

June 2014

Petrova v. Latvia - 4605/05

Judgment 24.6.2014 [Section IV]

Article 8

Article 8-1

Respect for private life

Removal of organs for transplantation without knowledge or consent of closest relatives: *violation*

Facts – In 2002 the applicant's adult son died in a public hospital in Riga as a result of serious injuries sustained in a car accident. The applicant subsequently discovered that her son's kidneys and spleen had been removed immediately after his death without her knowledge or consent. Her complaint to the Prosecutor General was dismissed on the grounds that the organs had been removed in accordance with domestic law. The applicant had not been contacted because the hospital had no contact details and, as the law then stood, medical practitioners were only obliged to actively search and inform close relatives of possible organ removal if the deceased was a minor.

Law – Article 8: The applicant complained that she had not been informed about the possible removal of her son's organs for transplantation purposes and had therefore been unable to exercise certain rights established under domestic law. Latvian law at the relevant time explicitly provided close relatives of the deceased, including parents, with the right to express their wishes regarding the removal of organs. The point at issue was therefore whether or not the law was sufficiently clear. The Government argued that when close relatives were not present at the hospital, national law did not impose an obligation to make specific inquiries with a view to ascertaining whether there was any objection to organ removal and that, in such cases, consent to removal could be presumed. However, the Court found that the way in which this "presumed consent system" operated in practice in cases such as the applicant's was unclear: despite having certain rights as the closest relative she was not informed – let alone provided with any explanation – as to how and when those rights could be exercised. The time it had taken to carry out medical examinations to establish the compatibility of her son's organs with the potential recipient could have sufficed to give her a real opportunity to express her wishes in the absence of those of her son. Indeed, even the Minister of Health had expressed the opinion that the applicant should have been informed of the planned transplantation. Moreover, amendments had since been made to the relevant domestic law. The Court accordingly found that Latvian law as applied at the time of the death of the applicant's son had not been formulated with sufficient precision and did not afford adequate legal protection against arbitrariness.

Conclusion: violation (unanimously).

Article 41: EUR 10,000 in respect of non-pecuniary damage.

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