



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

Information Note on the Court's case-law 186

June 2015

Lambert and Others v. France [GC] - 46043/14

Judgment 5.6.2015 [GC]

Article 2

Positive obligations

Decision to discontinue nutrition and hydration allowing patient in state of total dependence to be kept alive artificially: *no violation*

Article 34

Locus standi

Absence of standing of close relatives to complain in the name and on behalf of patient in state of total dependence

Facts – The applicants are the parents, a half-brother and a sister of Vincent Lambert, who sustained head injuries in a road-traffic accident in September 2008, which left him tetraplegic and in a state of complete dependency. He receives artificial nutrition and hydration which is administered enterally. In September 2013 the doctor in charge of Vincent Lambert initiated the consultation procedure provided for by the “Leonetti” Act on patients’ rights and end-of-life issues. He consulted six doctors, one of whom had been chosen by the applicants, convened a meeting with virtually all the care team, and held two meetings with the family which were attended by Vincent Lambert’s wife, parents and eight siblings. Following those meetings, Vincent Lambert’s wife Rachel and six of his brothers and sisters argued in favour of withdrawing treatment, as did five of the six doctors consulted, while the applicants opposed such a move. The doctor also held discussions with François Lambert, Vincent Lambert’s nephew. On 11 January 2014 the doctor in charge of Vincent Lambert decided to discontinue his patient’s artificial nutrition and hydration.

The *Conseil d’État*, hearing the case on the basis of an urgent application, observed that the last assessment of the patient dated back two and a half years, and considered it necessary to have the fullest information possible on Vincent Lambert’s state of health. It therefore ordered an expert medical report which it entrusted to three recognised specialists in neuroscience. Furthermore, in view of the scale and difficulty of the issues raised by the case, it requested the National Medical Academy, the National Ethics Advisory Committee, the National Medical Council and Mr Jean Leonetti to submit general observations to it as *amici curiae*, in order to clarify in particular the concepts of unreasonable obstinacy and sustaining life artificially. The experts examined Vincent Lambert on nine occasions, conducted a series of tests and familiarised themselves with the entire medical file and with all the items in the judicial file of relevance for their report. They also met all the parties concerned. On 24 June 2014 the *Conseil d’État* held that the decision taken by Vincent Lambert’s doctor on 11 January 2014 to withdraw artificial nutrition and hydration had been lawful.

Following a request for application of Rule 39 of the Rules of Court, the Court decided to indicate that execution of the *Conseil d'État* judgment should be stayed for the duration of the proceedings before it. On 4 November 2014 a Chamber of the Court relinquished jurisdiction in favour of the Grand Chamber.

The applicants submitted in particular that the withdrawal of Vincent Lambert's artificial nutrition and hydration was in breach of the State's obligations under Article 2.

Law – (a) Admissibility

(i) Standing to act in the name and on behalf of Vincent Lambert

(a) Regarding the applicants – A review of the case-law revealed two main criteria: the risk that the direct victim would be deprived of effective protection of his or her rights, and the absence of a conflict of interests between the victim and the applicant. Regarding the first criterion, the Court did not discern any risk that Vincent Lambert would be deprived of effective protection of his rights since it was open to the applicants, as Vincent Lambert's close relatives, to invoke before the Court on their own behalf the right to life protected by Article 2. As to the second criterion, the Court noted that one of the key aspects of the domestic proceedings had consisted precisely in determining Vincent Lambert's wishes. In those circumstances it was not established that there was a convergence of interests between the applicants' assertions and what Vincent Lambert would have wished. Accordingly, the applicants did not have standing to raise the complaints under Article 2 in the name and on behalf of Vincent Lambert.

(β) Regarding Rachel Lambert (Vincent Lambert's wife) – No provision of the Convention permitted a third-party intervener to represent another person before the Court. Furthermore, according to Rule 44 § 3 (a) of the [Rules of Court](#), a third-party intervener was any person concerned "who [was] not the applicant". Accordingly, Rachel Lambert's request had to be refused.

(ii) Whether the applicants had victim status – The next-of-kin of a person whose death allegedly engaged the responsibility of the State could claim to be victims of a violation of Article 2 of the Convention. Although Vincent Lambert was still alive, there was no doubt that if artificial nutrition and hydration were withdrawn, his death would occur within a short time. Accordingly, even if the violation was a potential or future one, the applicants, in their capacity as Vincent Lambert's close relatives, were entitled to rely on Article 2.

(b) Merits – Article 2 (substantive aspect): Both the applicants and the Government made a distinction between the intentional taking of life and "therapeutic abstention", and stressed the importance of that distinction. In the context of the French legislation, which prohibited the intentional taking of life and permitted life-sustaining treatment to be withdrawn or withheld only in certain specific circumstances, the Court considered that the present case did not involve the State's negative obligations under Article 2, and decided to examine the applicants' complaints solely from the standpoint of the State's positive obligations.

In order to do this, the following factors were taken into account: the existence in domestic law and practice of a regulatory framework compatible with the requirements of Article 2; whether account had been taken of the applicant's previously expressed wishes and those of the persons close to him, as well as the opinions of other medical personnel; and the possibility to approach the courts in the event of doubts as to the best decision to take in the patient's interests. The Court also took account of the criteria laid down in the Council of Europe's [Guide on the decision-making process regarding medical treatment in end-of-life situations](#).

