



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

FIFTH SECTION

CASE OF HADRI-VIONNET v. SWITZERLAND

(Application no. 55525/00)

JUDGMENT

STRASBOURG

14 February 2008

FINAL

14/05/2008

This judgment shall become final in the circumstances set out in Article 44 (2) of the Convention. It may be subject to editorial revision.

In the case of Hadri-Vionnet v. Switzerland,

The European Court of Human Rights (Fifth Section), sitting as a chamber composed of:

Peer Lorenzen, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Javier Borrego Borrego,
Mark Villiger,
Giorgio Malinverni, *judges*,

and of Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 55525/00) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the “Convention”) by an Algerian national, Ms Dalila Hadri-Vionnet (“the applicant”), on 7 December 1999.

2. The applicant was represented by Ms I. Poncet Carnice, a lawyer practising in Geneva. The Swiss Government (“the Government”) were represented by their Agent, initially Mr Ph. Boillat, former Deputy Director of the Federal Office of Justice, then Mr F. Schürmann, Head of the Human Rights and Council of Europe Section at the Federal Office of Justice.

3. Relying on Article 8 of the Convention, the applicant complained of a violation of her right to respect for her private and family life owing to the fact that she had been unable to attend the funeral of her stillborn child and that her baby’s body had been transported in an ordinary delivery van.

4. By a decision of 2 May 2006, the Fifth Section declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in Lignon (in the Canton of Geneva).

A. The events giving rise to the case

6. The facts of the case, as presented by the parties, may be summarised as follows.

7. The applicant arrived in Switzerland on 10 June 1996 as an asylum seeker.

8. On 17 June 1996 she was placed in an accommodation centre for asylum seekers in the Canton of Aargau.

9. On 12 March 1997 she was moved to the “Thorfeld 2” accommodation centre in Buchs (Aargau).

10. On 4 April 1997 the applicant gave birth to a stillborn baby, the father of whom was a Swiss national. The autopsy established that the foetus had died two days before delivery, at twenty-six weeks and two days. At the request of the midwife, the applicant, who was in a state of shock, was taken from the “Thorfeld 2” accommodation centre to the hospital in the Canton of Aargau. When asked by the midwife, both the applicant and the baby’s father said that they did not want to see the baby’s body.

11. On the same day the social worker (*Sozialarbeiter*) and the registrar of births, marriages and deaths (*Zivilstandsbeamter*) of the municipality of Buchs were informed of the child’s birth. Believing that it was not compulsory in the case of a child stillborn at the start of the twenty-seventh week of pregnancy to be buried with an attendant ceremony, they ordered a burial without a ceremony, in the absence of the applicant. They based their decision in particular on the fact that the parents had not expressed a wish to see the body before the autopsy and took the view that, given her mental state, the applicant was not fit to attend the burial.

12. On 8 April 1997, after having been placed in a wooden coffin by a firm of undertakers, the child’s body, on instructions from the municipality social worker, was carried in a delivery van to the cemetery of the municipality of Buchs for burial in a communal grave for stillborn babies (*Grabstelle für Totgeburten*).

13. It appears that the applicant left the hospital that same day (see the decisions of the Canton of Aargau Higher Court of 14 May 1999, paragraph 23 below).

14. On 10 April 1997 a member of the psychiatric services department took the applicant to the cemetery to lay flowers.

15. According to the Government, the applicant was informed on 15 April 1997 that it would be possible to organise a funeral for her child at a later date. In her statements of 1 July 1997 (see paragraph 19 below) the applicant disputed that assertion.

16. On 22 April 1997 she went to the cemetery and, accompanied by the priest, placed various stones and laid flowers at the site at which her child had been buried.

B. The proceedings brought by the applicant

17. On 13 May 1997 the applicant lodged a criminal complaint against persons unknown at the district office (*Bezirksamt*) of Aarau and joined the proceedings as a civil party. Criminal proceedings were brought against the social worker and the registrar of births, marriages and deaths of the municipality of Buchs for misuse of official authority, disturbing the repose of the dead and, in the alternative, removal of property within the meaning of Article 141 of the Swiss Criminal Code. The applicant submitted that her child's body had been unlawfully removed from her and that it had been carried in an inappropriate vehicle without the authorisation required for this kind of transport. In this context, she complained of a violation of her personal freedom guaranteed by the Federal Constitution and, in her submission, protecting the feelings of an individual vis-à-vis a deceased family member (see paragraph 33 below).

