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La Corte Edu in materia di diritto del paziente al consenso informato
(CEDU, sez. V, sent. 13 aprile 2023, ric. n. 14709/07)

La decisione in oggetto concerne l'asserita violazione del diritto al consenso informato, lamentata da una cittadina di nazionalità ucraina la quale, in via d'urgenza, era stata sottoposta ad un intervento di nefrectomia sebbene il personale sanitario non avesse rappresentato alla paziente l'eventualità di una procedura di asportazione del rene.
In primo luogo la Corte ribadisce che gli Stati, ivi compresi gli ospedali pubblici e privati, sono obbligati, ai sensi dell'art. 8 Cedu, ad adottare ogni misura necessaria a garantire l'integrità fisica e psicologica dei pazienti e ad informare questi ultimi su tutte le conseguenze che potrebbero derivare dall'esecuzione di una procedura medica.
Nel caso di specie i giudici hanno osservato la mancanza di un quadro giuridico idoneo all'adempimento dell'obbligo positivo di cui si tratta, riscontrando altresì l'assenza di linee guida nazionali o locali, standard o procedure ospedaliere formalizzate che garantissero la corretta attuazione delle disposizioni legislative inerenti alla protezione del diritto al consenso informato dei pazienti, determinando così una violazione dell'art. 8 Cedu.

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF XXX v. UKRAINE
(Application no. 14709/07)

JUDGMENT
STRASBOURG
13 April 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Georges Ravarani, *President*,
Carlo Ranzoni,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lado Chanturia,
Mattias Guyomar,
Mykola Gnatovskyy, *judges*,
and Victor Soloveytchik, *Section Registrar*,
Having regard to:
the application (no. 14709/07) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Ms XXX ("the applicant"), on 15 March 2007;
the decision to give notice of the application to the Ukrainian Government ("the Government");
the parties' observations;
Having deliberated in private on 21 March 2023,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns, under Article 8 of the Convention, the applicant's allegations that the respondent State failed to protect her right to informed consent in relation to a nephrectomy (surgical removal of a kidney) to which she was subjected as a matter of emergency and while she was unconscious and from concealment by her physicians, in the post-operative period, of the information concerning the kidney removal.

THE FACTS

2. The applicant was born in XXX and lived in XXX. She was represented by Mr S.V. Shklyar and Mr P.V. Khodakovskiy, lawyers at Arzinger law firm, practising in Kyiv.
3. On 10 February 2016, while the present proceedings were pending before the Court, the applicant died.
4. Her daughter, Ms XXX, informed the Court of her wish to pursue the application on the applicant's behalf.
5. The Government were represented, most recently, by their Agent, Ms M. Sokorenko.
6. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE APPLICANT'S TREATMENT IN THE LVIV REGIONAL CLINICAL HOSPITAL AND RELATED EVENTS

7. On 7 March 2000 the applicant had her left adrenal gland surgically removed in the Lviv Regional Clinical Hospital (*Львівська обласна клінічна лікарня* – a public hospital, hereinafter "the LRC Hospital"). The operation was performed by Dr M.P., a senior faculty member at the Lviv State Medical University (LSM University), the father and direct hierarchical superior of Dr I.P., also employed by the university, and appointed by the hospital as the applicant's consulting

physician. Both doctors practiced at the LRC Hospital on the basis of the partnership agreement concluded between the two institutions on 8 April 1998. That agreement indicated, in so far as relevant, as follows:

"[The university] faculty members who, by a joint order of the [university] and the [hospital], have been allowed to diagnose and treat patients and have been familiarised with the technical safety rules, shall bear personal legal responsibility for the diagnostics and results of patients' treatment."

8. On 8 March 2000 a panel of physicians, including, among others, Dr M.P. and Dr I.P., established that the applicant had likely developed post-operative internal bleeding and proposed that she undergo an urgent surgical intervention to address that complication.

9. Having obtained the applicant's oral consent, on 9 March 2000 a medical team including Dr M.P., Dr I.P. and one other physician performed the second operation, in the course of which the applicant's left kidney, previously diagnosed as healthy, was removed (a nephrectomy was performed).

10. On 14 April 2000 the applicant was discharged from hospital. On that date she was given a hospital discharge certificate (*витяг з медичної карти стаціонарного хворого*) signed by Dr I.P., summarising her treatment history in the hospital. The second operation was described in it as "the removal of blood clots from the left adrenal bed, [and] the cessation of a haemorrhage in the small branches of the kidney artery". The applicant was also recommended to take a follow-up appointment at the LRC hospital in September 2000. The certificate did not mention the kidney removal. It was issued on the hospital's official letterhead and had the hospital seal affixed to it. It also had the following heading: "Medical documentation / form no. 027/0 / approved by Order of the Ministry of Health of the USSR of 4 October 1980."

11. On an unspecified date in May 2000 the applicant received an anonymous telephone call suggesting to her that her left kidney "had been stolen". According to the applicant, after that call she made several unsuccessful attempts to obtain an appointment with Dr I.P. and Dr M.P. in order to seek their explanations.

12. On 14 November 2000, after the applicant had reported the story to the media and Dr M.P. had been visited by a journalist in that connection, he sent a letter to the applicant apologising for the concealment of the information concerning kidney removal. He explained in that letter that he had decided to do so to facilitate her recovery and that he was planning to inform her about the nephrectomy at their follow-up appointment in September, which he anticipated she would take. He also noted that since she had not booked the follow-up appointment in September, he was planning to advise his son (apparently Dr I.P.) to reach out to her after Christmas in order to convey information concerning the kidney removal and to ensure a follow-up appointment.

13. On 13 April 2001 Dr B.K., the chief doctor of the LRC Hospital, sent the applicant a letter indicating that he had learned from a local television programme that the applicant had been provided with an incomplete discharge certificate which omitted to mention the removal of the kidney. To rectify that shortcoming, he therefore enclosed a corrected discharge certificate and apologised for the omission committed by the LSM university faculty members, who had attended to her in the hospital.

