



Forthcoming Grand Chamber judgment concerning the death of a patient from post-operative complications

The European Court of Human Rights will be delivering a **Grand Chamber** judgment¹ in the case of **Lopes de Sousa Fernandes v. Portugal** (application no. 56080/13) at a public hearing on 19 December 2017 at 10.30 a.m. in the Human Rights Building, Strasbourg.

The case concerns the death of Ms Lopes de Sousa Fernandes's husband following a series of medical problems that arose after surgery.

Principal facts and complaints

The applicant, Maria Isabel Lopes de Sousa Fernandes, is a Portuguese national who was born in 1969 and lives in Vila Nova de Gaia (Portugal).

On 27 November 1997 Ms Lopes de Sousa Fernandes's husband (Mr Fernandes) underwent surgery to remove nasal polyps in Vila Nova de Gaia Hospital (CHVNG). He returned home the next day. On 29 November 1997 he went to the hospital's emergency department as he was suffering from violent headaches. The doctors on duty diagnosed psychological disorders and prescribed tranquilisers. The following day the patient was examined by a new medical team which discovered that he had bacterial meningitis. He was transferred to the intensive care unit, where he remained until 5 December 1997. He was then moved to a general medical ward, where he was diagnosed with two duodenal ulcers and treated by Doctor J.V. He left hospital on 13 December 1997 but his pain persisted. He went a further three times to the emergency department of the CHVNG and was hospitalised twice. Laboratory tests revealed, among other things, the presence of the *Clostridium difficile* bacterium. On 3 February 1998 he was discharged by Doctor J.V., who prescribed treatment and referred him to the hospital's outpatient department for follow-up. On 17 February 1998 Mr Fernandes was admitted to Santo António General Hospital in Oporto, where he died on 8 March 1998. According to the certificate produced by the hospital, Mr Fernandes died from septicaemia.

On 13 August 1998 Ms Lopes de Sousa Fernandes wrote a joint letter to the Ministry of Health, the regional health authority for the North region and the Medical Association, complaining that she had received no response explaining the sudden deterioration in her husband's health and his subsequent death. On 20 September 2000 the Inspector General for Health ordered an investigation. A report issued in July 2006 concluded that there were no grounds for a finding of disciplinary liability for negligence against the health-care professionals concerned. The report further stated that the decision by Dr J.V. to refer the patient for outpatient treatment had not been appropriate and sufficient and that the patient should have remained in hospital under close medical supervision. The Inspector General therefore ordered the opening of disciplinary proceedings against the doctor in question, which were stayed pending the outcome of the criminal proceedings. Dr J.V., who was charged with homicide by negligence, was acquitted in January 2009. The District Court found that there was no evidence that he bore any responsibility for the patient's death.

On 28 December 2001 it was decided to take no further action on Ms Lopes de Sousa Fernandes's complaint to the Medical Council, on the ground that there was no evidence of misconduct or

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

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

medical negligence. An appeal by the applicant to the Medical Association's National Disciplinary Council was declared inadmissible as being out of time.

On 6 March 2003 Ms Lopes de Sousa Fernandes brought an unsuccessful action in the Oporto Administrative and Fiscal Court, claiming compensation on account of her husband's death. Her appeal to the Supreme Administrative Court was dismissed in February 2013.

Relying on Article 2 (right to life) of the European Convention on Human Rights, Ms Lopes de Sousa Fernandes complains about her husband's death in hospital, alleging that it was caused by negligence and carelessness on the part of the medical staff. She also maintains that the authorities did not properly elucidate the precise cause of the sudden deterioration in her husband's health. Under Articles 6 § 1 (right to a fair hearing within a reasonable time) and 13 (right to an effective remedy), she complains about the length and outcome of the domestic proceedings.

Procedure

The application was lodged with the European Court of Human Rights on 23 August 2013.

In its Chamber judgment of 15 December 2015 the Court held by a majority (five votes to two) that there had been a violation of the substantive aspect (right to life) of Article 2 of the Convention, and unanimously that there had been a violation of the procedural aspect of that Article (investigation into the death).

On 11 March 2016 the Government requested that the case be referred to the Grand Chamber under Article 43 of the Convention (referral to the Grand Chamber), and on 2 May 2016 the panel of the Grand Chamber accepted that request. A hearing took place on 16 November 2016.

The United Kingdom and Irish Governments were given leave to intervene as third parties in the written procedure.

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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.