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End of life and the European Convention on Human Rights

Judgments of the Court

Pretty v. the United Kingdom

29 April 2002 (Chamber judgment)

The applicant was dying of motor neurone disease, a degenerative disease affecting the muscles for which there is no cure. Given that the final stages of the disease are distressing and undignified, she wished to be able to control how and when she died. Because of her disease, the applicant could not commit suicide alone and wanted her husband to help her. But, although it was not a crime in English law to commit suicide, assisting a suicide was. As the authorities refused her request, the applicant complained that her husband had not been guaranteed freedom from prosecution if he helped her die.

The Court held that there had been **no violation of Article 2** (right to life) of the Convention, finding that the right to life could not, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die.

The Court also held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. Even if it could not but be sympathetic to the applicant's apprehension that without the possibility of ending her life she faced the prospect of a distressing death, nonetheless, the positive obligation on the part of the State which had been invoked would require that the State sanction actions intended to terminate life, an obligation that could not be derived from Article 3.

The Court lastly held that there had been **no violation of Articles 8** (right to respect for private life), **9** (freedom of conscience) **and 14** (prohibition of discrimination) of the Convention.

Haas v. Switzerland

20 January 2011 (Chamber judgment)

This case raised the issue of whether, by virtue of the right to respect for private life, the State should have ensured that a sick person wishing to commit suicide could obtain a lethal substance (sodium pentobarbital) without a prescription, by way of derogation from the law, so as to be able to end his/her life without pain and with no risk of failure. The applicant, who had been suffering from a serious bipolar affective disorder for around twenty years and considered that, as a result, he could no longer live in a dignified manner, argued that his right to end his life in a safe and dignified manner had been violated in Switzerland as a result of the conditions that had to be met – and which he had not met – in order to be able to obtain the substance in question.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention, finding that, even assuming that States had a positive obligation to take measures to facilitate suicide in dignity, the Swiss authorities had not breached that obligation in the applicant's case.

The Court noted in particular that the member States of the Council of Europe were far from having reached a consensus as regards the right of an individual to choose how and when to end his life. Although assistance in suicide had been decriminalised (at least

partly) in certain member States, the vast majority of them appeared to attach more weight to the protection of the individual's life than to his right to end it. The Court concluded that States had a wide margin of appreciation in such matters.

Although the Court further accepted that the applicant might have wished to commit suicide in a safe and dignified manner and without unnecessary pain, it nevertheless considered that the requirement under Swiss law for a medical prescription in order to obtain sodium pentobarbital had a legitimate aim, namely to protect people from taking hasty decisions and to prevent abuse, the risks of which should not be underestimated in a system that facilitated access to assisted suicide. The Court considered that the requirement of a prescription, issued on the basis of a thorough psychiatric assessment, was a means of satisfying the obligation on States to put in place a procedure capable of ensuring that a person's decision to end his/her life did in fact reflect his/her free will. As lastly regards the question whether the applicant had had effective access to a medical assessment that might have allowed him to obtain sodium pentobarbital (if not, his right to choose when and how he died would have been theoretical and illusory), the Court was not persuaded that it had been impossible for him to find a specialist willing to assist him as he had claimed.

Koch v. Germany

19 July 2012 (Chamber judgment)

In 2004 the applicant's wife, who was suffering from complete quadriplegia, unsuccessfully applied to the Federal Institute for Pharmaceutical and Medical Products for authorisation to obtain a lethal dose of a drug that would have enabled her to commit suicide at home in Germany. An administrative appeal by the applicant and his wife was dismissed. In February 2005 they both went to Switzerland, where the wife committed suicide with the help of an association. In April 2005 the applicant unsuccessfully brought an action to obtain a declaration that the Federal Institute's decisions had been unlawful. His appeals to the administrative court, administrative court of appeal and Federal Constitutional Court were declared inadmissible. The applicant complained in particular that the domestic courts' refusal to examine the merits of his complaint had infringed his right to respect for private and family life.

Having regard, in particular, to the exceptionally close relationship between the applicant and his wife, and to his immediate involvement in the fulfilment of her wish to end her days, the Court considered that he could claim to have been directly affected by the refusal to grant her authorisation to acquire a lethal dose of the medication. It held that, in the present case, there had been a **violation of** the applicant's procedural rights under **Article 8** (right to respect for private and family life) of the Convention, in respect of the German courts' refusal to examine the merits of his complaint. As further regards the substance of the applicant's complaint, the Court considered that it was primarily up to the German courts to examine its merits, in particular in view of the fact that there was no consensus among the Member States of the Council of Europe as to the question of whether or not to allow any form of assisted suicide.

Gross v. Switzerland

30 September 2014 (Grand Chamber judgment)

The case concerned the complaint of an elderly woman – who had wished to end her life but had not been suffering from a clinical illness – that she had been unable to obtain the Swiss authorities' permission to be provided with a lethal dose of a drug in order to commit suicide. The applicant complained that by denying her the right to decide by what means and at what point her life would end the Swiss authorities had breached Article 8 (right to respect for private and family life) of the Convention.