18. On 15 May 1997 the applicant moved to Geneva where her partner was living.

19. On 1 July 1997 the applicant and her partner were questioned by the Geneva cantonal police concerning the birth of their child and the circumstances that had surrounded it. Extracts of the interview with the applicant are reproduced below:

“Question (hereafter: “Q”) 17: Were you informed of the various types of funeral (burial, cremation or other) for stillborn babies?

Reply (hereafter: “R”) 17: The midwife, and then Dr R, asked me what I wanted to do with the body of my child.

Q 18: What type of funeral did you choose?

R 18: I chose a normal burial with a ceremony.

Q 19: Did anyone mention to you that you could see your child's body?

R 19: The midwife offered to let me see the child.

Q 20: Did you see your child's body?

R 20: I was in shock and I declined because I didn't feel up to seeing my dead child.

...

Q 32: Did the hospital staff give you any guidance on the subject of funerals?

R 32: Yes. The formalities were carried out by C. [the firm of undertakers]. I just wasn't told the date.

Q 33: Were you informed of the funeral by the Buchs Registry of births, marriages and deaths?

R 33: No.

Q 34: Were you informed of the place, date and time of the burial?

R 34: No.

Q 35: If so, by whom?

R 35: ---

Q 36: If not, did you ask the child's father or any other person, in particular H. (the director of the Buchs accommodation centre) for this information?

R 36: I had a visit from Dr H on the following Tuesday, unless I am mistaken, at approximately 2 p.m. She told me that my baby had been buried that very day at 1 p.m. I was very angry that I had not been present. She told me she wasn't familiar with the system.

Q 37: Did you feel up to attending your child's funeral?

R 37: I was preparing myself because to convince myself that he had died, I had to see him placed in the ground.

Q 38: Why didn't you attend the burial?

R 38: I didn't get the chance.

...

Q 40: Did the hospital staff suggest that you attend the funeral accompanied by a nurse?

R 40: No. No such suggestion was made to me.

Q 41: Have you visited your child's grave and with whom?

R 41: On Thursday, 10 April 1997, I met Mr B., a social worker. He told me that I was not entitled to know where my baby was. I told him that even though I was an asylum seeker, I was first and foremost a mother and that I had the right to see my son's grave.

As he refused to tell me anything, I went to the police where I spoke to Ms B. She told me that she was not able to deal with this kind of problem. I insisted and after she had obtained some information, she told me that the “municipality” had made the decision.

I then contacted the priest of the Catholic Church in Aarau and a pastoral assistant. They were astonished that I had not obtained satisfaction. They tried to obtain information but were unsuccessful.

Q 42: Do you feel that you have suffered a loss as a result of the lack of information provided to you concerning your child’s burial?

R 42: A huge loss. I experienced the shock of losing my child and on top of that, I don’t know where he is buried.

Q 43: What type of loss have you suffered?

R 43: I feel as though I have not been respected as a mother. I was kept out at every step.

Q 44: Would you have attended the burial if you had known the time and place?

R 44: Yes.

Q 45: Were you informed that it was still possible to have a private funeral?

R 45: No.

...”

20. The following are extracts of the interview with the applicant’s partner:

“Q 11: Were you informed of the various types of funeral (burial, cremation or other)?

R 11: The midwife asked me what kind of funeral I wanted for the child. I told her that as a Catholic, I wanted a burial (burial and ceremony). She asked me to contact a company called C.

...

Q 13: Were you told that you could see your dead child?

R 13: Yes, the midwife suggested it to me.

Q 14: Did you see your dead child?

R 14: No, I wasn’t up to seeing him. I did however see some photographs of the baby at the cantonal hospital.

...

Q 27: Did you feel up to attending a burial?

R 27: Yes

...

Q 30: Did you visit your child's grave at the cemetery and who went with you?

R 30: I went with my girlfriend to the Buchs "unknown persons" cemetery on around 20 May 1997. As far as I'm concerned, it's not a cemetery but a public park. There is no cross to indicate that it is a cemetery. There are two statues and a few stones with names on them. According to the information provided by the Buchs social services department, my child is buried at the edge of the trees. There is no proof.

Q 31: Do you feel that you have suffered a loss as a result of the lack of information provided to you concerning your child's burial?

R 31: Yes I have suffered a loss. After all, the dead baby was my son.

