



## KEY THEME<sup>1</sup>

### Articles 2 and 8

### End-of-life situations

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#### Introduction

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The concept of 'end-of-life' refers to situations where domestic authorities prevent or allow an individual to end his or her life through assisted suicide or voluntary euthanasia, or take the decision to withdraw life-sustaining treatment. 'End-of-life' situations mainly raise issues under Articles 2 and 8 of the Convention.

The Court has dealt with physician-assisted dying cases. This category covers assisted suicide and voluntary euthanasia when such acts are performed in a regulated and medically supported setting. In addition, the Court has examined applications related to the withdrawal of life-sustaining or life-saving interventions, such as respiratory support, artificial nutrition and artificial hydration, which ultimately lead to the affected patient's death.

#### Physician-assisted dying

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##### ***Assisted suicide:***

##### **Principles drawn from the case-law**

##### ***Victim status***

- The right to die in dignity is of an eminently personal and non-transferable nature (*Sanles v. Spain* (dec.), 2000). However, if a relative complains of a violation of his own rights under Article 8 of the Convention, it is not relevant to determine whether the right relied upon is capable of being transferred from the immediate victim to his or her legal successor: the Court rather examines the existence of close family ties and whether the applicant has previously expressed an interest in the case (*Koch v. Germany*, 2012, § 44).

##### **Article 2**

- The Court has found that Article 2 cannot be interpreted as conferring a right to die, whether at the hands of a third person or with the assistance of a public authority nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life (*Pretty v. the United Kingdom*, 2002, §§ 39-40).
- Conversely, Article 2 does not prevent national authorities from allowing or providing physician-assisted dying, subject to the condition that the latter is accompanied by

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<sup>1</sup> Prepared by the Registry. It does not bind the Court.

appropriate and sufficient safeguards to prevent abuse and thus secure respect for the right to life (*Dániel Karsai v. Hungary*, 2024, § 145).

### Article 8

- Without in any way negating the principle of the sanctity of life protected by the Convention, the Court considers that it is under Article 8 that notions of the quality of life take on significance. In an era of growing medical sophistication, combined with longer life expectancies, many people are concerned that they should not be forced to linger on in old age or in states of advanced physical or mental decrepitude which conflict with strongly held ideas of self and personal identity (*Pretty v. the United Kingdom*, 2002, § 65).
- An individual's right to decide by what means and at what point his or her life will end, provided he or she is capable of freely reaching a decision on this question and acting in consequence, is one of the aspects of the right to respect for private life within the meaning of Article 8 (*Haas v. Switzerland*, 2011, § 51; *Koch v. Germany*, 2012, § 52).
- Having access to physician-assisted dying relates to core aspects of the right to respect for private life enshrined in Article 8. It concerns respect for autonomy, physical and mental integrity and for human dignity, which is the very essence of the Convention (*Dániel Karsai v. Hungary*, 2024, § 85).
- A State's imposition of compulsory or criminal measures on assisted suicide impinges on the private life of the applicant within the meaning of Article 8 § 1, requiring justification under the second paragraph (*Pretty v. the United Kingdom*, 2002, § 62).
- Article 8 of the Convention may encompass a right to judicial review when the substantive right in question had yet to be established (*Koch v. Germany*, 2012, § 53). In order for the right to respect for private life to be properly secured at domestic level, individuals must be able to seek to rely on arguments derived from Article 8 in domestic proceedings and to have those arguments considered and, where appropriate, taken into account in the rulings of the domestic courts (*Nicklinson and Lamb v. the United Kingdom* (dec.), 2015, § 81).
- In examining a possible violation of Article 8, the Court has referred to Article 2 of the Convention, which obliges the national authorities to prevent an individual from taking his or her own life if the decision has not been taken freely and with full understanding of what is involved (*Haas v. Switzerland*, 2011, § 54, *Dániel Karsai v. Hungary*, 2024, § 141).
- When determining the breadth of the margin of appreciation that should be granted to the States with respect to physician-assisted dying, account must be taken of the fact that the choice of the means that are appropriate in order to protect the right to life, and other relevant values affected by the sensitive issue in question, will need to be made in full appreciation of the local conditions and institutions in a given society (*Dániel Karsai v. Hungary*, 2024, § 141).
- The Court has noted a certain trend emerging towards the decriminalisation of medically assisted suicide, especially with regard to patients who are suffering from incurable conditions. Nevertheless, the majority of member States continue to prohibit and prosecute assistance in suicide. As this subject continues to be one that raises extremely sensitive moral and ethical questions, and one on which opinions in democratic countries often profoundly differ, States must be granted a considerable margin of appreciation (*ibid.*, §§ 143-144).

