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

THIRD SECTION

CASE OF PANNULLO AND FORTE v. FRANCE

(Application no. 37794/97)

JUDGMENT

STRASBOURG

30 October 2001

FINAL

30/01/2002

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In the case of Pannullo and Forte v. France,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr W. FUHRMANN, *President*,
Mr J.-P. COSTA,
Mr L. LOUCAIDES,
Mr P. KŪRIS,
Mrs F. TULKENS,
Sir Nicolas BRATZA,
Mr K. TRAJA, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 23 November 1999 and 9 October 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 37794/97) against the French Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Italian nationals, Mr Vincenzo Pannullo and his wife, Mrs Caterina Forte, ("the applicants"), on 21 November 1996. The application was registered on 15 September 1997.

2. The applicants, who had been granted legal aid, were represented by Mrs A. Mazzarri, a lawyer practising in Livorno. The French Government ("the Government") were represented by their Agent, first in the person of Mr Y. Charpentier, Assistant Director of Human Rights at the Ministry of Foreign Affairs, and then of Mrs M. Dubrocard, who replaced him.

3. The applicants alleged, in particular, a violation of the right to respect for their private and family life (Article 8 of the Convention), on account of a delay by the French authorities in returning the body of their deceased daughter.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 23 November 1999 the Chamber declared the application partly admissible [*Note by the Registry.* The Court's decision is obtainable from the Registry].

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 2 February 1994 the applicants' two-year-old daughter, Erika, underwent heart surgery at Marie-Lannelongue Hospital in Le Plessis-Robinson (France).

9. On 17 June 1996 Erika was admitted to the same hospital for a postoperative check-up.

10. On 18 June 1996 she became feverish and vomited blood. The doctors diagnosed rhinopharyngitis and prescribed antibiotics. On 20 June 1996 the doctors decided to allow the child to leave the hospital.

11. In the evening of the same day the applicants telephoned the hospital because Erika was feverish again.

12. On 22 June 1996 the applicants took the child to a doctor, who diagnosed pneumonia, telephoned the hospital and requested that Erika be admitted to hospital immediately. On arriving at the hospital Erika was initially taken to the cardiology unit. When she fell into a coma she was transferred to the intensive care unit. The doctors said that she had a serious infection in the left lung, which had weakened her heart.

13. On 24 June 1996 Erika died.

14. On 28 June 1996 the applicants lodged a complaint with the Nanterre public prosecutor. On 1 July 1996 an inquiry into the causes of death was opened.

15. On 3 July 1996 the investigating judge, Miss M., instructed the Sceaux Gendarmerie Investigation Squad to seize Erika's medical file and question the members of the medical staff who had looked after Erika. On 14 August 1996 the Sceaux Investigation Squad reported back to the judge with its incomplete findings.

16. On 5 July 1996 the investigating judge ordered an autopsy, which was carried out on 9 July. Several tissue samples were taken in case a further examination was needed. The autopsy report, dated 25 July 1996, concluded that at the time of Erika's death she had been suffering from an acute respiratory infection.

17. On 16 September 1996 the investigating judge commissioned a further anatomopathological report from Professor L., an expert in forensic medicine, and Dr D., a heart specialist, giving them until 15 December 1996 to submit their report.

18. On 13 January 1997 the investigating judge asked them to send her their report by the "absolute deadline of 20 January 1997".

19. From the date of the autopsy onwards the applicants sent numerous letters to the Italian consulate-general in Paris, the Ministry of Foreign Affairs in Rome and Italian members of Parliament with the aim of securing the return of Erika's body.

20. In Italy a number of MPs put parliamentary questions to the government and held press conferences on the case. Several newspaper articles were published on the subject.

21. The Italian consul-general made repeated representations to the investigating judge, including letters sent on 26 September, 26 November and 12 December 1996, and forwarded the information he had obtained to the applicants.