Q 32: *What kind of loss?*

R 32: An emotional and human loss.

Q 33: Would you have attended the funeral if you had been aware of the date and place?

R 33: Yes, absolutely.

Q 34: Were you told that it was possible to hold a funeral ceremony at a later date?

R 34: I was given no such information.

..."

21. On 4 August 1998, on the basis of the final reports from the Aarau district office (*Bezirksamt*) dated 1 July 1998, the Canton of Aargau public prosecutor's office issued two orders discontinuing the proceedings against the two defendants. With regard to the offence of disturbing the repose of the dead, the public prosecutor's office considered that one of the constituent elements of the offence – the *mens rea* of the defendants – had not been established. With regard to the inappropriate transport of the child's body, the public prosecutor's office acknowledged that the municipality's registrar of births, marriages and deaths had made a mistake of law. The accused were however ordered to pay some of the costs of the proceedings.

22. The applicant lodged two appeals against the orders of 4 August 1998 before the Higher Court (*Obergericht*) of the Canton of Aargau. She argued that the two accused had disturbed the repose of the dead through "recklessness" (*Eventualvorsatz*) and that they should

therefore be held criminally liable. In the context of the appeal concerning the registrar of births, marriages and deaths, the applicant complained more specifically of a violation of her personal freedom and the right to a decent burial, as individual rights protected by the Federal Constitution, due in particular to the fact that she had not been invited to attend the burial of her child. Lastly, as regards the transport of the child, the applicant challenged the contentions of the public prosecutor's office, which had acknowledged a mistake of law.

23. In two judgments of 14 May 1999 the Higher Court declared the appeals inadmissible. With regard to the offence of disturbing the repose of the dead, it considered that the constituent elements of the offence had not been made out in that case, but considered, nevertheless, that by ordering the child to be buried without a ceremony, the two accused had been in breach of the relevant legislation. Indeed, both Article 11, paragraph 1, of the order concerning funeral services in the Canton of Aargau and Article 8, paragraph 1, of the regulations governing cemeteries and funerals in the municipality of Buchs permitted burial two days after the date of the birth of the stillborn child. Furthermore, paragraph 4 of Article 8 of the regulations governing cemeteries and funerals in the municipality of Buchs made provision for a ceremony to be organised (see paragraph 40 below). The Higher Court therefore considered that there had been a *prima facie* violation of the applicant's right to hold a ceremony. Furthermore, the applicant's mental and physical state would not have prevented her from attending her child's burial, since it was on precisely that date that she had left hospital. The Higher Court stated, however, that it would have been possible to conduct a ceremony after the burial (Article 12, paragraph 1, of the regulations governing cemeteries and funerals in the municipality of Buchs; see paragraph 41 below) but that the applicant had made no such application.

24. As regards the complaint relating to the transport of the child, the Higher Court acknowledged that the registrar of births, marriages and deaths had acted in breach of Article 75 of the road traffic regulations since no authorisation, as provided for in paragraph 2 thereof, had been granted. It considered however that the mistake committed by the official, who had little experience in such matters, had to be put in perspective, as did the actual effects (*Tatfolge*) of his conduct. Therefore, in accordance with the principle of discretionary prosecution, the public prosecutor's office had legally entitled to discontinue prosecution of the accused.

25. On 25 June 1999 the applicant lodged two public-law appeals and two applications for judicial review with the Federal Court (*Bundesgericht*). As regards the offence of disturbing the repose of the dead, the applicant claimed that all the elements thereof, both objective and subjective, had been made out in the case at hand. She then submitted that her arguments concerning the right to a decent burial and the violation of personal freedom

had not been properly considered by the lower courts. On that point, she asked the Federal Court to transfer the part of her appeal concerning the right to a decent funeral to the Federal Council, the only authority having jurisdiction in the matter. As regards the violation of her personal freedom, the applicant submitted that for the family of a deceased person, the mourning process was an essential manifestation of personality development, according to the relevant case-law of the Federal Court. Lastly, she challenged the reasoning of the cantonal authorities concerning the inadequate transport of the child.

26. In two judgments of 12 August 1999 the Federal Court dismissed all four of the applicant's appeals. It declared the ground based on the right to a decent funeral inadmissible and determined that her application to transfer part of her appeals to the Federal Council was vexatious (*geradezu mutwillig*), pointing out that a specific type of appeal to that court existed for complaints of that nature.

