

## DOES THE RIGHT TO LIFE INCLUDE THE RIGHT TO DIE?

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**Abstract:** *The right to life is a fundamental and absolute human right, which, through its importance, goes beyond the sphere of personal interest, having relevance for the whole society. In a generalized context, it includes in its structure all the other rights, but also duties recognized to man. The right to life is portrayed as having two dimensions: a minimum content and a maximum content. Stricto sensu, the right to life protects the human being against harm to his or her bodily integrity by another person, and is therefore primarily a prohibition on killing another being. Lato sensu, the right to life is an expression that designates the set of rights that are attributed to living beings in general and people in particular. It is important to determine when the protection of the right to life begins, which in various laws of the European States leads to the criminalization or non-criminalization of the act of abortion and also to the determination of the content of this right, in order to determine whether it includes the right to die. Marginally, the jurisprudence of the European Court of Human Rights has ruled on this alleged right, challenging its existence, but not unanimously. What are the limits of this right if it were recognized? Is there such a right or not, and if so, can it be accepted that death is only one side of the right to life? In the following analysis we will try to identify certain questions to which we should look for an answer, in order to reach a conclusion: Does the right to life include the right to die?*

**Key words:** *right to life, jurisprudence, European Court of Human Rights, right to death, euthanasia*

### 1. Introduction

Article 2 of the European Convention of Human Rights, the right to life provides: "1. Everyone's right to life is protected by law. The death cannot be caused to someone intentionally, except in the execution of a capital sentence passed by a court when the offense is sanctioned with this penalty by law.

2. Death shall not be deemed to have been caused by breach of this article in cases where this would result from an absolute recourse forcibly necessary: (a) to secure the defence of any person against illegal violence; (b) to make a lawful arrest or prevent the

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escape of a legally detained person; (c) to repress, according to law, violent disorder or an insurrection."

## **2. The ECHR admitted the right to die in the case of a Frenchman in a coma for 7 years**

On 5 June 2015, the Grand Chamber of the European Court of Human Rights ruled in *Lambert and Others v. France* (no. 46043/14) on the euthanasia of persons with disabilities who are unable to communicate. With 12 votes in favour and 5 against, the Court ruled that Article 2 of the European Convention on Human Rights (right to life) is not violated in the event of the execution of its doctor's decision to stop the hydration and nutrition of the disabled person.

The case concerns Vincent Lambert, 38, married, who was diagnosed with quadriplegia following a motorcycle accident. Although Vincent was severely disabled with brain damage, he has not been at the end of his life. He is alive, even if he is in a state of minimal consciousness. He can breathe alone, is not kept alive by any medical device, does not suffer and does not need special treatment. His diet is not artificial, but enteral (through a food tube, at certain times of the day). However, Vincent's doctor decided to discontinue his nutrition and hydration from 13 January 2014, being challenged by Vincent's parents, as well as his brother and sister. Vincent's wife and other brothers opposed the appeal. During the trial of the appeal, the doctor's decision was suspended. The Council of State, relying in particular on an expert report from one of the doctors consulted, established by a final decision that the decision of 11 January 2014, which was to interrupt Vincent's nutrition and hydration - causing him to thus die - is legal. The Council of State considered Vincent's nutrition and hydration through the use of the food probe to be an unreasonable therapeutic ferocity.

Since the decision of the Council of State could be enforced at any time, Vincent's parents, applied to the ECHR with a request, in Vincent's name and on their own behalf.

Vincent's parents, a brother and a sister denounced the decision to stop his diet and hydration, considering them contrary to his right to life (Article 2 of the Convention), the prohibition of inhuman and degrading treatment (Article 3 of the Convention) and his right to physical integrity (Article 8 of the Convention).

In their own name, Vincent's parents, brother and sister denounced the decision to stop his nutrition and hydration, considering them contrary to their right to life (Article 2 of the Convention). They pointed to the lack of clarity and precision of Leonetti's law and challenged the collegial procedure that resulted in Vincent's doctor's decision to stop his hydration and nutrition. The Court considers that the applicants, as close relatives of Vincent, may complain of a violation of their right to life, given that 'it is certain that if [Vincent's] hydration and artificial feeding were to be stopped, his death would occur in a short time'.

