered by A. Maurice on account of the fact that her sister was born with a disability. In the circumstances of the case, a fair assessment of that damage requires [AP-HP] to pay the sum of 4,500 euros to [the applicants] acting on behalf of their child;"

27. On 19 January 2004 the applicants appealed against the above judgment. The appeal is at present pending before the Paris Administrative Court of Appeal.

C. Action against the State for damage inflicted by reason of legislation

28. In a complaint submitted to the Prime Minister on 24 February 2003, the applicants requested payment of compensation in the sum of EUR 1,970,593.33 based on the State's liability for damage inflicted by reason of the Law of 4 March 2002.

29. On expiry of the two-month time-limit following the lodging of their complaint, the applicants referred it to the Paris Administrative Court, requesting it to set aside the Prime Minister's implicit decision to reject it and to order the State to compensate them for the damage they considered they had sustained.

30. In a judgment of 25 November 2003, the Paris Administrative Court dismissed the complaint. It observed in particular:

> "It is clear from the drafting history of the Law of 4 March 2002 that this provision is based, firstly, on the desire of the legislature not to require health-care professionals or establishments to pay compensation for the burdens occasioned by a disability not detected during pregnancy, and, secondly, on a fundamental requirement: the rejection of any discrimination between disabled persons whose disability would be compensated for in accordance with the principles of liability and those whose disability would be covered by national solidarity, their mother having refused an abortion or the disability being undetectable at the time of the prenatal diagnosis.

This desire on the part of the legislature to eliminate any discrimination between disabled persons is a bar to the establishment [by the applicants] of the State's liability by reason of the immediate application to pending proceedings of the Law of 4 March 2002, for the purpose of obtaining compensation for the special burdens arising from the disability, not detected during the pregnancy, of their child C. Consequently, the [applicants'] submissions seeking the annulment of the contested decision and an order requiring the State to pay damages must be dismissed.

..."

31. The applicants appealed against this judgment. The appeal is now pending before the Paris Administrative Court of Appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

32. Here the Court refers to the judgment on the merits (§§ 37-59).

THE LAW

33. On 15 May 2006 the applicants sent the Registry the text of an agreement, signed by the parties' representatives, which reads as follows:

"AGREEMENT

Between, on the one hand,

The State, represented by Mr Xavier BERTRAND, Minister for Health and Solidarity ...

Assistance publique-Hôpitaux de Paris, a public health establishment ...

And, on the other hand,

Mr and Mrs MAURICE ...

The signatories of the present agreement being referred to hereafter as "the parties",

THE TERMS OF AGREEMENT ARE PRECEDED BY THE FOLLOWING STATEMENT OF THE FACTS OF THE CASE:

Mr and Mrs MAURICE had a first child, A., who was born on 9 October 1990 and discovered to be suffering from Type 1 infantile spinal amyotrophy. In 1992 Mrs MAURICE became pregnant again. A prenatal diagnosis, carried out at the Nancy University Hospital showed that the child she was carrying was affected by the same illness as daughter A. The couple therefore decided to terminate the pregnancy.

In 1997 Mrs MAURICE, who was pregnant for the third time, underwent another prenatal diagnosis, carried out at the Briey General Hospital, which sent the sample taken to the molecular diagnosis laboratory of the Necker Children's Hospital Group.

In June 1997 the results of the test carried out on the sample indicated that the child expected was not affected by infantile spinal amyotrophy.

That is how Mrs MAURICE came to give birth to daughter C. on 25 September 1997.

However, by 15 June 1999 it was observed that C. was suffering from disorders revealing the existence of infantile spinal amyotrophy.

Mr and Mrs MAURICE then submitted a claim to AP-HP on 13 November 2000 seeking compensation in full for the damage sustained as a result of the erroneous prenatal diagnosis carried out at the molecular diagnosis laboratory of the Necker Children's Hospital Group.

They then brought an action for damages on 16 June 2001 in the Paris Administrative Court.

In its judgment of 25 November 2003, the Paris Administrative Court pointed to the terms of section 1 of the Law of 4 March 2002 on patients' rights and the quality of the health service, which provides: 'No one may claim to have suffered damage by the mere fact of his or her birth ... where the liability of a health-care professional or establishment is established *vis-à-vis* the parents of a child born with a disability not detected during the pregnancy by reason of gross negligence, the parents may claim compensation in respect of their damage only. That damage cannot include the special burdens arising from the disability throughout the life of the child. Compensation for the latter is a matter for national solidarity. The provisions of the present paragraph I shall be applicable to proceedings in progress, except for those in which an irrevocable decision has been taken on the principle of compensation.'

It held that the mistaken diagnosis resulting from mixing up the results of two different patients constituted gross negligence conferring entitlement to compensation under the conditions laid down in section 1 of the Law of 4 March 2002.

It ordered AP-HP to pay compensation to Mr and Mrs MAURICE in respect of non-pecuniary damage and the disruption to their lives, particularly their working lives, but refused the compensation claims they had submitted in respect of the special burdens arising from their child's disability.

In execution of that judgment, AP-HP paid Mr and Mrs MAURICE the sum of 224,500 euros, which included compensation for the non-pecuniary damage suffered by their daughter A.

On 19 January 2004 Mr and Mrs MAURICE appealed against the judgment of the Paris Administrative Court to the Paris Administrative Court of Appeal .

In their appeal they argued that the provisions of the Law of 4 March 2002 which limited compensation to 'their damage only', excluding 'the special burdens arising from the disability throughout the life of the child', were not applicable to the case, and claimed compensation for all the damage they had sustained on account of the incorrect diagnosis.