27. Subsequently, leaving aside the matter of whether the objective elements of the offence of disturbing the repose of the dead had been met, the Federal Court held that whatever the circumstances, *mens rea* on the part of the accused had not been established. Lastly, as regards the violation of personal freedom complained of by the applicant for having been prevented from completing her mourning process, and the violation of the right to a decent funeral, the Federal Court held that these claims were well-founded, or at least could have been, but that they were not relevant in the context of the proceedings at issue, in which the only matter to be decided was whether or not the perpetrators were guilty of the acts complained of.

28. Under the federal law on assistance to victims of crime, the applicant lodged a parallel application for payment of compensation for the non-pecuniary damage suffered as a result of the infringement of her personality rights.

29. That application was rejected first by the social services of the Canton of Aargau, then by the Administrative Court of that canton and, lastly, by the Federal Court on 24 November 2000. While acknowledging that an offence committed by negligence could, as the case may be, fulfil the requirements of section 2(1) of the federal law on assistance to victims of crime even if it were not, as such, punishable as a crime because it lacked the requisite *mens rea*, the High Court held that the offence in question in the present case, namely, misuse of authority, inherently fell outside the scope of that law.

C. The exhumation and transfer to Geneva of the child's remains

30. By a decision of 23 March 1998 the Buchs municipal council authorised the child's body to be exhumed at the expense of the municipality. The exhumation took place on 20 May 1998 and the body was

transferred to the applicant's new home in Geneva where it was buried following a Catholic ceremony.

31. On an unspecified date, the applicant married her partner.

II. RELEVANT DOMESTIC LAW AND PRACTICE

32. Before 1 January 2000, when the new Constitution came into force, the Federal Constitution made no specific provision for the protection of the private sphere. However, in a judgment of 20 March 1963 (ATF 89 I 92) the Federal Court afforded it constitutional value as an element of personal (or individual) freedom.

33. In a judgment of 18 September 1985 (ATF 111 Ia 231) the Federal Court acknowledged more specifically that personal freedom also encompasses the feeling of parental devotion and, accordingly, the right of parents to object to any unjustified intervention in relation to the remains of a deceased family member.

34. Article 13 of the new Federal Constitution protects the private sphere and is worded as follows:

“1. Everyone has the right to respect for their private and family life, their correspondence and their relations established by mail and telecommunications.

2. Everyone has the right to be protected against the misuse of their personal data.”

35. Article 53, paragraph 2, of the old Federal Constitution provided for an obligation on the authorities to ensure that the dead received a decent burial:

“The disposal of burial grounds is a concern of the civil authorities. They shall make sure that every deceased person can have a decent burial.”

The new Constitution has not explicitly reproduced this provision.

36. Under the old section 73(1), paragraph a, sub-paragraph 4, of the Federal Law on administrative procedure in force at the material time, the Federal Council was the only authority with jurisdiction to deal with appeals lodged against the acts of cantons concerning burial grounds. The relevant paragraph was worded as follows:

“An appeal to the Federal Council shall be admissible against decisions taken at final instance at cantonal level and against legislative acts of the cantons for violation

a. of the following provisions of the Federal Constitution or the provisions corresponding to cantonal constitutions:

...

4. Article 53, paragraph 2 (of the Federal Constitution) concerning burial grounds.

... .”

This provision was repealed with effect from 1 March 2000 in line with the entry into force of the new Federal Constitution.

37. Paragraph 2 of Article 262 of the Swiss Criminal Code concerning disturbing the repose of the dead punishes the removal of human remains. The provision reads as follows:

“Any person who removes a dead body or part of a dead body or the ashes of a dead person against the will of those entitled thereto shall be liable to a custodial sentence or to a fine.”

38. Article 75 of the road traffic regulations reads as follows:

“Motor vehicles shall not be used to transport dead bodies unless they are specifically equipped for this purpose. This shall not apply to the transport of victims from the scene of an accident.

The cantonal authorities may allow the use of another vehicle where it can be guaranteed that the body will be transported decently and in optimum conditions of hygiene.”

39. Article 11, paragraph 1 of the canton of Aargau order concerning funeral services (*Verordnung über das Bestattungswesen*) is worded as follows (unofficial translation):

“Burial must take place within a time-limit which is in line with local custom and practice and as a general rule, not less than 48 hours after death.”