### Noteworthy examples

- *Sanles Sanles v. Spain* (dec.), 2000 — absence of standing of the sister-in-law, of a tetraplegic man requesting medical assistance to end his life, to act on her brother-in-law's behalf.
- *Pretty v. the United Kingdom*, 2002 — blanket ban on assisted suicide not disproportionate, justified by the aim of safeguarding life and the need to protect vulnerable people from clear risks of abuse.
- *Haas v. Switzerland*, 2011 — requirement of a full psychiatric assessment to obtain a medical prescription for a lethal drug justified by the legitimate aims of protecting the public from hasty decisions and in particular patients lacking discernment.
- *Koch v. Germany*, 2012 — applicant directly affected by the refusal to grant his late wife authorisation to acquire a lethal dose of sodium pentobarbital.
- *Dániel Karsai v. Hungary*, 2024 — margin of appreciation not overstepped by punishing, under the criminal law, the act of providing assistance to suicide to a terminally-ill patient suffering from an incurable progressive neurodegenerative disease.

### Assisted suicide under other Articles of the Convention

- *Lings v. Denmark*, 2022 — under Article 10, justified and proportionate conviction and suspended prison sentence imposed on pro-euthanasia physician for assistance and advice to specific persons on how to commit suicide.
- *Pretty v. the United Kingdom*, 2002 — under Article 14, objective and reasonable justification for not distinguishing between those who are and those who are not physically capable of committing suicide when criminalising assistance to suicide.
- *Dániel Karsai v. Hungary*, 2024 — under Article 14, objective and reasonable justification for permitting patients who are dependent on life-sustaining treatment to refuse or request discontinuation of medical treatment while maintaining an absolute ban on assisted suicide.

### Euthanasia:

#### Principles drawn from the case-law

#### Victim status

- If the alleged victim of a violation of Article 2 has died before the introduction of the application, it may be possible for the persons with requisite legal interest as next-of-kin to introduce an application raising complaints related to the death. Thus, close family members, including children, of a person whose death is alleged to engage the responsibility of the State can themselves claim to be indirect victims of the alleged violation of Article 2 in the case of an act of euthanasia (*Mortier v. Belgium*, 2022, §§ 112-113).

#### Article 2

- When examining the compatibility with Article 2 of an already performed act of euthanasia, the Court takes account of the right to respect for private life and the notion of autonomy under Article 8 (*Mortier v. Belgium*, 2022, § 134).
- While no right to die can be derived from Article 2, the right to life enshrined in that provision cannot be interpreted as *per se* prohibiting the conditional decriminalisation of euthanasia, which has to be accompanied by appropriate and adequate safeguards to prevent abuse and thus ensure respect for the right to life (*ibid.*, §§ 138-139).

- The Court has emphasised that, in view of the complexity of this area and the lack of a European consensus, States are afforded a margin of appreciation, which is not unlimited (*ibid.*, §§ 142-143).
- In examining whether the State complied with its Article 2 obligations, the Court considers the following factors (*ibid.*, § 141):
  - (i) whether there is, in domestic law and practice, a legislative framework for pre-euthanasia procedures which must ensure that an individual's decision to end his or her life has been taken freely and with full understanding of what is involved;
  - (ii) whether the legislative framework was complied with in the present case;
  - (iii) whether the post-euthanasia review afforded all the safeguards required by Article 2 of the Convention.