In its [Chamber judgment](#) in the case on 14 May 2013, the Court held, by a majority, that there had been a violation of Article 8 (right to respect for private life) of the Convention. It found in particular that Swiss law was not clear enough as to when assisted suicide was permitted.

The case was subsequently [referred to the Grand Chamber](#) at the request of the Swiss Government.

In January 2014 the Swiss Government informed the Court that it had learned that the applicant had died in November 2011.

In its Grand Chamber judgment of 30 September 2014 the Court has, by a majority, declared the application inadmissible. It came to the conclusion that the applicant had intended to mislead the Court on a matter concerning the very core of her complaint. In particular, she had taken special precautions to prevent information about her death from being disclosed to her counsel, and thus to the Court, in order to prevent the latter from discontinuing the proceedings in her case. The Court therefore found that her conduct had constituted an abuse of the right of individual application (Article 35 §§ 3 (a) and 4 of the Convention). As a result of this judgment, the findings of the Chamber judgment of 14 May 2013, which had not become final, are no longer legally valid.

Lambert and Others v. France

5 June 2015 (Grand Chamber)

The applicants are the parents, a half-brother and a sister of Vincent Lambert who sustained a head injury in a road-traffic accident in 2008 as a result of which he is tetraplegic. They complained in particular about the judgment delivered on 24 June 2014 by the French *Conseil d'État* which, relying on, among other things, a medical report drawn up by a panel of three doctors, declared lawful the decision taken on 11 January 2014, by the doctor treating Vincent Lambert, to discontinue his artificial nutrition and hydration. The applicants submitted in particular that withdrawing his artificial hydration and nutrition would be contrary to the State's obligations under Article 2 (right to life) of the European Convention on Human Rights.

The Court held that there would be **no violation of Article 2 (right to life)** of the European Convention on Human Rights in the event of implementation of the *Conseil d'État* judgment of 24 June 2014.

It observed in particular that there was no consensus among the Council of Europe member States in favour of permitting the withdrawal of life-sustaining treatment. In that sphere, which concerned the end of life, States must be afforded a margin of appreciation. The Court considered that the provisions of the Act of 22 April 2005, as interpreted by the *Conseil d'Etat*, constituted a legal framework which was sufficiently clear to regulate with precision the decisions taken by doctors in situations such as that in the present case.

The Court was further keenly aware of the importance of the issues raised by the present case, which concerned extremely complex medical, legal and ethical matters. In the circumstances of the case, the Court reiterated that it was primarily for the domestic authorities to verify whether the decision to withdraw treatment was compatible with the domestic legislation and the Convention, and to establish the patient's wishes in accordance with national law.

The Court's role consisted in examining the State's compliance with its positive obligations flowing from Article 2 of the Convention.

The Court found the legislative framework laid down by domestic law, as interpreted by the *Conseil d'État*, and the decision-making process, which had been conducted in meticulous fashion, to be compatible with the requirements of Article 2.

The Court reached the conclusion that the present case had been the subject of an in-depth examination in the course of which all points of view could be expressed and that all aspects had been carefully considered, in the light of both a detailed expert medical report and general observations from the highest-ranking medical and ethical bodies.

Decisions of the Court on the admissibility

Sanles Sanles v. Spain

26 October 2000 (inadmissibility decision)

The applicant was the heir legally appointed by her brother-in-law – who had been tetraplegic following an accident in 1968 and committed suicide in January 1998 with the help of a third party while his action to have the right to a dignified death recognised

was pending – to continue the proceedings which he had instituted while he was alive. She requested in particular recognition of the right to a dignified life or a dignified death, or to non-interference with her brother-in-law's wish to end his life.

The Court declared **inadmissible** (incompatible *ratione personae*) the applicant's complaints under Articles 2 (right to life), 3 (prohibition of inhuman and degrading treatment), 5 (right to liberty and security), 6 (right to a fair trial), 8 (right to respect for private life), 9 (freedom of conscience) and 14 (prohibition of discrimination) of the Convention. It held that, having not been directly affected by the alleged violations of the Convention, the applicant could not therefore claim to have been a victim of them¹.

Ada Rossi and Others v. Italy

16 December 2008 (inadmissibility decision)

The father and guardian of a young woman who had been in a vegetative state for a number of years as a result of a road-traffic accident began court proceedings seeking authorisation to discontinue his daughter's artificial nutrition and hydration, basing his arguments on her personality and the ideas concerning life and dignity which she had allegedly expressed. In an order of 16 October 2007 remitting the case, the Italian Court of Cassation stated that the judicial authority could authorise the discontinuation of nutrition if the person concerned was in a persistent vegetative state and if there was evidence that, had he/she been in possession of all his/her faculties, he/she would have opposed medical treatment. The Court of Appeal granted the requested authorisation on the basis of those two criteria. Before the European Court, the applicants (people with severe disabilities and associations defending the interests of such people) complained of the adverse effects that execution of the Court of Appeal's decision was liable to have on them.