22. In January 1997 the consul-general made a formal complaint to the public prosecutor, who demanded an explanation from Professor L. In a letter of 12 February 1997, Professor L. replied as follows:

> "The autopsy was carried out on 9 July 1996 and the investigating judge was immediately notified of the results by telephone. She was told that all the necessary samples of tissue from the internal organs had been taken and that the body could be returned to the family as from 9 July 1996.
>
> The internal organs were to be studied subsequently from an anatomopathological viewpoint and this was done on 20 January and 4 February 1997, but I had also been instructed to examine the medical file and seek the opinion of another expert, which was done on 3 February 1997. When the seals were removed it was discovered that the intensive-care file was missing, and so we contacted our colleagues, who sent us a copy of it which we are currently examining.
>
> The medical file is complex and it is essential that we have a certain amount of time to study it, but there is no reason to keep the body at the Institute of Forensic Medicine.
>
> The administrative authorities of the Institute of Forensic Medicine have repeatedly expressed concern at the length of time the body has been kept in storage. On 2 June, 12 August and 18 August 1996 and on 15 January 1997 they contacted Miss M., the investigating judge at the Nanterre Court, who is in charge of the case. She said that she was awaiting the outcome of the anatomopathological examination, but the latter is part of a longer task of investigation and analysis which has not yet been completed.
>
> Miss M. is therefore completely free to release the body from the Institute of Forensic Medicine and hence to sign the burial certificate, leaving the doctors the necessary time to carry out their work."

23. On 14 February 1997, on receiving the above letter, the public prosecutor asked the investigating judge to order that Erika's body be returned to her family.

24. On the same day investigating judge B., standing in for Miss M., issued a burial certificate.

25. On 19 February 1997 Erika was buried at Terracina Cemetery.

26. On 12 March 1997 Miss M. wrote to Professor L., expressing surprise that after more than six months the report had not yet been filed and asking him to inform her of any difficulties or obstacles that might explain the failure to do so.

27. On 18 March 1997 Professor L. replied that there had been "a problem with a discrepancy between the anatomical observations and the information in the medical file", which meant that the experts had had to organise interviews with the doctors who had looked after the child, scheduled for 8 April 1997.

28. The experts' report was filed on 29 April 1997. They concluded that "there was no possibility of life-saving surgery" and there were no signs of "any mistaken treatment".

29. In a letter of 8 September 1997 a deputy public prosecutor informed the applicants that their case had been dropped because none of the expert reports ordered by the investigating judge had revealed any medical negligence, error of diagnosis or mistaken treatment that could possibly amount to a criminal offence.

II. RELEVANT DOMESTIC LAW

30. Article 74 of the Code of Criminal Procedure provides:

> "On discovery of a dead body, regardless of whether the deceased suffered a violent death, but wherever the cause of death is unknown or suspicious, the senior police officer who is advised thereof shall immediately notify the public prosecutor, promptly visit the place of discovery and make initial observations.
>
> The public prosecutor shall visit the place if he deems it necessary and shall call on the assistance of persons qualified to assess the circumstances in which death took place. He may, however, delegate those tasks to a senior police officer of his choice.
>
> Except where their names appear in one of the lists provided for in Article 157, persons appointed in this way shall take a written oath to assist the courts on their honour and according to their conscience.
>
> The public prosecutor may also call for an inquiry to investigate the causes of death."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

31. The applicants submitted that the delay by the French authorities in returning Erika's body to them constituted an unjustified interference with their right to respect for their private and family life. They referred to Article 8 of the Convention, the relevant parts of which provide as follows:

> "1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of ... crime ..."

32. The applicants considered that the provisions of Article 74 of the Code of Criminal Procedure could have justified the first part of the procedure. However, the judge had greatly exceeded the discretionary powers conferred on her in a manner that was disproportionate and unnecessary in relation to the legitimate aim pursued.

33. Under Article 156 of the Code of Criminal Procedure the investigating judge was required to set time-limits for the submission of expert reports and had the power to intervene if they were not observed. Moreover, Professor L. had stated that he had contacted the investigating judge on 9 July 1996, the date of the autopsy, and informed her that the samples had been taken and the body could be repatriated. Yet it was not until March that the investigating judge had asked him to explain the delay in submitting the expert report. The applicants emphasised how young their daughter was, how strong family ties were in the regions of central and southern Italy from which they came and what an important part religion played in their lives.

34. The Government did not dispute that the delay by the judicial authority in issuing the burial certificate and returning Erika's body to her parents had constituted an interference with their right to respect for their private and family life, regardless of whether it was attributable to "the experts' inertia or a poor understanding of the medical aspects of the case on the judicial authorities' part". They submitted that the various formalities carried out had pursued the legitimate aim of preventing crime and were provided for by the last paragraph of Article 74 of the Code of Criminal Procedure.