40. Article 8, paragraph 1, of the regulations governing cemeteries and funerals (*Bestattungs- und Friedhofreglement*) in the municipality of Buchs establishes a similar rule. Paragraphs 2 and 4 thereof read as follows (unofficial translation):

“In principle, burials shall take place on the third day following the death

After consultation with the family and the priest, the registry of births, marriages and deaths shall regulate the ceremony and burial ...”

41. Article 12, paragraph 1, of the same regulations is worded as follows (unofficial translation):

“The burial or cremation of the coffin at the cemetery must be organised in person by the family, together with the registrar and the priest. Burial or cremation shall normally take place before the ceremony. Upon request, they may be scheduled to take place at a different time.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

42. The applicant complained of a violation of her private and family life on the ground that, firstly, the body of her stillborn child had been taken from her and buried without her knowledge in a communal grave in the cemetery and, secondly, that it had been transported from the hospital to the cemetery in an inappropriate vehicle. She relied on Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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 in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.”

A. The arguments of the parties

1. The applicant

43. According to the applicant, by transporting the remains of her child in an ordinary delivery van and depriving her of the right to attend a funeral ceremony, the competent authorities interfered in her private and family life within the meaning of Article 8 of the Convention. In her opinion, the rights of a parent over the remains of her child, and in particular the right to decide as to the place, time and arrangements for the burial, as elements of private and family life, are protected by that provision. In the instant case, these rights were flouted, since the body of the applicant's child had been carried as if it were common waste and buried in haste, without a ceremony worthy of the name and without the parents having been consulted or even informed.

2. The Government

44. The Government contested the applicant's submissions. They stated that having been taken to the hospital at Aarau, she had said that she did not want to see the body of her child and had given her consent for an autopsy. After being informed of these facts by the municipality's social worker, the registrar assumed that the applicant did not want to attend her child's burial and therefore ordered that it go ahead without a ceremony. According to the

Government, that decision was also influenced by the supposition that – according to the statements of the social worker – the mental and physical condition of the applicant, who was in hospital, was such that she would not recover in time to attend the burial. Indeed, Article 8, paragraph 2, of the regulations governing cemeteries and funerals in the municipality of Buchs provided that the burial should, in principle, take place on the third day after death (see paragraph 40 above).

45. According to the Government, in order to better understand the approach taken by the registrar, a further element demonstrating that the registrar had acted in good faith had to be taken into account: the following day the child's father had gone to the hospital to which the applicant had been admitted and had also declined to see the child's body.

46. The Government argued, further, that the common denominator of State measures that could be regarded as interference with private and family life – such as refusal to recognise the biological link between a child and its mother or father; intervention in a child's personal relationships with its parents; the expulsion of a family member; or even measures motivated by a person's sexual orientation – was the fact that they were all taken against the will or without the knowledge of at least one of the people concerned. They must therefore be clearly distinguished from the circumstances of this case, in which the parties accused, namely the social worker and the registrar, believed that they were acting in accordance with the wishes expressed by the applicant. The registrar had thus decided in good faith to order the burial of the stillborn child in the applicant's absence, believing that that decision reflected the parents' wishes.

47. The respondent Government submitted that, regardless of the fact that the child's parents had not been present, a decent burial had taken place on 8 April 1997. Furthermore, the Buchs municipal council had acceded to a subsequent request by the applicant on 23 March 1998 to exhume the body. The exhumation had taken place on 20 May 1998 at the expense of the municipality of Buchs and the body transferred to the applicant's new home in Geneva where it had been buried following a Catholic ceremony.

48. According to the Government, the registrar's decision to order the burial of the stillborn child without having contacted the parents could not be classed as interference with the exercise of the applicant's right to respect for her private and family life.

49. Were the Court nevertheless to find that there had been interference in the instant case, the Government would argue, basically on the same grounds as set out above, that the act or omission at issue did not violate Article 8 of the Convention. The Government reaffirmed in particular that, in the light of the information available to him, the registrar had been entitled to assume that his decision was in line with the wishes expressed by the applicant at the hospital and that she would not have recovered in time to attend the burial.

