



## Organ transplantation without consent at a public hospital was unlawful

In today's Chamber judgment in the case of [Petrova v. Latvia](#) (application no. 4605/05), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights**

The case concerned Ms Petrova's complaint that a public hospital had removed her son's organs for transplantation purposes without her consent after he was involved in a road traffic accident and had died from his injuries.

The Court found that the Latvian law in the area of organ transplantation as applied at the time of the death of Ms Petrova's son had not been sufficiently clear and had resulted in circumstances whereby Ms Petrova, as the closest relative to her son, had certain rights with regard to removal of his organs, but was not informed – let alone provided with any explanation – as to how and when these rights could have been exercised.

### Principal facts

The applicant, Svetlana Petrova, is a Latvian national who was born in 1955 and lives in Riga.

On 26 May 2002 Ms Petrova's son, Oļegs Petrovs, who was 23 years old at the time, sustained very serious injuries in a car accident and was taken to a public hospital in Riga. Following surgery, his condition deteriorated and he died on 29 May 2002.

Nine months later Ms Petrova discovered – when reading the post-mortem report issued during the criminal proceedings against the person held liable for the car accident – that her son's kidneys and spleen had been removed for organ transplantation purposes immediately after his death.

She lodged a complaint with the hospital, the police and the prosecutor's office. Ultimately, in August 2004 the Prosecutor General dismissed her complaint in a final decision which concluded that the organ removal had been performed in accordance with domestic law. Notably, the hospital did not have any contact details for Oļegs Petrovs' relatives and, under the relevant provisions, medical practitioners were not obliged to actively search and inform the closest relatives of the deceased about the possible removal of organs unless the person concerned was a child.

### Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life), Ms Petrova alleged that the removal of her son's organs had been carried out without her or her son's prior consent and that, in any event, no attempt had been made to establish her views. She alleged in particular that, in view of the domestic law provisions in this area,

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

there should be some kind of mechanism to establish the wishes of a dying person through his or her closest relatives if that person had not made them known beforehand.

The application was lodged with the European Court of Human Rights on 18 January 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Päivi Hirvelä (Finland), *President*,  
Ineta Ziemele (Latvia),  
George Nicolaou (Cyprus),  
Nona Tsotsoria (Georgia),  
Paul Mahoney (the United Kingdom),  
Krzysztof Wojtyczek (Poland),  
Faris Vehabović (Bosnia and Herzegovina),

and also Fatoş Aracı, *Deputy Section Registrar*.

## Decision of the Court

### Article 8 (private and family life)

The Court considered that the circumstances of Ms Petrova's case, namely that she was not informed about the possible removal of her son's organs for transplantation purposes and could not exercise certain rights established under domestic law, had amounted to an interference with her respect for private life.

Furthermore, Latvian law at the relevant time explicitly provided for the right, in the event of death, of not only the person concerned but also of his or her closest relatives, including parents, to express their wishes as to the removal of organs. The point at issue was therefore whether or not this law was sufficiently clear as regards the implementation of this right.

Ms Petrova argued that there was no mechanism permitting her to exercise her right to express her wishes as concerned organ removal, whereas the Government considered that the mechanism was in place and that it was up to the closest relatives to take action if they wished to prevent any organ removal. They pointed out in particular that, when a deceased person's closest relatives were not present at the hospital, such being the case for Ms Petrova, national law did not impose an obligation on a doctor or on the medical institution itself to make specific inquiries to ascertain if there was any objection as concerned organ removal. In such cases, consent could therefore be presumed to be given for the transplantation.

However, the Court found that the way in which this "presumed consent system" had operated in practice was unclear and had resulted in circumstances whereby Ms Petrova had certain rights as the closest relative but was not informed – let alone provided with any explanation – as to how and when these rights could have been exercised. The time it had taken to carry out several 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 for Health, when the proceedings before the investigating authorities were still pending, had expressed the opinion that Ms Petrova should have been informed and, as a result of a proposal by a working group established in the Ministry, amendments were made to the relevant law which were subsequently adopted by Parliament with effect from 30 June 2004.

The Court accordingly found that the Latvian law as applied at the time of the death of Ms Petrova's son had not been formulated with sufficient precision or afforded adequate legal protection against arbitrariness. The organ transplantation of Ms Petrova's son without her being informed had not therefore been in accordance with the law, in breach of Article 8 of the Convention.

Given this finding under Article 8, it considered that it was not necessary to examine whether there had also been a violation of Article 3 in the case.

#### Just satisfaction (Article 41)

The court held that Latvia was to pay Ms Petrova 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 500 for costs and expenses.

*The judgment is available only in English.*

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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.