14. On 29 November 2003 the Lviv Medical Association (*Українське лікарське товариство у Львові*)[1] adopted a declaration expressing solidarity with Dr M.P. and justifying his decision not

to notify the applicant of nephrectomy as taken on ethical grounds. They noted, in particular, as follows:

"[A]s regards the [applicant] initially not being informed [of the removal of the kidney], we refer once again to the teaching of Hippocrates, the father of medicine: 'You shall surround the patient with love and reasonable reassurance, but most importantly – leave him in ignorance of that which awaits him, especially that which threatens him'. ..."

II. OFFICIAL INVESTIGATIONS INTO THE APPLICANT'S COMPLAINTS

15. In September 2000 the applicant appealed to the national Ombudsman, complaining that her kidney had been removed without her consent or knowledge and that this fact had subsequently been concealed from her. This letter having been forwarded to the prosecutor's office, the Lychakivskiy district prosecutor in Lviv commissioned, in November 2000, an inquiry into the applicant's allegations.

16. On 18 December 2000, when he was questioned by the prosecutor, Dr M.P. made written statements explaining: that the second operation had been urgent and indispensable for saving the applicant's life; that the need to remove her kidney had become apparent only in the course of that operation, while the patient had been in unconscious state and after other less intrusive methods to stop the bleeding had proved to be futile; that the decision not to inform the applicant about the removal of the kidney in post-operative period had been his, and that it had been taken with a view to facilitating the applicant's recovery. He also suggested that he had not been aware of the presence of any of the applicant's relatives, who could be consulted and/or informed about the applicant's health, in the hospital.

17. On 19 December 2000 Dr B.K. (the chief doctor at the LRC Hospital), wrote a letter to the prosecutor's office, in which he noted, in particular, as follows:

"As regards your inquiry ... concerning the [regulatory instruments] relevant to the removal of organs and informing the [patients'] relatives ...

[I note that] [u]pon the declaration of Ukraine's independence[2] no [relevant] normative documents had been developed, so we use the documents of the former USSR. Thus, in 1970 the Law on the Fundamentals of Health Protection Legislation of the USSR and the soviet republics entered into force, which clearly defined the duties of physicians ... [According to these Guidelines] where a non-urgent ... [nephrectomy] ... is needed, the patient and his/her relatives are to be informed.

[The applicable] law does not contain any instructions concerning the procedure for documenting a patient's consent to an operation (either oral or written). The existing medical practice, which is to reflect notice of oral consent in the [patient's] medical record, is lawful and humane, as making [the patient] sign an affidavit will additionally traumatise the patient emotionally. ...

[F]rom an ethical point of view, in the immediate post-operative period it was undesirable to inform [the applicant] of the removal of her kidney ... as this would have been an emotional trauma [for her], in addition, ... later on in the post-operative period [M.P.] repeatedly invited the patient [to come] for a consultation, and intended to inform [her] of the removal of the kidney."

18. On the same date, at the request of the prosecutor's office, the Lviv Regional Department of the Ministry of Health created a commission made up of three medical experts, with a view to carrying out an internal investigation into the quality of the applicant's treatment. That

commission concluded that there had been no signs of medical malpractice in the applicant's case. Her kidney had been removed on life-saving grounds and in urgent circumstances. As appeared from Dr M.P.'s explanations given to the prosecutor's office investigators, the relevant information had been withheld from her on ethical grounds.

19. On 23 June 2001 the Ministry of Health informed S.G., a member of parliament, who had enquired on the applicant's behalf about the measures taken by it to address her complaints, that an internal inquiry carried out by its Lviv Department had found no signs of malpractice, but that the chief doctor at the LRC Hospital had been reprimanded as a disciplinary punishment for insufficient supervision of the keeping of medical records and insufficient observance of ethical norms by the hospital's healthcare professionals. No further details concerning the relevant disciplinary proceedings were provided.

20. In the meantime, on 25 April 2001 the Lviv regional prosecutor's office had instituted criminal proceedings against Dr I.P. in relation to suspected abuse of a position of authority and forgery of an official document. The applicant joined those proceedings as an injured party.

21. On 25 May 2001 the Lviv regional prosecutor's office commissioned a board of experts to assess the quality of the applicant's treatment. The experts were presented with a list of twenty-two questions concerning the quality of the medical treatment. The twenty-third question concerned the quality of information provided to the applicant and her relatives.

22. On 28 December 2001 the board of experts concluded that the applicant had been diagnosed and treated correctly and in accordance with the standard protocols. The expert report read, in particular, as follows:

"The second surgical intervention, aimed at stopping the bleeding in the kidney area, was performed ... on life-saving grounds, according to the generally accepted methodology. As appears from the operation record, there were valid grounds for the removal of the kidney. ...

The hospital discharge certificate ... does not meet the established requirements. ... [it] contains no mention of a kidney being removed or the further supervision and treatment which [the applicant] needs [in this connection].

[R]egard being had [to the fact] that [the applicant's] urinary function ... has been preserved up until now, it shall be considered that the incompleteness of the data on the hospital discharge certificate ... has had no negative impact on her physical health.

The commission does not have at its disposal any normative documents ... concerning ... informing [patients] of the results of the [organ removal] operations."

23. Subsequently, (on 29 July 2005) these proceedings, closed and re-opened on several occasions, were discontinued for want of evidence that Dr I.P. had committed a crime. It was noted in the relevant decision that, being employed by the LSM University, Dr I.P. practised in the LRC Hospital on the basis of the partnership agreement between the two institutions. There was neither a specific order issued by the two partner institutions in respect of his permission to practise, nor a job description or any other document on the basis of which it was possible to define the scope of his official responsibilities and confirm that he was authorised to sign official certificates on the hospital's behalf. Accordingly, he could not be classified as an "official" and could therefore not be charged with forgery of an "official document". The prosecutor's office indicated, in that respect, as follows:

"[Neither] the Law on the Fundamentals of Health Protection Legislation, [nor] ... any other regulatory document lists or listed in April 2000 any of the official duties of a surgical medicine faculty assistant ..., namely [Dr I.P.], with respect to the drafting and preparation of medical documentation, in particular, [the preparation] of a hospital discharge certificate ... and its proper and correct presentation."