B. The Court's assessment

1. Applicability of Article 8 to the instant case

50. The Government did not contest the applicability of Article 8 to the instant case.

51. The Court reiterates that the concepts of private and family life are broad terms not susceptible to exhaustive definition (see, for example, *Pretty v. United Kingdom*, no. 2346/02, § 61, ECHR 2002-III). Thus the former Commission had considered that the wish to have one's ashes scattered on one's own land was covered by the first concept (see *X v. Germany*, decision of 10 March 1981, no. 8741/79, *Decisions and Reports* 24, p. 137). Later, in the case of *Znamenskaya v. Russia* (no. 77785/01, § 27, 2 June 2005), the Court considered the "private life" aspect of Article 8 to be applicable to the question of whether a mother had the right to change the family name on the tombstone of her stillborn child. In the case of *Pannullo and Forte v. France* (no. 37794/97, § 36, ECHR 2001-X), the Court considered the excessive delay by the French authorities in returning the body of their child following an autopsy to be interference with the private and family life of the applicants. Lastly, in the case of *Elli Poluhas Dödsbo v. Sweden* (no. 61564/00, § 24, ECHR 2006-...), the Court considered that the refusal to authorise the transfer of the urn containing the applicant's husband's ashes was a matter falling within the scope of Article 8, without however stating whether the interference found related to the concept of private life or family life.

52. In the light of that case-law, the Court considers Article 8 to be applicable to the question of whether or not the applicant was entitled to attend the burial of her child, possibly accompanied by a ceremony, and to have the child's remains transported in an appropriate vehicle.

2. Interference with the rights protected by Article 8

53. For the reasons set out above (see paragraphs 44-48), the Government submitted that the decision of the relevant authorities to order the burial of the child without having re-contacted the parents could not be regarded as interference with the exercise of the applicant's right to respect for her private and family life. The Government maintained, essentially, that the municipal official responsible had acted in good faith in assuming that, in the circumstances, the mother did not wish to attend the burial. Furthermore, the Court notes that the Government did not comment on whether or not there had been any interference with the rights enshrined in Article 8 with regard to the transport of the child's body in an inappropriate vehicle.

54. The Court in no way wishes to cast doubt on the good faith of the official responsible for the particularly delicate task of ordering the transport

and burial of the child's body, bearing in mind that the applicant was in a state of shock and that it was necessary to act quite quickly.

55. That being said, the Court points out that the acquittal of a civil servant in criminal proceedings does not necessarily absolve the State from its obligations under the Convention. The responsibility of a State under the Convention is based on its own provisions which are to be interpreted and applied on the basis of the objectives of the Convention and in light of the relevant principles of international law (see, in this connection, *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Avşar v. Turkey*, no. 25657/94, § 284, ECHR 2001-VII (extracts)).

56. In other words, the Court considers that in the instant case, the absence of intent or bad faith on the part of the municipal officials responsible in no sense absolves Switzerland from its own international responsibilities under the Convention. In circumstances which are admittedly different from the circumstances of this case, the Court has had occasion to lay down the principle whereby it is the duty of the Contracting States to organise their services and train their agents in such a way that they can meet the requirements of the Convention (see, *mutatis mutandis*, *Dammann v. Switzerland*, no. 77551/01, § 55, 25 April 2006, concerning the disclosure of confidential information; or *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 183, ECHR 2006-V, and *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V, concerning compliance with the reasonable time requirement). According to the Court, what is valid in those areas is all the more valid in an area as personal and delicate as the management of the death of a close relative, where a particularly high degree of diligence and prudence must be exercised.

57. In the light of the foregoing, the Court considers that there has been interference with the enjoyment of the rights guaranteed to the applicant by Article 8 of the Convention both in relation to the burial of her child and the transport of the child's remains.

3. Justification for the interference with the exercise of the right protected by Article 8

58. Interference with the exercise of the right to respect for private and family life can only be justified if the conditions of the second paragraph of Article 8 are satisfied. It therefore remains to be seen whether the interference was "in accordance with the law", had an aim which is legitimate under this paragraph and was "necessary in a democratic society" for the aforesaid aim (see *Smith and Grady v. United Kingdom*, nos. 33985/96 and 33986/96, § 72, ECHR 1999-VI).

59. The Court must then examine firstly whether there was a sufficient legal basis for the actions of the municipal officers. Firstly, as regards the right of the parents to attend the burial and a ceremony, the Court discerns a contradiction between the clear text of legislation and the practice followed

in the present case (see, *mutatis mutandis*, *Kopp v. Switzerland*, judgment of 25 March 1998, *Reports of Judgments and Decisions* 1998-II, § 73). In fact, contrary to the requirements of paragraph 4 of Article 8 of the regulations governing cemeteries and funerals in the municipality of Buchs, the registrar had conducted the burial without having consulted the relatives. Likewise, contrary to the clear wording of Article 12, paragraph 1, of the same regulations, the burial was not organised by the relatives (see paragraphs 40 et seq. above).