The Court reiterated that, in principle, it did not suffice for an applicant to claim that the mere existence of a law violated his rights under the Convention; it was necessary that the law should have been applied to his detriment. Furthermore, the exercise of the right of individual petition could not be used to prevent a potential violation of the Convention: only in highly exceptional circumstances could an applicant nevertheless claim to be a victim of a violation of the Convention owing to the risk of a future violation. In the present case, the Court declared the applicants' complaints **inadmissible** (incompatible *ratione personae*). As regards the individual applicants, it held that they could not claim to be victims of a failure by the Italian State to protect their rights under Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the Convention. As to the applicant legal entities, they were not directly affected by the Court of Appeal's decision, which was not actually capable of having any impact on their activities and did not prevent them from pursuing their aims.

Nicklinson and Lamb v. the United Kingdom

23 June 2015 (inadmissibility decision)

This case concerned the ban under UK law on assisted suicide and voluntary euthanasia². The first applicant, the wife of Tony Nicklinson (now deceased) who was suffering from locked-in syndrome and wished to end his life, complained that the domestic courts had failed to determine the compatibility of the law in the UK on assisted suicide with her and her husband's right to respect for private and family life. The second applicant, who was paralysed and also wished to end his life, brought a complaint about the failure to provide him with the opportunity to obtain court permission to allow a volunteer to administer lethal drugs to him with his consent.

¹. The European Commission of Human Rights (which, together with the European Court of Human Rights and the Committee of Ministers of the Council of Europe, supervised Contracting States' compliance with their obligations under the European Convention on Human Rights, and ceased to exist when the Court became permanent on 1st November 1998) had previously declared inadmissible an application brought by the applicant's brother-in-law himself (see the **Sampedro Camean v. Spain** decision of the Commission of 17 May 1995).

². Assisted suicide is prohibited by section 2(1) of the Suicide Act 1961 and voluntary euthanasia is considered to be murder under UK law.

The Court declared both applications **inadmissible**. As regards the first one, it held that it was manifestly ill-founded, finding that Article 8 (right to respect for private and family life) of the Convention did not impose procedural obligations which required the domestic courts to examine the merits of a challenge brought in respect of primary legislation as in the present case. In any event, the Court was of the view that the majority of the Supreme Court had examined the substance of the applicant's complaint by concluding that she had failed to show that there had been any relevant developments since the judgment in *Pretty v. the United Kingdom* (see above, page 1). As to the second application, the Court observed that, before the Supreme Court, the applicant had only pursued his complaint about the ban on assisted suicide and not his argument that there should be a judicial procedure to authorise voluntary euthanasia in certain circumstances. Recalling that those who wish to complain to the European Court of Human Rights against a State first have to use remedies provided for by the national legal system, the Court dismissed the application for failure to exhaust domestic remedies.

Gard and Others v. the United Kingdom

27 June 2017 (inadmissibility decision)

This case concerned Charlie Gard, a baby suffering from a rare and fatal genetic disease. In February 2017, the treating hospital sought a declaration from the domestic courts as to whether it would be lawful to withdraw artificial ventilation and provide Charlie with palliative care. Charlie's parents also asked the courts to consider whether it would be in the best interests of their son to undergo experimental treatment in the U.S.A. The domestic courts concluded that it would be lawful for the hospital to withdraw life sustaining treatment because it was likely that Charlie would suffer significant harm if his present suffering was prolonged without any realistic prospect of improvement, and the experimental therapy would be of no effective benefit. In the proceedings before the European Court, Charlie's parents argued – on their own behalf and that of their son – under Article 2 (right to life) of the Convention that the hospital has blocked access to life sustaining treatment (in the U.S.A.) for Charlie and under Article 5 (right to liberty and security) that, as a result, he is unlawfully deprived of his liberty. They further alleged under Articles 6 (right to a fair trial) and 8 (right to respect for private and family life) that the domestic court decisions amounted to an unfair and disproportionate interference in their parental rights.

The Court has by a majority endorsed in substance the approach by the domestic courts and thus declared the application **inadmissible**. In particular, the Court bore in mind the considerable room for manoeuvre ("wide margin of appreciation") left to the authorities in the sphere concerning access to experimental medication for the terminally ill and in cases raising sensitive moral and ethical issues, reiterating that it was not for the Court to substitute itself for the competent domestic authorities. From this perspective, the Court gave weight to the fact that a domestic legal framework – compatible with the Convention – was available governing both access to experimental medication as well as withdrawal of life sustaining treatment. Furthermore, the domestic court decisions had been meticulous, thorough and reviewed at three levels of jurisdiction with clear and extensive reasoning giving relevant and sufficient support for their conclusions; the domestic courts had direct contact with all those concerned (notably, they had heard from all the medical experts involved in the treatment as well as experts instructed by the applicants, from Charlie's parents themselves and from an independent professional appointed as the child's guardian, had received expert reports from other doctors of international standing in the field and had visited the hospital); it was appropriate for the hospital to approach the courts in the UK in the event of doubts as to the best decision to take; and, lastly, the domestic courts had concluded, on the basis of extensive, high-quality expert evidence, that it was most likely Charlie was being exposed to continued pain, suffering and distress and that undergoing experimental treatment with no prospects of success would offer no benefit, and continue to cause him significant harm.

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