24. On the same date the prosecutor's office also decided that it was unwarranted to open criminal investigations into other allegations relating to medical malpractice in the applicant's case, including the possibility that her kidney could have been removed for transplantation purposes. In this regard, the prosecutor's office concluded, relying, in particular, on the findings of the board of medical experts, that there was sufficient documentary evidence that the applicant's kidney had been removed in her best interests and subsequently destroyed.

25. The applicant did not appeal against the above-mentioned decisions.

III. CIVIL PROCEEDINGS

26. In September 2002 the applicant brought a civil action against the LRC Hospital, the LSM University, Dr M.P. and Dr I.P., alleging, in particular, that they had breached their duties under the Law on the Fundamentals of Health Protection Legislation ("the FHPL"). She submitted, in particular, that her kidney had been removed without her knowledge or consent and therefore arbitrarily. She further complained that information about the removal of her kidney had been unlawfully and deliberately concealed from her after the operation.

27. On 29 December 2005 the Svalyava District Court ("the District Court") found against Dr I.P. and awarded the applicant 50,000 Ukrainian hryvnias[3] (UAH) in respect of non-pecuniary damage. It found that Dr I.P., appointed by the hospital to attend to the applicant as consulting physician, had breached his duties under section 39 of the FHPL, as he had not notified, in post-operative period, either the applicant or any of her relatives about the fact that her kidney had been removed. The applicant's remaining claims were dismissed. The District Court's reasoning, in so far as it concerned the dismissal of the applicant's remaining claims, read as follows:

"[Both] operations were carried out with the applicant's consent. [On] 09.03.2000 [the applicant agreed to have an operation], with a view to stopping the internal bleeding which had emerged in the post-operative period.

The court cannot take into account [the applicant's] assertions that her healthy kidney was unlawfully removed, as the court has not been provided with any evidence concerning unlawful conduct by the doctors as regards the provision of medical assistance to [the applicant] ...

As regards the provision of accurate information concerning the [applicant's] state of health by defendants [Dr M.P.], [the LRC Hospital] and [the LSM University], no unlawful actions *vis-à-vis* [the applicant] can be discerned from their conduct, because:

1. [The LSM University] and [Dr I.P.] are only in an employment relationship, while in accordance with the agreement of 08.04.1998, a consulting physician bears personal responsibility for his or her activity in the sphere of diagnostics and treatment;

2. [The LRC Hospital] took its own initiative in notifying [the applicant] about the results of [her] treatment. As the claimant had not [directly] addressed the [hospital] doctors with a request for access to her hospital record or oral information, the court does not detect any unlawful conduct on the part of the doctors of [the LRC Hospital];

3. As regards [Dr M.P.], he was one of the doctors who carried out the operation on [the applicant], and in the present case he is not the consulting physician; accordingly, he is not concerned by the provisions of [section 39 of the FHPL]. ..."

28. In January 2006 the applicant lodged an appeal against that judgment, complaining that the District Court had failed to analyse various aspects of her action and had incorrectly relieved Dr M.P., the LSM University, and the LRC Hospital of liability. She argued, in particular, as follows:

"[T]he court has assessed the evidence provided by me superficially ... and has evaluated it from only one perspective. ...

Thus, the court has not evaluated the conduct of [the LRC Hospital], which is a defendant in the present case; the court was obliged to take into account the fact that, according to the conclusions of ... the Ministry of Health which investigated the facts of my case, the chief doctor was reprimanded for insufficient supervision of the keeping of medical records and compliance with the standards of medical ethics and professional conduct. Why has the court not had regard to this fact when determining my legal claim against [the LRC Hospital]?

[T]here was [also] insufficient regard to the fact ... that I was not notified of what might happen in the course of the [second] operation, and that my close relatives ([S.Z.], [R.Z.] and my husband [M.B.]), who stayed in the hospital for the duration of that operation, ... were not notified that it had been necessary to remove [my] left kidney ...

... The court's conclusion that I had not contacted the [LRC Hospital's] doctors ... seeking information ... are wrong, since my applications addressed to the Ministry of Health had always been forwarded to the LRC Hospital, as evidenced by a series of inquiries carried out by ... the Ministry of Health ..."

29. On 18 April 2006 the Zakarpattya Regional Court of Appeal dismissed the applicant's appeal, endorsing the trial court's reasoning.

30. On 21 September 2006 the Supreme Court of Ukraine rejected a request by the applicant for leave to appeal on points of law.

RELEVANT LEGAL FRAMEWORK

I.RELEVANT DOMESTIC LAW

31. The relevant provisions of the Law on the Fundamentals of Health Protection Legislation ("FHPL") of 19 November 1992, as worded at the material time, read as follows:

Section 39. The obligation to provide medical information

"A doctor shall be obliged to explain to a patient, in an understandable manner, the state of his or her health, the purpose of [any] proposed examinations and medical treatment, and the prognosis for the possible development of his or her illness, including any risk to life and health.

The patient shall be entitled to familiarise himself with the records of his or her medical history and other documents which may be of use for his or her further treatment.

The doctor may restrict access to the patient's medical information if such access could be detrimental to the patient's health. In that case, the doctor, taking into account the patient's personal interests, shall inform the members of the patient's family or the patient's legal representative accordingly. The doctor shall act in the same way when the patient is unconscious."

Section 43. Consent to medical treatment

"Diagnostic and preventive measures and medical treatment shall be carried out with the consent of the patient, who shall have been provided with the information required in accordance with section 39 of this Act. ...

In urgent situations when there is a real risk to the patient's life, the consent of the patient or his or her legal representative to medical treatment shall not be required.

..."

