

January 2011

***Haas v. Switzerland* - 31322/07**

Judgment 20.1.2011 [Section I]

Article 8

Positive obligations

Article 8-1

Respect for private life

Refusal to make medication available to assist suicide of a mental patient:
admissible

Facts – The applicant has been suffering from a serious bipolar affective disorder for about twenty years. Considering that his illness made it impossible for him to live in dignity, he asked a Swiss private-law association that offered services including assistance in suicide to help him end his life. The applicant asked several psychiatrists to prescribe him a lethal prescription drug (sodium pentobarbital), but to no avail. He then sought permission from various federal and cantonal authorities to obtain the drug from a pharmacy without a prescription through the association, again without success. The applicant appealed to the administrative courts and ultimately the Federal Court. In a judgment of November 2006 the Federal Court dismissed his appeals, finding that a distinction had to be made between the right to decide on one's own death – which was not at issue – and the right to assistance in suicide from the State or a third party, which could not be inferred from the Convention. Before the European Court, the applicant argued that his right to end his life in a safe and dignified manner had not been respected in Switzerland, on account of the conditions that had to be met in order to be able to obtain the lethal substance, namely a medical prescription issued on the basis of a thorough psychiatric assessment.

Law – Article 8: The right of an individual to decide how and when his life should end, provided that he was in a position to form his own free will in that respect and to act accordingly, was one aspect of the right to respect for private life. However, the dispute in the present case concerned another matter: whether the State had a "positive obligation" under Article 8 to ensure that the applicant could obtain, without a prescription, a substance enabling him to die without pain or risk of failure. The Court noted in that connection 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 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 shared the view of the Federal Court that the right to life obliged States to put in place a procedure capable of ensuring that a person's decision to end his life did in fact reflect his free will. The requirement of a prescription, issued on the basis of a thorough psychiatric assessment, was a means of satisfying that obligation. It remained to be determined 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). However, the Court was not persuaded that it had been impossible for him to find a specialist willing to assist him as he had claimed.

Having regard to all the above considerations and to the margin of appreciation enjoyed by the national authorities in this sphere, the Court considered 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.

Conclusion: no violation (unanimously).

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