

Council of State

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Litigation Section

Mr. Denoix de Saint Marc, president

Mrs. Le Bihan Graf, advisor

Mr. Chauvaux, government commissioner

M. Blonder, M. Foussard, lawyer, lawyers

Ruling of 26 October 2001

FRENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

Considering the summary request and corresponding report, registered on 10 August and 10 December 1998 with the Secretary of Litigation of the Council of State, presented by Mrs. Catherine X...; Mrs. X..., acting on her own and on behalf of her minor children Audrey and Dayn, calls on the Council of State to annul the judgment of 9 June 1998 in which the Administrative Court of Appeal of Paris rejected her request 1) to annul the judgment of 5 April 1995 of the Administrative Tribunal of Paris in which it rejected their claim seeking that the Public Assistance Hospital of Paris be sentenced to pay them the sum of 100,000 francs in compensation for the damages caused by the decision to perform blood transfusions on her husband, Mr. Sunil X..., against his expressed will, 2) to condemn the Public Assistance Hospital of Paris to pay said sum, and the sum of 100,000 francs for costs incurred by them and not included in the costs;

Considering the other documents in the file;

Considering the European Convention on Human Rights and Fundamental Freedoms;

Considering the Civil Code;

Considering the Code of Public Health;

Considering decree no. 79-506 of 28 June 1979 on the Code of Medical Ethics;

Considering the Code of Administrative Justice;

After having heard at public hearing:

-the report of Mrs. Le Bihan-Graf, Master of Requests'

-the observations of M. Blondel, lawyer for Mrs. X...and of M. Foussard, lawyer for the Public Assistance Hospital of Paris,

-the conclusion of Mr. Chauvaux, Commissioner of the government;

Whereas the material findings of fact of the judgment are not contested that Mr. Sunil X..., then aged 44, was hospitalized on 2 January 1991 at the surgical center in west Paris at Garenne-Colombes due to acute renal failure, and then was transferred on 22 January 1991 to Tenon Hospital in Paris following the worsening of his condition; that, in a letter written 12 January 1991 while he was hospitalized in Garenne-Colombes, and subsequently included with his medical records to doctors at the Tenon Hospital in Paris, Mr. X...stated that he refused, as a Jehovah's Witness, to be administered blood products, even assuming that this treatment would be the only way to save his life; he reiterated his refusal on 23 January 1991 before a doctor at

Tenon Hospital in the presence of his wife and nurse, and he maintained this thereafter, when he was informed that his attitude was compromising his survival; whereas, however, during the period from 28 January to 6 February 1991, the date of the death of the party, blood transfusions were performed following the occurrence of severe anemia;

Whereas to uphold the rejection of Mrs. X's demand by the Administrative Court to the effect that the Public Assistance Hospital of Paris be condemned for the injury allegedly caused to her husband by disregarding his expressed will, the Administrative Court of Appeal of Paris based its opinion on this: "the duty of the physician to always respect the will of the patient in a state to express... is limited by the requirement that the doctor also, in accordance with the very purpose of his business, protect the health, that is to say, ultimately, life itself in the individual; as a result, it cannot be called offending behavior for doctors who, in an emergency, when the vital prognosis is at stake and there is a lack of alternative treatment, perform the acts necessary for patient survival proportionate to the state, even if done in full knowledge of the will previously expressed by him to refuse for any reason whatsoever"; by prevailing on the general obligation of doctors to save life while respecting the will of the sick in so doing, the court committed an error of law justifying the annulment of the judgment;

Whereas under Article L. 821-2 of the Code of Administrative Justice, the Council of State, if it pronounces the annulment of a decision of an administrative court adjudicating as a last resort, can "rule on the merits if the interests of the proper administration of justice justify" ; that, in the circumstances of the case, it should rule on the merits;

Whereas, given the extreme situation Mr. X...was in, the doctors who treated him chose, for the sole purpose of trying to save him, to perform an act essential for his survival and commensurate with his status; that, under these conditions, and whatever their additional obligation to respect his will based on his religious beliefs, they have not committed any fault such as to impose liability on the Public Hospital of Paris;

Whereas the investigation, including the report of the expert appointed by the President of the Administrative Court of Appeal of Paris, that because of the severity of anemia which Mr. X...suffered, the blood transfusion became the only treatment that could save the patient's life; that so the hospital service is not at fault by not using a treatment other than blood transfusions; Whereas, Mr. X...being able to express his will, Mrs. X...is not justified in claiming that the doctors committed a fault such as to impose liability on the Public Assistance Hospital of Paris by abstaining from personal consultation;

Whereas the blood transfusions administered to Mr. X...do not constitute inhuman or degrading treatment or deprivation of liberty within the meaning of Article 3 and 5 of the European Convention on Human Rights and Fundamental Freedoms;

It follows from the foregoing that Mrs X ... is not justified in complaining that, by the challenged judgment, the Paris Administrative Court rejected her request for imposing liability on the Public Hospital of Paris;

On the claims for the payment of costs incurred and not included in the costs:

Considering that it is not necessary in the circumstances of the case, to apply the provisions of Article L. 761-1 of the Code of Administrative Justice and to sentence Mrs.... X to pay to the Assistance Publique-Hôpitaux de Paris the amount claimed for costs incurred by her and not included in costs; that the provisions of Article L. 761-1 of the Administrative Code of Justice preclude the Public Assistance Hospital of Paris which is not, in this instance, the losing party or ordered to pay Mrs X ... the amount claimed for costs incurred by it and not included in the costs;

Article 1: The judgment of the Administrative Court of Appeal of Paris dated 9 June 1998 is annulled.

Article 2: The request of Mrs. X...against the judgment of the Administrative Tribunal of Paris is rejected, together with the additional conclusions of her request in front of the Council of State.

Article 3: The conclusions of the Public Assistance Hospital of Paris regarding the application of Article L. 761-1 of the Code of Administrative Justice are rejected.

Article 4. The present decision will be notified to Mrs. Catherine X..., the Public Assistance Hospital of Paris and the Ministry of Employment and Solidarity.