II. RELEVANT INTERNATIONAL MATERIAL

A. Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine ("the Oviedo Convention", Council of Europe Treaty Series no. 164)

32. The Oviedo Convention was opened for signature on 4 April 1997 and entered into force on 1 December 1999. To date, it has been signed by thirty-six States and has entered into force in respect of twenty-nine States. Ukraine signed the Convention on 22 March 2002, but has not yet ratified it. The relevant provisions of the Convention read as follows:

Article 4 – Professional standards

"Any intervention in the health field, including research, must be carried out in accordance with relevant professional obligations and standards."

Article 5 – General rule

"An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.

This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks.

The person concerned may freely withdraw consent at any time."

Article 6 – Protection of persons not able to consent

"[A]n intervention may only be carried out on a person who does not have the capacity to consent, for his or her direct benefit.

...

Where, according to law, an adult does not have the capacity to consent to an intervention because of a mental disability, a disease or for similar reasons, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law. ..."

Article 8 – Emergency situation

"When, because of an emergency situation, the appropriate consent cannot be obtained, any medically necessary intervention may be carried out immediately for the benefit of the health of the individual concerned."

Article 10 – Private life and right to information

"...

2. Everyone is entitled to know any information collected about his or her health. ...

3. In exceptional cases, restrictions may be placed by law on the exercise of the rights contained in paragraph 2 in the interests of the patient."

33. The relevant parts of the Explanatory Report to the Oviedo Convention are as follows:

Article 4 – Professional standards

"...

30. All interventions must be performed in accordance with the law in general, as supplemented and developed by professional rules. In some countries these rules take the form of professional codes of ethics (drawn up by the State or by the profession), in others codes of medical conduct, health legislation, medical ethics or any other means of guaranteeing the rights and interests of the patient ... The Article covers both written and unwritten rules. When there is a contradiction between different rules, the law provides the means of resolving the conflict.

31. The content of professional standards, obligations and rules of conduct is not identical in all countries. The same medical duties may vary slightly from one society to another. However, the fundamental principles of the practice of medicine apply in all countries. Doctors and, in general, all professionals who participate in a medical act are subject to legal and ethical imperatives. They must act with care and competence, and pay careful attention to the needs of each patient. ..."

Article 5 – General rule

"34. This article deals with consent and affirms at the international level an already well-established rule, that is that no one may in principle be forced to undergo an intervention without his or her consent. ...

35. The patient's consent is considered to be free and informed if it is given on the basis of objective information from the responsible health care professional as to the nature and the potential consequences of the planned intervention or of its alternatives, in the absence of any pressure from anyone. Article 5, paragraph 2, mentions the most important aspects of the information which should precede the intervention but it is not an exhaustive list: informed consent may imply, according to the circumstances, additional elements. ... This information must include the purpose, nature and consequences of the intervention and the risks involved. Information on the risks involved in the intervention or in alternative courses of action must cover not only the risks inherent in the type of intervention contemplated, but also any risks related to the individual characteristics of each patient, such as age or the existence of other pathologies. ..."

Article 10 – Private life and right to information

"... 65. The first sentence of the second paragraph lays down that individuals are entitled to know any information collected about their health, if they wish to know. This right is of fundamental importance in itself but also conditions the effective exercise of other rights such as the right of consent set forth in Article 5.

66. A person's 'right to know' encompasses all information collected about his or her health, whether it be a diagnosis, prognosis or any other relevant fact.

...

69. ... the last paragraph of Article 10 sets out that in exceptional cases domestic law may place restrictions on the right to know or not to know in the interests of the patient's health (for example a prognosis of death which might, in certain cases if immediately passed on to the patient, seriously worsen his or her condition). In some cases, the doctor's duty to provide information which is also covered under Article 4 conflicts with the interests of the patient's health. It is for domestic law, taking account of the social and cultural background, to solve this conflict. Where appropriate under judicial control, domestic law may justify the doctor sometimes withholding part of the information or, at all events, disclosing it with circumspection ('therapeutic necessity')."

B. Universal Declaration on Bioethics and Human Rights

34. The Universal Declaration on Bioethics and Human Rights was adopted by UNESCO's General Conference on 19 October 2005. Its relevant provisions read as follows:

Article 6. Consent

"1. Any preventive, diagnostic and therapeutic medical intervention is only to be carried out with the prior, free and informed consent of the person concerned, based on adequate information. The consent should, where appropriate, be express and may be withdrawn by the person concerned at any time and for any reason without disadvantage or prejudice."

Article 19. Ethics committees

"Independent, multidisciplinary and pluralist ethics committees should be established, promoted and supported at the appropriate level in order to:

...

(b) provide advice on ethical problems in clinical settings;

(c) assess scientific and technological developments, formulate recommendations and contribute to the preparation of guidelines on issues within the scope of this Declaration;

(d) foster debate, education and public awareness of, and engagement in, bioethics."

Article 22. Role of States

"1. States should take all appropriate measures, whether of a legislative, administrative or other character, to give effect to the principles set out in this Declaration in accordance with international human rights law. Such measures should be supported by action in the spheres of education, training and public information.

2. States should encourage the establishment of independent, multidisciplinary and pluralist ethics committees, as set out in Article 19."

C. World Medical Association (WMA) Declaration of Lisbon on the Rights of the Patient

35. The World Medical Association is an international confederation of professional medical associations and individual physicians formally established in 1947. It currently includes 116 national medical associations, including the Ukrainian Medical Association, and more than ten million physicians.

36. The relevant declaration was adopted by the 34th World Medical Assembly in Lisbon, Portugal in 1981. It was revised and edited on several occasions and reaffirmed by the 200th World Medical Association's Council Session in Oslo, Norway in 2015. The relevant provisions of the declaration read as follows:

Preamble

"The relationship between physicians, their patients and broader society has undergone significant changes in recent times. While a physician should always act according to his/her conscience, and always in the best interests of the patient, equal effort must be made to guarantee patient autonomy and justice. ..."

3. Right to self-determination

"...

b. A mentally competent adult patient has the right to give or withhold consent to any diagnostic procedure or therapy. The patient has the right to the information necessary to make his/her

decisions. The patient should understand clearly what is the purpose of any test or treatment, what the results would imply, and what would be the implications of withholding consent. ..."