60. As regards the complaint concerning the transport of the child's remains, the Court points out that the Canton of Aargau Higher Court acknowledged that the body had been transported in breach of Article 75, paragraph 1, of the road traffic regulations since no authorisation within the meaning of paragraph 2 of that provision had been given (see paragraph 38 above). The Federal Court did not dispute that finding.

61. Given the foregoing, there was no legal basis for the interference with the rights protected by Article 8.

62. Accordingly, the Court finds that there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. According to Article 41 of the Convention,

“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

64. The applicant alleged pecuniary damage amounting to CHF 2,000 (approximately EUR 1,208) for costs not reimbursed by the insurance companies. These costs related to the gynaecological, medical and psychological examinations that proved to be necessary following the events that gave rise to this case. She indicated that the supporting documentation had unfortunately been mislaid.

65. The applicant further asked the Court to grant her “an equitable sum” for pain and suffering.

66. According to the Government, the requirements of Rule 60 of the Rules of Court were not met as regards the alleged medical expenses. In their view, the claims made under this head should be rejected.

67. As regards the non-pecuniary loss, the Government considered that the finding of a violation of the Convention would in itself constitute just satisfaction. In this regard, they pointed out that the child was given a

decent burial in Geneva on 8 April 1997 and that the subsequent measures taken by the authorities of the municipality of Buchs, which authorised the exhumation and transfer to Geneva of the stillborn child, allowed the applicant to attend a burial with a ceremony in accordance with her beliefs.

68. The Court shares the Government's view as regards the expenses not reimbursed by the insurance companies, since the applicant has not been able to establish that they were actually incurred. Furthermore, it notes that the causal link between the Court's finding of a violation and the expenses claimed is insufficient.

69. However, the Court is not convinced by the Government's argument that the exhumation of the child's body and its transfer to the cemetery near the applicant's new home in Geneva, where it was buried in a Catholic ceremony, constitutes, together with this finding of a violation, adequate and sufficient reparation. The Court observes that in its decision of 2 May 2006 on the admissibility of this case, it considered that, having occurred more than a year after the birth and initial burial of the child, these measures were not likely to fully eradicate the suffering endured by the applicant over that period of time and therefore the pain and suffering caused by the inappropriate transport of the child's body remained intact.

70. Ruling on an equitable basis, the Court awards the applicant the sum of EUR 3,000 by way of non-pecuniary damage.

B. Costs and expenses

71. The applicant claimed the sum of CHF 17,216 (approximately EUR 10,397) in respect of lawyers' fees for the proceedings before the Court, namely 40 hours at CHF 400 (approximately EUR 242), plus VAT.

72. In the light in particular of the degree of complexity of this case, the Government considered that the costs and expenses claimed by the applicant cannot be considered to have been necessarily incurred within the meaning of the Court's case-law. The Government considered the amount claimed by the applicant to be excessive. They proposed to award her the sum of CHF 8,000 (approximately EUR 4,831) for costs and expenses.

73. The Court reiterates that if it finds that there has been a violation of the Convention, it may award the applicant the costs and expenses incurred for the prevention or redress of the violation (see *Zimmermann and Steiner v. Switzerland*, 13 July 1983, § 36, Series A no. 66; *Hertel v. Switzerland*, 25 August 1998, § 63, *Reports* 1998-VI). Moreover, such costs and expenses must have been actually and necessarily incurred and must be reasonable as to quantum (see *Bottazzi v. Italy*, cited above, § 30, ECHR 1999-V, and *Linnekogel v. Switzerland*, no. 43874/98, § 49, 1 March 2005).

74. The Court considers the claim for costs and expenses to be exaggerated. Taking into account the information available to it and the

criteria established in its case-law, the Court awards the applicant the sum of EUR 5,000 for costs and expenses.

C. Default interest

75. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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 applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - i. EUR 3,000 (three thousand euros) for non-pecuniary damage;
 - ii. EUR 5,000 (five thousand euros) for costs and expenses;
 - iii. any amount that may be chargeable to the applicant on those amounts;
 - b) that from expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the claim for just satisfaction.

Done in French and notified in writing on 14 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President