The Court wishes to state that it "was not notified, in the present case, of the question of euthanasia, but of the cessation of life-sustaining treatments". In this statement, the Court denies the existence of euthanasia and interprets that hydration and nutrition are treatments that would keep Vincent artificially alive. The applicants' lawyer explained, during the hearing in the Grand Chamber, that stopping Vincent's hydration and

nutrition was in fact a disguised euthanasia and that Vincent was not artificially fed.

Basically, stopping hydration and nutrition, Vincent, who currently does not suffer physically, will be caused physical suffering.

It has been argued that this is not the first time the Court has tried to conceal the validation of anti-human rights practices, for example, in establishing a right to eugenics in *Costa and Pavan v. Italy*, stating that the case is not about parents and eugenics, but about their desire "to procreate a child unaffected by a genetic disease and to resort to medically assisted procreation techniques and preimplantation screening for this purpose".

The Court is fully aware of the importance of the issues raised by the present case, which concern particularly complex medical, legal and ethical issues. In the circumstances of the case, the Court recalls that it is primarily the responsibility of the domestic authorities to verify the conformity of the decision to permanently terminate treatment with domestic law and the Convention, as well as to establish the wishes of the patient in accordance with national law.

The role of the Court was to examine whether the state complied with its positive obligations arising from art. 2 of the Convention. In this approach, the Court considered that both the legislative framework provided for by national law, as interpreted by the Conseil d'État, and the decision-making process, conducted in this case in a meticulous manner, complied with the requirements of this article.

On the other hand, as regards the remedies available to the applicants, the Court concluded that the present case had been the subject of an in-depth examination, in which all views could be expressed and carefully analysed. All aspects, both from the perspective of a detailed medical expertise and of some general observations formulated by the highest medical and ethical authorities.

Consequently, the Court concludes that the domestic authorities have complied with their positive obligations under Art. 2 of the Convention, considering the margin of appreciation which they had in the present case.

In the partially separate opinion of the 5 ECHR judges, the following arguments can be found: "Vincent Lambert is alive and well cared for. It is also nourished - water and food are two basic elements, essential for maintaining life and closely related to human dignity. This close link has been stated countless times in many international documents.

Therefore, we ask the following question: what can justify the authorization by a state or a doctor, in this case, not for the "disconnection" of Vincent Lambert (who is not connected to any device to keep him alive artificially), but rather for stopping or interrupting the administration of food and liquids so that he is actually hungry until death?

What is the imperative reason, in the circumstances of the case, that prevents the state from intervening to protect life? The suffering felt by Vincent Lambert? Or is it because it is no longer useful or important to society and, in reality, is no longer a person, but just a "biological life"?

Let us remember another case that calls into question the right to die: Ariel Sharon, the former prime minister of Israel. He died in 2014 at the age of 85, after being in a coma for eight years. But, contrary to Vincent's situation, Ariel Sharon was pushed to stay alive despite all the circumstances.

Earlier this year, doctors said the former Israeli prime minister was living "his last days", with his critical health deteriorating further. In addition to declining the functioning of several organs, including the kidneys, Sharon also suffered from a blood infection. Ariel Sharon went into a coma in 2006, but 8 years he was maintained alive.

Ariel Sharon died at Sheba Medical Centre outside Tel Aviv. Health officials said Ariel Sharon died peacefully with his family.

In *Pretty v. England*, which was registered at the ECHR in 2002, the applicant was suffering from paralysis and neuronal dysfunction, degenerative, progressive, and incurable diseases.

Mrs. Pretty was in a state of health far too degraded to be able to take her own life, she asked the English institutions to do it.

After her claim had been denied by the English authorities, she lodged a complaint to the European Court of Human Rights, considering that her rights have been violated. Thus, she considered that not being allowed to die in a dignified manner is in fact a degrading treatment. She also claimed that assisted suicide is not limited to art. 2 of the Convention which does not have life itself as its object, but the right to choose life or not.

Thus, the arguments in support of this defence were subsumed by the idea that the right to life has a double dimension: to live and to choose whether to live or not. The indication of art. 2 of the ECHR for solving the case raised a series of ambiguities.

The court therefore had to face certain questions which had not been raised prior to the settlement of the case, being moreover a philosophical approach to multiple dimensions of existence. Thus, certain aspects were taken into account: the extent to which life and the right to live are protected by law, respectively pondering on the possibility of turning the right to life into the obligation to live.

In this regard, the issue of a possible right to die has been raised, in contrast to the laws that impose the obligation to live, by protecting the right to live irrespective of the will of the patient. Following the systematic analysis set out in the judgment, the Court rejected the claim made by the petitioner, considering that it falls exclusively under national law to delimit the manner of criminalization of assisted suicide (Corlatean, 2015).