4. The unconscious patient

"a. If the patient is unconscious or otherwise unable to express his/her will, informed consent must be obtained whenever possible, from a legally entitled representative. ..."

7. Right to information

"a. The patient has the right to receive information about himself/herself recorded in any of his/her medical records, and to be fully informed about his/her health status including the medical facts about his/her condition. ...

b. Exceptionally, information may be withheld from the patient when there is good reason to believe that this information would create a serious hazard to his/her life or health. ...

e. The patient has the right to choose who, if anyone, should be informed on his/her behalf."

THE LAW

I. PRELIMINARY REMARK

37. The Government have not raised any objections concerning *locus standi* of Ms XXX, the applicant's daughter, to pursue the present proceedings after the applicant's death, which occurred while the case was pending before the Court.

38. The Court recognises that Ms XXX may have a sufficient interest in continuing the proceedings and can act in her mother's stead in the present case (see, among other similar examples, *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, §§ 72-73, 17 October 2019). For practical reasons, Ms XXX will continue to be called "the applicant" in the ensuing text (see *Dalban v. Romania* [GC], no. 28114/95, § 2, ECHR 1999-VI, and *Radzevil v. Ukraine*, no. 36600/09, § 47, 10 December 2019).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

39. The applicant complained that the respondent State had failed to protect her from removal of a kidney without her informed consent and from the concealment of the relevant information by her physicians in the post-operative period. She also complained that she had received no adequate response at the domestic level in connection to her relevant allegations.

A. Scope and legal classification of the applicant's complaints

40. Insofar as the applicant may be understood as claiming that the removal of the kidney was not medically justified, the Court notes that according to the results of the domestic official investigations, the applicant's kidney was removed in an emergency setting in order to save her life (see paragraphs 18 and 24 above). The Court finds no call to review the substance of these conclusions made in domestic inquiry, which were not challenged by the applicant at the national level (see paragraph 25 above). The crux of the complaints to be examined by the Court concerns, therefore, only the lack of the information communicated by healthcare professionals in relation to the disputed medical intervention, before, during and after it took place.

41. The Court observes that the applicant relied on Articles 3 and 13 of the Convention. While she, understandably, suffered anguish and distress on account of the manner in which she had learned that her kidney was missing, it is not apparent from the available material that her doctors

intended to humiliate or debase her by omitting to provide her with relevant information either before or after the intervention. It has also been established by a board of experts that the delay in communicating the information in issue did not, in itself, result in adverse consequences for her physical health (see paragraph 22 above; compare and contrast, *R.R. v. Poland*, no. 27617/04, §§ 153 and 159-62, ECHR 2011).

42. In the light of its case-law, the Court considers that the present complaints fall to be examined under Article 8 of the Convention (compare *Tysiąc v. Poland*, no. 5410/03, § 66, ECHR 2007-I; *Vasileva v. Bulgaria*, no. 23796/10, § 57-58, 17 March 2016; and *Y.P. v. Russia*, no. 43399/13, §§ 34 and 37-38, 20 September 2022).

43. The provision in question reads as follows:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

B. Alleged breach of Article 8 of the Convention on account of the State's presumed failure to protect the applicant's right to informed consent

1. Admissibility

44. The Government submitted that, in their view, the possibility of lodging a civil complaint constituted a sufficient remedy in the present case. However, even assuming that the State was obliged to conduct an official investigation into the applicant's grievances, such an investigation had in fact been conducted and the applicant had not exhausted her opportunities to challenge the findings of the prosecutor's office. She had also not availed herself of an opportunity to seek redress by notifying the LRC Hospital's chief doctor of what she assumed to be her physicians' malpractice.

45. The applicant disagreed. In her view, she had duly discharged her obligation to exhaust domestic remedies. In particular, in addition to lodging a civil complaint, she had also notified all possible regulatory authorities, as well as the media, of her situation. The LRC Hospital's chief doctor had demonstrated support to the applicant's doctors in his responses to the official inquiries and a very lax attitude to the protection of her rights as a patient. It was only in April 2001, a year after the applicant had been discharged from the hospital and only after extensive media coverage of her story, that he had decided to take some remedial action and to provide the applicant with a corrected copy of the hospital discharge certificate, duly mentioning that her healthy kidney had been removed.

46. The Court notes that the applicant lodged the present complaint with it on 15 March 2007, within six months after having exhausted the civil remedies available to her in the domestic legal order (see paragraph 30 above). In view of that, the Court considers that neither the applicant's omission to appeal against the decisions of the prosecutor's office to close the official inquiries (see paragraph 25 above) nor her omission – as alleged by the Government and contested by the

applicant – to notify the chief doctor of her physicians' alleged malpractice provide grounds for dismissing this complaint on account of non-exhaustion of domestic remedies (see, among other authorities, *Mehmet Ulusoy and Others v. Turkey*, no. 54969/09, § 91, 25 June 2019, and the cases cited therein; *Belevitskiy v. Russia*, no. 72967/01, § 59, 1 March 2007; and *Polyakh and Others v. Ukraine*, nos. 58812/15 and 4 others, § 135, 17 October 2019). The Court therefore dismisses this objection.

47. The Court further finds that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

48. The applicant argued that the respondent State had failed to protect her from having her healthy kidney removed without her informed consent. She noted that she had consented to an operation which, according to her care providers, was necessary to halt suspected internal bleeding from the kidney area. The risk that her healthy kidney might also have to be removed in the context of that operation had never been discussed with her. She could not possibly foresee that her consent would be interpreted as permitting an intervention of that scale and nature. She had thus been deprived of her personal autonomy in making a health-related decision of paramount importance. In addition, her relatives, who had been present in the hospital before and during the disputed medical intervention, could have been consulted on the matter even when she was unconscious.