As to whether the measure had been proportionate to the facts and whether a fair balance had been struck between the legitimate aim pursued and the applicants' right to respect for their private and family life, the Government left those issues to the Court's discretion.

35. The Court points out that while the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, there may in addition be positive obligations inherent in effective "respect" for family life. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole, and in both contexts the State is recognised as enjoying a certain margin of appreciation (see *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55).

36. The Court has no doubt that the interference with the applicants' right to respect for their private and family life was in accordance with the law and pursued the legitimate aim of preventing crime.

37. What needs to be established, therefore, is whether that interference was "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention. In that connection, account should be taken of the fact that a period of more than seven months elapsed between Erika's death and the issue of the burial certificate.

38. The Court considers that for the purposes of the inquiry it was necessary for the French authorities to keep Erika's body for the time required for the autopsy to be carried out, namely until 9 July 1996. As far as the subsequent period is concerned, however, Professor L.'s letter to the public prosecutor makes it quite clear that the child's body could have been returned to her parents right after the autopsy since the requisite samples had been taken and it was not necessary for it to be kept at the Institute of Forensic Medicine for the report to be drawn up. The letter also reveals that the investigating judge was immediately informed of this and that a number of representations to the same effect were made by the Institute of Forensic Medicine to the investigating judge.

39. That being so, and regardless of whether the delay was caused, as the Government submitted, by the experts' inertia or by the judge's "poor understanding of the medical aspects of the case", the Court finds that, regard being had to the circumstances of the case and the tragedy for the parents of losing their child, the French authorities failed to strike a fair balance between the applicants' right to respect for their private and family life and the legitimate aim pursued.

40. The Court consequently concludes that there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

42. In respect of pecuniary damage, the applicants claimed 9,000,000 Italian lire (ITL) (30,000 French francs (FRF)) to cover their subsistence expenses (which they assessed at FRF 1,000 per person per day) while waiting in France until 15 July 1996 in the hope of returning to Italy with Erika's body, and ITL 2,000,000 (FRF 6,667) for Mr Pannullo's travel and subsistence expenses when he came to retrieve the body in February 1997.

43. The Government expressed no view on the matter.

44. The Court considers it necessary to reimburse the applicants' subsistence expenses between 9 and 15 July 1996 (FRF 12,000) and Mr Pannullo's travel and subsistence expenses in February 1997 (FRF 6,667), a total of FRF 18,667.

45. The applicants claimed ITL 200,000,000 (FRF 666,667) each in respect of non-pecuniary damage. The Government proposed FRF 30,000 each.

46. The Court considers that, in view of the tragic circumstances of their child's death and the long period that elapsed before the body was returned to them, the applicants endured undoubted mental suffering which the finding of a breach is not sufficient to make good. Ruling on an equitable basis in accordance with Article 41, the Court awards each applicant FRF 100,000 under this head.

B. Costs and expenses

47. The applicants sought no reimbursement for the costs of the domestic proceedings. They claimed ITL 102,091,392 (FRF 340,305) in respect of costs and fees incurred before the Convention institutions, as documented by a bill presented by their lawyer.

48. The Government agreed to reimburse the costs incurred during the proceedings before the Court provided that they were duly documented.

49. The Court considers the amount claimed excessive, especially considering that only one of the various complaints initially brought by the applicants against France and Italy was declared admissible. The Court awards the applicants FRF 60,000 under this head, from which must be deducted the sum of FRF 5,900 already paid by the Council of Europe by

way of legal aid and to which must be added any value-added tax that may be chargeable.

C. Default interest

50. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 4.26% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention;

2. *Holds*

   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

      (i) FRF 18,667 (eighteen thousand six hundred and sixty-seven French francs) in respect of pecuniary damage;

      (ii) FRF 100,000 (one hundred thousand French francs) each in respect of non-pecuniary damage;

      (iii) FRF 60,000 (sixty thousand French francs) less FRF 5,900 (five thousand nine hundred French francs) in respect of the costs and expenses of proceedings before the Convention institutions, as well as any value-added tax that may be chargeable on the above amounts;

   (b) that simple interest at an annual rate of 4.26% shall be payable from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* the remainder of the applicants’ claim for just satisfaction.

Done in French, and notified in writing on 30 October 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ W. FUHRMANN
Registrar President