No consensus existed among the Council of Europe member States in favour of permitting the withdrawal of artificial life-sustaining treatment, although the majority of States appeared to allow it. While the detailed arrangements governing the withdrawal of treatment varied from one country to another, there was nevertheless consensus as to the paramount importance of the patient's wishes in the decision-making process, however those wishes were expressed. Accordingly, States should be afforded a margin of appreciation, not just as to whether or not to permit the withdrawal of artificial life-sustaining treatment and the detailed arrangements governing such withdrawal, but also as to the means of striking a balance between the protection of patients' right to life and the protection of their right to respect for their private life and their personal autonomy.

(i) *The legislative framework* – The provisions of the Leonetti Act, as interpreted by the *Conseil d'État*, constituted a legal framework which was sufficiently clear, for the purposes of Article 2 of the Convention, to regulate with precision the decisions taken by doctors in situations such as that in the present case, by defining the concepts of "treatment that could be withdrawn or limited" and "unreasonable obstinacy" and by detailing the factors to be taken into account in the decision-making process. Accordingly, the State had put in place a regulatory framework apt to ensure the protection of patients' lives.

(ii) *The decision-making process* – Although the procedure under French law was described as "collective" and included several consultation phases (with the care team, at least one other doctor, the person of trust, the family or those close to the patient), it was the doctor in charge of the patient who alone took the decision. The patient's wishes had to be taken into account and the decision itself had to be accompanied by reasons and was added to the patient's medical file.

The collective procedure in the present case had lasted from September 2013 to January 2014 and, at every stage of its implementation, had exceeded the requirements laid down by law. The doctor's decision, which ran to thirteen pages, had provided very detailed reasons and the *Conseil d'État* had held that it was not tainted by any irregularity.

French law as it currently stood provided for the family to be consulted (and not for it to participate in taking the decision), but did not make provision for mediation in the event of disagreement between family members. Likewise, it did not specify the order in which family members' views should be taken into account, unlike in some other countries. In the absence of consensus on this subject the organisation of the decision-making process, including the designation of the person who took the final decision to withdraw treatment and the detailed arrangements for the taking of the decision, fell within the State's margin of appreciation. The procedure in the present case had been lengthy and meticulous, exceeding the requirements laid down by the law, and although the applicants disagreed with the outcome, that procedure had satisfied the requirements flowing from Article 2 of the Convention

(iii) *Judicial remedies* – The *Conseil d'État* had examined the case sitting as a full court, which was highly unusual in injunction proceedings. The expert report had been prepared in great depth. In its judgment of 24 June 2014 the *Conseil d'État* had begun by examining the compatibility of the relevant provisions of the Public Health Code with Articles 2, 8, 6 and 7 of the Convention, before assessing whether the decision taken by Vincent Lambert's doctor had complied with the provisions of the Code. Its review had encompassed the lawfulness of the collective procedure and compliance with the substantive conditions laid down by law, which it considered – particularly in the light of the findings of the expert report – to have been satisfied. The *Conseil d'État* noted in particular that it was clear from the experts' findings that Vincent Lambert's clinical condition corresponded to a chronic vegetative state, that he had sustained serious and extensive damage whose severity, coupled with the period of five and a half years that

had passed since the accident, led to the conclusion that it was irreversible and that there was a “poor clinical prognosis”. In the view of the *Conseil d’État*, these findings confirmed those made by the doctor in charge. After stressing “the particular importance” which the doctor must attach to the patient’s wishes, the *Conseil d’État* also sought to ascertain what Vincent Lambert’s wishes had been. As the latter had not drawn up any advance directives or designated a person of trust, the *Conseil d’État* took into consideration the testimony of his wife, Rachel Lambert. It noted that she and her husband, who were both nurses with experience of patients in resuscitation and those with multiple disabilities, had often discussed their professional experiences and that on several such occasions Vincent Lambert had voiced the wish not to be kept alive artificially in a highly dependent state. The *Conseil d’État* found that those remarks – the tenor of which was confirmed by one of Vincent Lambert’s brothers – had been reported by Rachel Lambert in precise detail and with the corresponding dates. It also took account of the fact that several of Vincent Lambert’s other siblings had stated that these remarks were in keeping with their brother’s personality, past experience and views, and noted that the applicants had not claimed that he would have expressed remarks to the contrary. Lastly, the *Conseil d’État* observed that the consultation of the family, prescribed by law, had taken place.

It was the patient who was the principal party in the decision-making process and whose consent must remain at its centre; this was true even where the patient was unable to express his or her wishes. The Council of Europe’s Guide on the decision-making process regarding medical treatment in end-of-life situations recommended that the patient should be involved in the decision-making process by means of any previously expressed wishes, which may have been confided orally to a family member or close friend. Furthermore, in the absence of advance directives or of a “living will”, a number of countries required that efforts be made to ascertain the patient’s presumed wishes, by a variety of means (statements of the legal representative or the family, other factors testifying to the patient’s personality and beliefs, and so forth).

In those circumstances, the *Conseil d’État* had been entitled to consider that the testimony submitted to it was sufficiently precise to establish what Vincent Lambert’s wishes had been with regard to the withdrawal or continuation of his treatment.

(iv) *Final considerations* – The Court found both 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 in the present case, to be compatible with the requirements of Article 2. As to the judicial remedies that had been available to the applicants, 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 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.

Consequently, the domestic authorities had complied with their positive obligations flowing from Article 2 of the Convention, in view of the margin of appreciation left to them in the present case.

Conclusion: no violation (twelve votes to five).

(See also the Factsheet on [End of life and the ECHR](#))