49. The applicant further submitted that the public institutions with which her doctors were affiliated – the LSM University and the LRC Hospital – had not put in place any supervisory system capable of detecting and checking the deficient communication practices of those doctors. The domestic administrative and judicial authorities, for their part, had failed to properly assess the applicant's arguments concerning the lack of any communication from her doctors about the nephrectomy prior to the operation or the failure to consult her relatives on the matter. The applicant contended, therefore, that her grievances were indicative of a structural problem demonstrating that the State as a whole had not put in place an effective framework for ensuring her right to informed consent as a patient at a public hospital and addressing effectively her complaints about that right having been breached.

50. The Government, who contended that this complaint was manifestly ill-founded, argued, firstly, that the patients' rights to informed consent and to the full disclosure of medical information were secured in sections 39 and 43 of the FHPL. These provisions served as proof that the State had put in place an appropriate legislative framework. Secondly, the State had set up an effective law-enforcement and judicial system to ensure proper implementation of those provisions in practice. Thanks to that system, it had been established that the need to perform an urgent nephrectomy in the applicant's case had become apparent only in the course of the operation aimed at halting internal bleeding, to which she had consented, and which had been indispensable for saving her life. In that context it had not been realistically possible to seek the applicant's consent to the nephrectomy.

(b) The Court's assessment

(i) General principles

51. The Court reaffirms that although the right to health is not as such among the rights guaranteed under the Convention and the Protocols thereto (see *Jurica v. Croatia*, no. 30376/13, § 84, 2 May 2017, and the cases cited therein), the High Contracting Parties have, parallel to their positive obligations under Article 2 of the Convention, a positive obligation under Article 8, firstly, to have in place regulations compelling both public and private hospitals to adopt appropriate measures for the protection of their patients' physical integrity and, secondly, to provide victims of medical negligence with access to proceedings in which they may, where appropriate, obtain compensation for damage (see *Y.P. v. Russia*, cited above, § 49, and the cases cited therein). This latter procedural obligation will be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any responsibility of the doctors concerned to be established and any appropriate civil redress to be obtained. Disciplinary measures may also be envisaged (see, among other authorities, *Mehmet Ulusoy and Others*, cited above, § 91 and the cases cited therein).

52. The Court further reiterates that the patients' right to informed consent to medical interventions has occupied a prominent place in its case-law. It has been established that the States are bound to adopt the necessary regulatory measures to ensure that doctors consider the foreseeable consequences for their patients' physical integrity of a planned medical procedure, and to inform patients of these consequences beforehand, in such a way that they are able to give informed consent (see, among other authorities, *Trocellier v. France* (dec.), no. 75725/01, § 4, ECHR 2006-XIV; and, more recently, *Y.P. v. Russia*, cited above, § 50). As a corollary to this, if a foreseeable risk of this nature materialises without the patient having been duly informed in advance by doctors, the State Party concerned may potentially be liable under Article 8 for this lack of information (see, among other authorities, *Csoma v. Romania*, no. 8759/05, § 42, 15 January 2013).

53. A positive obligation of the State to put in place a regulatory framework must be understood in a sense which includes the duty to ensure the effective functioning of that regulatory framework. The regulatory duties thus encompass necessary measures to ensure implementation, including supervision and enforcement (see, *mutatis mutandis*, *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 189, 19 December 2017, and *Mehmet Ulusoy and Others*, cited above, § 83, with further references).

54. At the same time, as long as the State has taken the necessary measures for securing high professional standards among healthcare professionals and protecting both the physical and mental integrity of patients, matters such as an error in judgment on the part of a healthcare professional or poor coordination between such professionals in the context of a particular patient's treatment are not in themselves sufficient to hold a State accountable for a breach of the positive obligations under Article 8 (see, *mutatis mutandis*, *Lopes de Sousa Fernandes*, and *Mehmet Ulusoy and Others*, both cited above).

(ii) Application to the present case

55. In the present case, the Court notes that the patients' right to informed consent to medical interventions was guaranteed by Section 43 of the FHPL (see paragraph 31 above; compare *Botoyan v. Armenia*, no. 5766/17, § 104, 8 February 2022; see also the International legal instruments cited in paragraphs 32-36 above for comparison). At the same time, the Court observes that the assessment

of the adequacy of the relevant legal framework must include analysis of its functioning in practice, including the interaction between the general rule and any regulations and guidelines of lower level that exist or may be necessary in order to ensure the requisite protection.

56. In the present case, it has been established at the domestic level that the applicant's kidney had been removed in urgent circumstances, as the only available means of halting a life-threatening internal bleeding. That is, the intervention took place in a situation, which, according to Section 43 of the FHPL exceptionally authorised medical interventions without patients' consent. The Court notes in this respect that emergency medical interventions on life-saving grounds performed in absence of patients' consent are not as such incompatible with the Convention (see, in particular, *Bogumil v. Portugal*, no. 35228/03, §§ 90-91, 7 October 2008).

57. However, the particularity of the present case is that the applicant's consent to the disputed surgical intervention was sought and, indeed given, albeit without any discussion as regards a possible kidney removal to achieve the stated aim of halting the bleeding (compare also *Y.P. v Russia*, cited above, § 53). The applicant argued before the Court, as well as before the domestic courts, that her medical team had an obligation to discuss a possibility of kidney removal with her prior to the disputed operation or at least to consult her relatives on the matter as soon as the need to remove the kidney had become apparent. The Court is not in a position to assess the substance of these arguments: based on the available material it is not apparent whether the applicant's medical team should have reasonably foreseen a possibility that the applicant's kidney might need to be removed or whether there was a genuine opportunity to consult her relatives during the operation, without jeopardising the primary interest in saving her life. At the same time, in the Court's view, these questions were of significant importance in establishing the scope of her caregivers' duty to seek her informed consent (compare *Trocellier*, cited above, § 4).

58. However, neither the civil courts, nor the authorities, which carried out the official inquiries and ordered expert conclusions in that context, scrutinised the relevant matters in detail. Instead, they essentially confined their analysis to a general finding that the applicant's kidney had been removed on life-saving grounds (see paragraphs 21-22 and 27 above). It appears from the file that the difficulty in addressing the applicant's relevant and important arguments stemmed from the lack of necessary guidelines, regulations, professional standards, hospital records or other pertinent documents.