The cases of *Nicklinson* and *Lamb v. England*, registered before the Court in 2015, returned in the spotlight the issue of voluntary euthanasia and assisted suicide (the legislation in Britain banned assisted suicide by enacting the Suicide Act of 1961, the procedure being prohibited in the second part of this law. It is also mentioned that euthanasia is criminalized in English law.)

Both requests were based on the provisions of the Convention on the Right to Privacy.

In the first case, Mr. Nicklinson was in a pseudo-coma, which determined him and his wife to seek the help of the European Court of Human Rights.

In the second case, Mr. Lamb, suffering from paralysis, asked permission for a volunteer to be allowed to administer him a lethal dose. The Court considered both applications inadmissible, on grounds of form.

### **3. The right to life does not include the right to die**

In October 2020, the Netherlands declared that it would allow euthanasia for children

between 1 and 12 years of age in the terminal stage. As the Dutch Health Minister says, the new law will prevent some children from "suffering a lot for nothing". Euthanasia has already been legal in the Netherlands for children over 12, but the consent of the patient and parents is required.

However, there are no clauses provided for children between 1 and 12 years of age in the terminal stage, the subject being intensely debated in recent months in the governing coalition.

After the government backed the initiative, the health minister said it would draft new rules for the practice. "The study shows that there is a need for an active end to life among doctors and parents of terminally ill children, who suffer greatly for no reason and will die in the near future," the Dutch minister said.

On the other hand, the current law should not be changed, de Jonge said, but doctors will no longer be prosecuted if they perform an approved euthanasia among children between 1 and 12 years old.

Euthanasia and assisted suicide have been legal in the Netherlands since 2002, and Belgium followed the example of the neighbouring country a few months later, being the first two countries in the world to legalize these practices, but carried out under strict conditions.

In 2014, Belgium became the first country in the world to introduce voluntary euthanasia among terminally ill children with parental consent. The Netherlands introduced the same rule shortly, but only for children over 12 years old.

On March 18, 2021, the Spanish deputies finally approved the legalization of euthanasia and assisted suicide in the case of people with serious, incurable or disabling diseases who want to end their suffering. Thus, Spain becomes the fourth country in the European Union to adopt such a measure.

The text provides that a person suffering from a serious, disabling or incurable disease may be helped to die if he makes a request to do so in order to avoid intolerable suffering. The request must be made in writing and repeated after 15 days. It will have to be accepted successively by two doctors and subsequently examined by a commission.

Doctors may refuse to take part in euthanasia, citing "conscientious objection". The law, which can be used by adults with legal residence in Spain, will enter into force within three months to allow the creation of regional control commissions that will examine and authorize applications.

The issue of euthanasia has long attracted the attention of public opinion in Spain, a country with one of the highest life expectancies in the world. The debate intensified especially after the death of Ramon Sampedro, who became quadriplegic at the age of 25 and who then demanded the right to euthanasia in court for 29 years.

After the statute of limitations for the crime expired, one of his friends admitted in court that she had participated in the 1998 assisted suicide of Ramon.

As mentioned before, in the EU, Belgium, Luxembourg and the Netherlands have already legalized euthanasia.

The right to life is the first important right regulated by the European Convention of Human Rights, guaranteed to "any person" by the provisions of art. 212.

Undoubtedly it is essential in the system of fundamental rights and freedoms protected by the Convention because the protection of other rights would remain without object if the right to life were not enshrined and effectively protected (Corlatean, 2019).

Judgments in ECHR cases are of a minimally invasive nature with regard to the autonomy of the Member States. From the point of view of the legislator, the victim's request does not represent a cause that would justify the inapplicability of art. 2 of the Convention.

The jurisprudence of the ECHR presents an optimal approach to a controversial subject. A decision on the legalization of euthanasia is a national issue, being closely linked to the specificity of each culture. In this sense, the obligation to legalize euthanasia is an unlikely project at this time, given the divergence of socio-religious views of Member States.

In order to solve the above mentioned issue, according to Recommendation no. 1418/1999 adopted by the Parliamentary Assembly of the Council of Europe, it is recommended to the Committee Ministers to encourage Council Member States to respect and protect the dignity of the incurable or the dying by maintaining the absolute prohibition of cutting the lives of the incurable or dying ones.

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