Mr and Mrs MAURICE also asked the Paris Administrative Court, in an application lodged on 28 April 2003, to order the State, on the basis of liability without fault, to pay them compensation for the prejudice they had suffered through application of Law no. 2002-303 of 4 March 2002 on patients' rights and the quality of the health service.

When the Paris Administrative Court refused their application in its judgment of 25 November 2003, Mr and Mrs MAURICE appealed to the Paris Administrative Court of Appeal.

Lastly, on 28 February 2003, Mr and Mrs MAURICE lodged an application with the European Court of Human Rights.

That application directly contested the compatibility with the Convention of section 1 of Law no. 2002-303 of 4 March 2002, concerning medical liability for the birth of a disabled child.

On 6 October 2005 the European Court of Human Rights gave judgment against France in so far as the retrospective effect of the Law of 4 March 2002 had deprived the applicants, without reasonably proportionate compensation, of a substantial portion of the damages they had claimed.

In its judgment the Grand Chamber of the Court observed that the Law of 4 March 2002 had 'abolished purely and simply, with retrospective effect, one of the essential heads of damage, relating to very large sums of money, in respect of which the parents of children whose disabilities had not been detected before birth, like the applicants, could have claimed compensation from the hospital held to be liable' [paragraph 90].

'[T]he grounds relating to ethical considerations, equitable treatment and the proper organisation of the health service mentioned by the *Conseil d'Etat* in its opinion of 6 December 2002 and relied on by the Government could not, in the instant case, legitimise retrospective action whose result was to deprive the applicants, without sufficient compensation, of a substantial portion of the damages they had claimed, thus making them bear an individual and excessive burden' [paragraph 93].

In its judgment of 6 October 2005, the European Court of Human Rights invited the parties to reach a negotiated settlement.

The proper course of action is accordingly to make good the damage sustained by Mr and Mrs Maurice on account of negligence on the part of AP-HP and the retrospective nature of the impugned legislation.

The parties have come together and decided to end the dispute between them.

IN CONSEQUENCE, THEY HAVE REACHED THE FOLLOWING AGREEMENT:

Article 1:

As requested by the Court, the purpose of the present agreement is to afford just satisfaction to Mr and Mrs Maurice and to put an end to the disputes between them

and the State and AP-HP relating to the damage they sustained on account of negligence by AP-HP and the retrospective scope of section 1 of the Law of 4 March 2002.

Article 2: Compensation

The compensation proposed to Mr and Mrs MAURICE to make good the damage they have sustained amounts to 2,065,000 euros (two million sixty-five thousand euros), made up as follows:

– for provision of the child's material needs, by her parents, throughout her life, a capital sum of 1,690,000 euros;

– for all other heads of damage taken together, the sum of 375,000 euros.

Interest is payable on the sum of 2,065,000 euros from 14 November 2000. The accrued interest on 14 February 2002 and on that date in each succeeding year will be capitalised and will itself earn interest, the total compound interest to be calculated as on 31 March 2006.

The default interest and capitalised interest accrued by 31 March 2006 amount to the sum of 375,279.14 euros (three hundred and seventy-five thousand two hundred and seventy-nine euros and fourteen cents).

The sum to be paid to Mr and Mrs MAURICE is therefore 2,440,279.14 euros (two million four hundred and forty thousand two hundred and seventy-nine euros and fourteen cents).

That payment excludes any other form of reparation to Mr and Mrs MAURICE.

Article 3: Waivers

In consideration of payment of the sum intended as final settlement mentioned in Article 2, Mr and Mrs MAURICE undertake to withdraw their claims against AP-HP (application no. 04PA00232) and the State (application no. 04PA00233) before the Paris Administrative Court of Appeal. In addition, they will inform the ECHR that they have obtained just satisfaction and that they wish to withdraw all further compensation claims against the French State before that Court.

Article 4: Settlement effect

The present agreement is governed by French law and constitutes settlement for the purposes of Articles 2044 et seq. of the Civil Code.

The present agreement has the binding effect of a final judgment by virtue of Article 2052 of the Civil Code.

Article 5: Payment

Payment of the sums due under the terms of the present settlement shall be effected by bank or postal account transfer from Assistance publique-Hôpitaux de Paris to Mr and Mrs MAURICE within forty-five days from the date of receipt (by AP-HP) of

> the present agreement, duly signed by the parties. For that purpose, Mr and Mrs MAURICE will send their bank or postal account details to Assistance publique-Hôpitaux de Paris.
>
> The official empowered to authorise the payment shall be the treasurer of Assistance publique-Hôpitaux de Paris ...”

34. The Court takes formal note of the above agreement. It observes that its purpose is to put an end to the dispute. It further observes that under the terms of the settlement thus reached the applicants will be paid compensation for the prejudice they have suffered and that in consideration they will withdraw all other compensation claims against the French State before the Court and their actions against AP-HP and the State in the Paris Administrative Court of Appeal.

35. Having examined the terms of the agreement reached, the Court considers that it is equitable within the meaning of Rule 75 § 4 of the Rules of Court and that it is based on respect for human rights as defined in the Convention and its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

36. Accordingly, the remainder of the case should be struck out of the Court’s list (Article 37 § 1 (b) of the Convention and Rule 43 § 3).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Takes formal note* of the agreement between the parties and the arrangements made to ensure compliance with the undertakings given therein (Rule 43 § 3 of the Rules of Court);

2. *Decides* to strike the remainder of the case out of the list.

Done in English and in French, and notified in writing on 21 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early	Luzius Wildhaber
Registrar	President