59. In this respect the Court notes, firstly, that insofar as the national regulations were concerned, it is not apparent from either the domestic judgments or the Government's observations that at the material time there existed, apart from the FHPL, any national regulatory instruments establishing any procedures to be followed for documenting patients' consent to surgical interventions, contacting their relatives in emergency settings, or detailing, in particular, the interrelation between the notion of "consent" as stipulated in Section 43 of the FHPL and the "risks" to be discussed with the patients as required by Section 39 of the same Act in the context of ensuring that the patients' "consent" be informed.

60. Secondly, as regards the record-keeping practices and procedures in the LRC Hospital, where the applicant was treated, it appears from the file that it likewise did not have in place any formalised record-keeping practices or standardised procedures for informing the patients of the foreseeable risks of planned interventions or consulting their relatives and designating contact

persons in the event of an emergency. The hospital practiced taking their oral consent only, regardless of the type and seriousness of the interventions proposed (see paragraph 17 above). This practice made it impossible to trace what information was provided to a patient when seeking consent to a particular intervention. It also appears particularly striking that Dr B.K., the chief doctor of the LRC Hospital, was personally not even aware of the FHPL's existence and referred to the Soviet-era legislation dating to 1970s in his correspondence with the prosecutor's office (see paragraph 17 above).

61. Thirdly, it is noted that Dr I.P., appointed by the hospital as the applicant's consulting physician, was a university faculty member practising in the LRC Hospital on the basis of a university-hospital partnership agreement. It appears that the two partner institutions, both public entities, omitted to issue a "joint order" required by that agreement as a pre-condition for admitting him to practice in the hospital, and did not develop any other instructions or instruments defining, in any detail, the scope of his personal responsibility when imparting information to the patients consulted by him at the hospital (see paragraphs 7 and 23 above).

62. The Court reiterates that the States generally have a broad margin of appreciation as regards laying down their healthcare policy (see *Vasileva*, cited above, § 70) and that the mere fact that the regulatory framework may be deficient in some respect is not sufficient in itself to raise an issue under Convention (see *Botoyan*, cited above, § 103). The Court further notes that the Convention itself does not establish any particular form of patient consent (see *Reyes Jimenez v. Spain*, no. 57020/18, § 36, 8 March 2022). Nevertheless, it considers that the setting up of some standard guidelines and formalised procedures, either at the national or the local institutional level, detailing key elements of the right to informed consent, guaranteed by the FHPL, such as "the risks" to be discussed with patients and the scope of the practitioners' duty to contact their relatives or designated persons was instrumental in discharging the respondent State's positive duty to set up an appropriate regulatory framework and ensure high professional standards in this area (compare, *mutatis mutandis*, *Arskaya v. Ukraine* (no. 45076/05, § 88, 5 December 2013). In the applicant's case, such guidelines and procedures would have been equally necessary for guiding her medical practitioners in their day-to-day work, for enabling the supervisory authorities to intervene promptly in the event of any omissions, and for protecting both: the applicant from malpractice and her medical team from any possibly unfounded accusations.

63. The Court also notes that the absence of specific regulatory instruments which would have elaborated on key aspects of the right to informed consent in a different context has already led to the finding of a violation of Article 2 of the Convention in the Court's judgment in the case of *Arskaya* (cited above, §§ 87-91).

64. In the present case, regard being had to the lack of any structured response by the State authorities to the applicant's allegation that the "risk" of the nephrectomy should have been discussed with her prior to the operation and, in an alternative, that her relatives should have been consulted before her kidney was removed – which appears to have been closely connected to the absence of any national or local guidelines, standards or formalised hospital records and procedures ensuring the proper implementation in practice of the general legislative provisions concerning the patients' right to informed consent – the Court considers that the respondent State

has not fulfilled its positive duty to set up an appropriate regulatory framework to protect the applicant's right to informed consent.

65. Accordingly, there has been a violation of Article 8 of the Convention in respect of protecting the applicant's right to informed consent.

C. Alleged breach of Article 8 of the Convention on account of the State's presumed failure to protect the applicant from concealment of the information by her physicians

The parties' submissions

(a) The Government

66. The Government reiterated the non-exhaustion objection on the same grounds as those mentioned in paragraph 44 above. They further argued that the present complaint was in any event inadmissible on account of the loss of victim status by the applicant.

67. They submitted in that respect that the omission to notify the applicant about the scope of the surgical operation in the immediate post-operative period had to be viewed as a "postponement" rather than "concealment" of the relevant information, as was evident from the explanations by Dr M.P. in his letter addressed to the applicant on 14 November 2000. In any event, it had been established in domestic civil proceedings that the omission in question was in breach of the applicable law. The applicant's consulting physician, Dr I.P., had been held liable for that omission and the applicant had obtained compensation in an amount which was commensurate with the gravity of his misconduct. The fact that the civil courts had dismissed the applicant's claims against the other defendants (namely the LSM University, the LRC Hospital and Dr M.P.) could not alter that conclusion, as the courts had thoroughly examined the applicant's arguments in adversarial proceedings and, acting within their margin of appreciation, had provided full reasons for attributing liability to Dr I.P. only.

(b) The applicant

68. The applicant contested the Government's view.

69. She noted that it had been a tremendous shock for her to find out about the missing kidney from an anonymous telephone call. Had it not been for that call and for her eventual complaint to the press, there was no indication that anyone from her healthcare team would have ever informed her about the missing kidney. As was evident from the letter of 14 November 2000 by Dr M.P. (Dr I.P.'s father and hierarchical superior), the decision to conceal the information concerning the nephrectomy had emanated from him and not from Dr I.P., who had been found solely liable for that decision by the domestic courts. The LSM University and the LRC Hospital had, once again, failed to act in putting in place a supervisory system capable of detecting, checking and promptly redressing the faulty conduct of their affiliated practitioners. The domestic judicial authorities, which had attributed all liability to Dr I.P., for their part had failed to assess properly the applicant's arguments concerning the omissions by those other defendants. The breach of her right to be informed about the loss of a kidney – an intervention of exceptional gravity – had therefore not been properly addressed and she had not lost her victim status in respect of this complaint.

