EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

GRAND CHAMBER JUDGMENT IN THE CASE OF VO v. FRANCE

The European Court of Human Rights has today delivered at a public hearing a Grand Chamber judgment[1] in the case of ***Vo v. France*** (application no. 53924/00). The Court held, by 14 votes to 3, that there had been **no violation** of Article 2 of the European Convention on Human Rights (right to life).

(The judgment is available in English and in French.)

1. Principal facts

The case concerns an application brought by a French national, Mrs Thi-Nho Vo, who was born in 1967 and lives in Bourg-en-Bresse (France).

On 27 November 1991 she attended the Lyons General Hospital for a medical examination scheduled during the six month of pregnancy. On the same day another woman, Mrs Thi Thanh Van Vo, was due to have a coil removed at the same hospital.

Owing to a mix-up caused by the fact that both women shared the same surname, the doctor who examined the applicant pierced her amniotic sac, making a therapeutic abortion necessary.

Following a criminal complaint lodged by the applicant and her husband in 1991, the doctor was charged with causing unintentional injury, the charge subsequently being increased to one of unintentional homicide. On 3 June 1996 Lyons Criminal Court acquitted the doctor. The applicant appealed and on 13 March 1997 Lyons Court of Appeal overturned the Criminal Court's judgment, convicted the doctor of unintentional homicide and imposed a six-month suspended sentence and a fine of 10,000 French francs. On 30 June 1999 the Court of Cassation reversed the Court of Appeal's judgment, holding that the facts of the case did not constitute the offence of involuntary homicide; it thus refused to consider the foetus as a human being entitled to the protection of the criminal law.

2. Procedure and composition of the Court

The application was lodged on 20 December 1999. On 22 May 2003 the Chamber relinquished jurisdiction in favour of the Grand Chamber. On 25 November 2003 the President of the Grand Chamber gave leave to two non-governmental organisations, the Family Planning Association (London) and the Center for Reproductive Rights (New York) to intervene in the proceedings as third parties. A hearing on the admissibility and merits of the case was held in Strasbourg on 10 December 2003.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

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[1] Grand Chamber judgments are final (Article 44 of the Convention).

Luzius **Wildhaber** (Swiss), ***President***,
Christos **Rozakis** (Greek),
Jean-Paul **Costa** (French),
Georg **Ress** (German),
Nicolas **Bratza** (British),
Lucius **Caflisch** (Swiss)[1],
Viera **Strážnická** (Slovakian)
Peer **Lorenzen** (Danish),
Karel **Jungwiert** (Czech),
Marc **Fischbach** (Luxemburger),
John **Hedigan** (Irish),
Wilhelmina **Thomassen** (Netherlands),
András **Baka** (Hungarian),
Kristaq **Traja** (Albanian),
Mindia **Ugrekhelidze** (Georgian),
Antonella **Mularoni** (San Marinese),
Khanlar **Hajiyev** (Azerbaijani), ***judges***,

and also Paul **Mahoney**, ***Registrar***.

3. Summary of the judgment[2]

Complaint

Relying on Article 2 of the Convention, the applicant complained of the authorities' refusal to classify the unintentional killing of her unborn child as involuntary homicide. She maintained that France had an obligation to pass legislation making such acts a criminal offence.

Decision of the Court

The Court considered that the issue of when the right to life begins was a question to be decided at national level: firstly, because the issue had not been decided within the majority of the States which had ratified the Convention, in particular in France, where the issue has been the subject of public debate; and, secondly, because there was no European consensus on the scientific and legal definition of the beginning of life.

It was clear from the case-law of the French courts and a recent parliamentary debate on the question of creating an offence of unintentional termination of pregnancy that the nature and legal status of the embryo and/or the foetus were currently not defined in France and that the manner in which it was to be protected would be determined by very varied forces within French society. At European level, there was no consensus on the nature and status of the embryo and/or foetus. At best, it could be regarded as common ground between States that the embryo/foetus belonged to the human race. Its potential and capacity to become a person required protection in the name of human dignity, without making it a person with the right to life for the purposes of Article 2.

Having regard to those considerations, the Court was convinced that it was neither desirable, nor even possible as matters stood, to answer in the abstract the question whether the unborn

[1] Elected in respect of Liechtenstein.
[2] This summary by the Registry does not bind the Court.

child was a person for the purposes of Article 2 of the Convention ("*personne*" in the French text).

As to the case before it, the Court considered it unnecessary to examine whether the abrupt end to the applicant's pregnancy fell within the scope of Article 2, seeing that, even assuming that that provision was applicable, there had been no failure on the part of France to comply with the requirements relating to the preservation of life in the public-health sphere. The unborn child was not deprived of all protection under French law. Contrary to what had been submitted by Mrs Vo, the States' positive obligation – which in the public-health sphere consisted of adopting appropriate measures for the protection of patients' lives and of holding inquiries into the cause of death – did not necessarily require the provision of a criminal-law remedy.

In the case before the Court, in addition to the criminal proceedings which the applicant had instituted against the doctor for unintentionally causing her injury, she could have brought an action for damages in the administrative courts which would have had fair prospects of success. Such an action would have enabled the applicant to prove the doctor's medical negligence and to obtain full redress for the resulting damage. There had therefore been no need to institute criminal proceedings.

The Court accordingly found that, even assuming that Article 2 was applicable in the case before it, there had been no violation of that provision.

Judge Rozakis, joined by Judges Caflisch, Fischbach, Lorenzen and Thomassen expressed a separate opinion, as did Judge Costa, joined by Judge Traja. Dissenting opinions were expressed by Judge Ress and by Judge Mularoni, joined by Judge Strážnická. The opinions are annexed to the judgment.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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The European Court of Human Rights *was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments.*