### Article 8

- The notion of personal autonomy is an important principle underlying the interpretation of Article 8 guarantees, protecting the personal sphere of each individual. In particular, an individual's right to decide by what means and at what point his or her life will end, provided he or she is capable of freely reaching a decision on this question and acting in consequence, is one of the aspects of this protection (*Mortier v. Belgium*, 2022, § 124).
- Where the Court is called upon to rule on a conflict between various competing interests, it has to weigh up the interests at stake (*ibid.*, § 204). In so doing, the Court gives importance to the patient's wish when it comes to discussing the request for euthanasia with his or her family members and friends (*ibid.*, § 205). It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general (*ibid.*, § 207).

### Noteworthy examples

- *Mortier v. Belgium*, 2022 — death by euthanasia of the applicant's mother, who had suffered from depression for about 40 years, as authorised by the domestic legal framework; lack of independence of the post-euthanasia review mechanism and excessive length of criminal investigation; doctors' failure to involve the son in the procedure leading to the mother's death, in the absence of her wish to do so, in accordance with law.

### Euthanasia under other Articles of the Convention

- *Gawlik v. Liechtenstein*, 2021 — under Article 10, interference considered to be proportionate when a doctor was dismissed for having lodged in good faith an unfounded criminal complaint accusing a colleague of active euthanasia, without appropriate and possible verification.

## Withdrawal of life-sustaining treatment

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### *Principles drawn from the case-law:*

#### *Victim status*

- Guardians of people in a vegetative state and associations assisting them, with no connection to an individual who obtained a court decision authorising him to disconnect his daughter's life support, may not claim to be either direct or indirect victims of a violation of the Convention. The impugned law should have been applied to the applicant's detriment. The exercise of the right of individual petition cannot be used to prevent a potential violation

of the Convention: it is only in highly exceptional circumstances that an applicant may nevertheless claim to be a victim of a violation of the Convention owing to the risk of a future violation (*Ada Rossi and Others v. Italy* (dec.), 2008).

- A third party may, in exceptional circumstances, act in the name and on behalf of a vulnerable person, if there is a risk that the direct victim would be deprived of effective protection of his or her rights, and if there is no conflict of interests between the victim and the applicant (*Lambert and Others v. France* [GC], 2015, § 102).
- The next-of-kin of a person whose death allegedly engaged the responsibility of the State could, as close relatives, claim to be victims of a violation of Article 2, even if the violation is a potential or future one (*ibid.*, § 115).

### Article 2

- The Court has observed that 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 (*Lambert and Others v. France* [GC], 2015, §§ 147-148).
- The Court has noted that, in examining whether the State has complied with its positive obligations flowing from Article 2, it is appropriate to refer to the right to respect for private life and the notion of personal autonomy under Article 8. Accordingly, the following factors are to be taken into account (*ibid.*, §§ 142-143):
  - (i) the existence in domestic law and practice of a regulatory framework compatible with the requirements of Article 2 of the Convention.
  - (ii) whether account had been taken of the applicant's previously expressed wishes and those of the persons close to him, as well as to the opinions of other medical personnel.
  - (iii) 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 has applied the same principles where the applicant was a child (*Gard v. the United Kingdom* (dec.), 2017, *Afiri and Biddarri v. France* (dec.), 2020, *Parfitt v. the United Kingdom* (dec.), 2021).

### Article 8

- The decision to withdraw the life-sustaining treatment of a child constitutes an interference with the child's right to respect for his or her private life, as well as with the rights of parents under Article 8 in view of their family ties (*Gard v. the United Kingdom* (dec.), 2017, §§ 109-110).
- Where there is a conflict between a parent's desire concerning medical care for the child and the opinion of medical professionals treating the child, it is appropriate for the medical professionals involved to bring such conflicts before a court for resolution. The decisive issue is whether the fair balance that must exist between the competing interests at stake — those of the child, of the parents and of public order — has been struck, within the margin of appreciation afforded to States in such matters, taking into account, however, that the best interests of the child must be the primary consideration (*ibid.*, §§ 106-107).