(c) The Court's assessment

70. The Court notes that the Government's non-exhaustion arguments have already been addressed and dismissed in paragraph 46 above.

71. Insofar as the Government alleged that the applicant has lost her status as a victim in respect of the present complaint, the Court reiterates that the adequacy of domestic redress falls to be assessed in the light of all the circumstances of a case seen as a whole. An applicant's status as a victim of a breach of the Convention may depend on compensation being awarded at the domestic level on the basis of the facts about which he or she complains before the Court. It also depends on whether the domestic authorities have acknowledged, either expressly or in substance, the breach of a right protected by the Convention. Only when those two conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *R.R.*, cited above, § 97, with references cited therein).

72. In the specific context of medical negligence, an obligation to provide redress for a breach of individual rights under Article 8 can be fulfilled, for example, if the legal system in question offers interested parties a remedy before the civil courts, alone or jointly with a remedy before the criminal courts or other disciplinary bodies, in order to establish the responsibility of healthcare practitioners and, where applicable, impose an appropriate civil sanction, such as the payment of damages and the publication of a judgment (see, among other authorities, *Codarcea v. Romania*, no. 31675/04, § 102, 2 June 2009). The mere fact that proceedings concerning medical negligence have not resulted in liability being attributed to a particular defendant does not in itself mean that the respondent State has failed in establishing a proper remedy (see *Vasileva, cited above,* §§ 68 and 77-78).

73. Turning to the facts of the present case, the Court notes that the domestic courts found Dr I.P., the applicant's consulting physician, liable for a breach of his duties under the FHPL to inform either the applicant, or at least her relatives, of the fact that her kidney had been removed. The applicant was awarded compensation from Dr I.P. for the distress she had suffered. It has not been argued in the present case that the amount of that award was manifestly unreasonable or that it was not paid in due course (compare *Codarcea*, cited above, §§ 107-08).

74. Insofar as the applicant complained that - notwithstanding the above - she remained the victim of a breach of her Convention rights because her complaints against other defendants (the LSM University, the LRC Hospital, and Dr M.P.) had been dismissed, the Court reiterates that its task is not to decide on the liability of an individual defendant for a breach of domestic legal provisions, but to determine the State's responsibility for observance of its obligations under the Convention (see, as a recent authority, *Genov and Sarbinska v. Bulgaria*, no. 52358/15, § 66, 30 November 2021).

75. In the present case, it appears from the material at hand that neither the record-keeping system in the LRC Hospital, which was based, at least to some extent, on the Soviet-era regulations predating the FHPL (see paragraph 10 above), nor any other national or local regulatory instrument envisaged any formalised procedure obliging Dr I.P. to document his decision to derogate from his general disclosure duty established in Section 39 of the FHPL. Such a procedure could have helped the hospital management or other competent authorities to intervene promptly with his faulty conduct. The Court further notes that Dr I.P. appears to have withheld the disputed information from the applicant on the instructions of Dr M.P., his hierarchical superior and a senior faculty member at a State University (see paragraphs 12 and 16 above). In their solidarity declaration in support of Dr M.P., members of the Lviv Medical Association endorsed hiding from patients of information which could arouse in them fear or anguish (see paragraph 14 above) and

advocated an approach to patients' information rights that was completely opposite to that laid out in the applicable legislation. In these circumstances, the applicant could have understandably felt distressed by what appeared to her to be a failure to put in place the mechanism for implementing the legislative provisions protecting her right to information concerning her medical treatment and to ensure high professional standards among the medical practitioners.

76. Notwithstanding the above, the Court finds it of crucial importance that the domestic courts were able to establish Dr I.P.'s liability for the breach of the applicant's rights directly on the basis of the FHPL provisions. Irrespective of any possible shortcomings in the hospital's record-keeping policies, omissions in the university-hospital cooperation scheme or the influence of Dr M.P.'s authority on Dr I.P.'s conduct, it is not evident from the file that these elements had a direct causal link with what was established by the courts to be a breach of Dr I.P.'s duty under the FHPL to inform the applicant about the scope of the operation to which she had been subjected. In this context, the dismissal, in the civil proceedings, of some of the applicant's arguments and her claims against the hospital and other defendants does not disclose any appearance of arbitrariness or manifestly deficient approach (compare, *mutatis mutandis*, *Mikhno v. Ukraine*, no. 32514/12, § 146, 1 September 2016).

77. In view of the above, the Court considers that the applicant's grievance as regards the alleged failure of the State to protect her from concealment of information by her physicians was sufficiently addressed by the domestic judicial system. A breach of her right to information concerning her health as guaranteed by the domestic law was acknowledged at the national level and she obtained reasonable compensatory redress. In the light of this, the Government's objection as regards loss of victim status should be upheld.

78. The present complaint must therefore be rejected as inadmissible pursuant to Article 35 § 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

80. The applicant's daughter, Ms XXX, claimed 20,000 euros (EUR) in respect of non-pecuniary damage on the late applicant's behalf.

81. The Government argued that this claim had to be dismissed.

82. The Court, ruling on an equitable basis, awards Mrs XXX, on the applicant's behalf, EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

83. The applicant's daughter also claimed EUR 2,000 in legal fees for the applicant's representation in the present proceedings. She provided no documents in support of this claim.

84. The Government argued that this claim should be dismissed as wholly unsubstantiated.

85. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and

are reasonable as to quantum. In the present case, regard being had to the absence of any documents, the Court is unable to make any award.

C. Default interest

86. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that the late applicant's daughter, Ms XXX, has standing to continue the present proceedings in her stead;
2. *Declares* the complaint concerning the State's presumed failure to protect the applicant's right to informed consent to a surgical intervention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds*

(a) that the respondent State is to pay Mrs XXX, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,500 (four thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the claim for just satisfaction.

Done in English, and notified in writing on 13 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar
Georges Ravarani President