



Maurice v. France

Application No. 11810/03; (2006) 42 EHRR 42; [2005] ECHR 683

Country: France

Region: Europe

Year: 2005

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Child and adolescent health, Disabilities, Medical malpractice, Sexual and reproductive health

Human Rights: Freedom from discrimination, Right to due process/fair trial, Right to family life, Right to property

Facts

The application concerned a negligent prenatal diagnosis made by Assistance Publique—Hôpitaux de Paris (AP-HP), a molecular diagnosis laboratory. AP-HP failed to detect an anomaly during pregnancy, resulting in the birth of a disabled child to Didier and Sylvia Maurice.

Mr. and Mrs. Maurice submitted an application to the Paris Administrative Court for an assessment of damages. However, while these assessments were ongoing, new legislation barred compensation for wrongful birth and for the costs of raising a disabled child throughout his or her life. This significantly reduced the amount of compensation that the couple could receive.

The Maurices brought their claim before the European Court of Human Rights (the Court), claiming that the legislation had the effect of retrospectively depriving them of full compensation for the costs of caring for their disabled child, and prevented them from being able to meet their child's needs. They argued that the legislation therefore interfered with their right to the peaceful enjoyment of their possessions, their right to equality under the law, their fair trial rights, their right to an effective remedy, and their right to enjoyment of private and family life. They relied in particular on articles 6(1), 8, 13, 14, and article 1 of Protocol no 1 of the European Convention on Human Rights (ECHR).

The case was heard and decided jointly with Draon v. France, also Application No. 1513/03; (2006) 42 EHRR 40; [2005] ECHR 679.

Decision and Reasoning

The Court held that there was a violation of article 1 of Protocol 1, no violation of articles 8 or 13, and that it was not necessary to separately examine articles 6(1) or 14 in light of its findings on article 1 of Protocol 1 and article 8.

With regard to article 1 of Protocol 1, the Court considered that legislation barring the Maurices' claims did deprive them of a "possession" protected by the right to property. It further held that this interference was in accordance with law and in the public interest.

However, it held that the legislation was not proportionate to the public interest it pursued. While legislation extinguishing damages in medical negligence claims for wrongful birth pursued the legitimate aims of ethics, equitable treatment, and the proper administration of the health service, an interference that deprived Didier and Sylvia Maurice of considerable compensation imposed an "individual and excessive burden" on them. This burden ruined the fair balance between the demands of the general interest on the one hand and the protection of the right to peaceful enjoyment of possessions on the other.

The court considered that even interferences in pursuit of strong public interests—the ethical basis of entitlements, fairness, and the proper organization of the health service—required reasonable compensation. The Court ordered compensation to be paid to the Maurices.

With regard to article 13, the Court considered that the right to remedy did not extend so far as to allow a party to challenge the national laws of a state before the Court.

With regard to article 8, the Court sidestepped the issue of whether or not the right to private and family life

was applicable to this case, instead ruling that even if the right was applicable, it would not be violated here. The Court considered that France had a wide margin of appreciation in determining how it would protect the right to enjoyment of private and family life. The system of compensation for medical negligence that it had set up was well within this margin, and thus did not constitute a violation of article 8.

Decision Excerpts

“In the present case, however, section 1 of the Law of 4 March 2002 abolished purely and simply, with retrospective effect, one of the essential heads of damage, relating to very large sums of money, in respect of which the parents of children whose disabilities had not been detected before birth, like the applicants, could have claimed compensation from the hospital held to be liable. The French legislature thereby deprived the applicants of an existing “asset” which they previously possessed, namely an established claim to recovery of damages which they could legitimately expect to be determined in accordance with the decided case-law of the highest courts of the land.” Para. 90.

“The Court cannot accept the Government’s argument that the principle of proportionality was respected, provision having been made for an appropriate amount of compensation, which would thus constitute a satisfactory alternative, to be paid to the applicants. It does not consider that what the applicants could receive by virtue of the Law of 4 March 2002 as the sole form of compensation for the special burdens arising from the disability of their child was, or is, capable of providing them with payment of an amount reasonably related to the value of their lost asset. The applicants are admittedly entitled to benefits under the system now in force, but the amount concerned is considerably less than the sum payable under the previous liability rules and is clearly inadequate, as the Government and the legislature themselves admit, since these benefits were extended recently by new provisions introduced for that purpose by the Law of 11 February 2005.” Para. 91.

“Such a radical interference with the applicants’ rights upset the fair balance to be maintained between the demands of the general interest on the one hand and protection of the right to peaceful enjoyment of possessions on the other.” Para. 93.

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