**Noteworthy examples:**

- [Ada Rossi and Others v. Italy](#) (dec.), 2008 — lack of standing of associations and individuals complaining about the adverse effects of an authorisation to discontinue artificial nutrition and hydration of a woman, without any direct family ties with the woman nor proving that a violation affecting them personally would likely occur.
- [Lambert and Others v. France](#) [GC], 2015 — decision to discontinue nutrition and hydration allowing a patient in state of total dependence to be kept alive artificially.
- [Gard and Others v. the United Kingdom](#) (dec.), 2017 — decision to withdraw life-sustaining treatment for an infant child suffering from a fatal genetic disease, against the parents' wishes.
- [Afiri and Biddarri v. France](#) (dec.), 2020 — decision to withdraw the life-sustaining treatment being administered to a 14-year-old girl in a vegetative state following acute cardio-respiratory failure.
- [Parfitt v. the United Kingdom](#) (dec.), 2021 — decision to withdraw life-sustaining treatment for a child suffering from a terminal medical condition, based on her “best interests”.

**Related (but different) topics**

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- Conditions of detention of terminally-ill prisoners: [Dorneanu v. Romania](#), 2017.
- Refusal of medical treatment: [Pindo Mulla v. Spain](#) [GC], 2024.
- Access to experimental treatment for terminally-ill: [Hristozov and Others v. Bulgaria](#), 2012.

**Further references**

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**Case-law guides:**

- [Guide on Article 2 - Right to life](#)
- [Guide on Article 8 - Right to respect for private and family life](#)

**Other key themes:**

- [Representation of the child before the ECHR](#)
- [The locus standi of relatives \(indirect victims\)](#)
- [The locus standi of representatives](#)

## KEY CASE-LAW REFERENCES

### ***Assisted suicide:***

- *Sanles Sanles v. Spain* (dec.), no. 48335/99, ECHR 2000-XI (inadmissible — incompatible *ratione personae*);
- *Pretty v. the United Kingdom*, no. 2346/02, ECHR 2002-III (no violation of Articles 2, 3, 8, 9 and 14);
- *Haas v. Switzerland*, no. 31322/07, ECHR 2011 (no violation of Article 8);
- *Koch v. Germany*, no. 497/09, 19 July 2012 (violation of Article 8);
- *Nicklinson and Lamb v. the United Kingdom* (dec.), nos. 2478/15 and 1787/15, 23 June 2015 (inadmissible — manifestly ill-founded);
- *Lings v. Denmark*, no. 15136/20, 12 April 2022 (no violation of Article 8);
- *Dániel Karsai v. Hungary*, no. 32312/23, 13 June 2024 (no violation of Article 8 taken alone, no violation of Article 14 in conjunction with Article 8).

### ***Euthanasia:***

- *Gawlik v. Liechtenstein*, no. 23922/19, 16 February 2021 (no violation of Article 10);
- *Mortier v. Belgium*, no. 78017/17, 4 October 2022 (no violation of Article 2 by the legislative framework governing pre-euthanasia procedures, no violation of Article 2 by the conditions in which the act of euthanasia was performed on the applicant's mother, violation of Article 2 on account of the shortcomings in the post-euthanasia review, no violation of Article 8).

### ***Withdrawal of life-sustaining treatment:***

- *Ada Rossi and Others v. Italy* (dec.), nos. 55185/08 and others, 2008 (inadmissible — incompatible *ratione personae*);
- *Lambert and Others v. France* [GC], no. 46043/14, ECHR 2015 (admissible as regards the applicants' complaint raised under Article 2 on their own behalf, no violation of Article 2 in the event of implementation of the *Conseil d'Etat* judgment, not necessary to rule separately on the complaint under Article 8);
- *Gard and Others v. the United Kingdom* (dec.), no. 39793/17, 27 June 2017 (inadmissible — manifestly ill-founded);
- *Afiri and Biddarri v. France* (dec.), no. 1828/18, 23 January 2018 (inadmissible — manifestly ill-founded);
- *Parfitt v. the United Kingdom* (dec.), no. 18533/21, 20 April 2021 (inadmissible — manifestly ill-founded).