



Lambert and Ors. v. France

Application No. 46043/14

Country: France

Region: Europe

Year: 2015

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Health systems and financing, Informed consent

Human Rights: Right to bodily integrity, Right to family life, Right to life

Facts

The applicants appealed a decision to terminate artificial nutrition and hydration for their son, who was in a chronic vegetative state.

In 2013, Mr. Lambert's doctor and wife initiated proceedings to terminate care under the Act of 22 April 2005 (Act), which amended provisions of the Public Health Code (Code). However, the applicants received an order by the Châlons-en-Champagne Administrative Court to resume Mr. Lambert's care. The Court held that, absent an advance directive from Vincent Lambert or a designated person of trust within the meaning of the Code, Article L. 1111-4 of the Code required that the decision include the patient's family. Failure to notify or involve the parents breached a fundamental freedom under the Administrative Courts Code, the right to respect for life.

The doctor then initiated a second round of collective procedures involving Mr. Lambert's parents, siblings, wife, and six doctors. The applicants applied for an injunction against the doctor's action and for Mr. Lambert's transfer to an extended-care facility. The Administrative Court granted the injunction but declined the application for transfer to the extended-care facility.

Mr. Lambert's wife appealed to the Conseil d'État, which rejected her arguments that the Act and procedure that had been followed violated Articles 2, 6, 7, and 8 of the European Convention on Human Rights (Convention). The court found that: (1) the doctor's decision to withdraw care conformed to the procedural requirements of the Code; (2) A new expert report indicated a vegetative state, irreversible brain damage, a poor clinical prognosis and non-consciousness; (3) the Code allows doctors to ascertain and consider patients' wishes where no advance directive exists; and (4) the doctor had sufficiently considered the family's views.

Decision and Reasoning

The Court then considered whether removing life support engaged either branch of Article 2 of the Convention, which protects the right to life. The Court concluded that the Code did not violate the State's negative obligation not to intentionally take a life because Article 2 permitted withholding life-sustaining treatment in limited circumstances. Regarding the State's positive obligations to safeguard the lives of those within its jurisdiction, the Court noted that the issue of termination of care affords States a margin of appreciation as there is no clear consensus. The Court held that the Act provided a sufficiently clear regulatory framework to protect patients' lives in light of the Conseil d'État's decision detailing which for treatment could be withdrawn and under what circumstances. It further held that the procedural requirements of the decision-making process fell within the State's margin of appreciation, and that the collective procedures satisfied Article 2 despite the lack of consensus among participants. Finally, it held that the Conseil d'État was entitled to find Mr. Lambert's spoken remarks sufficiently precise to consider in his treatment.

Given its analysis on Article 2, the Court held that it did not need to consider a violation of Article 8 (respect for family life). The Court also held that the applicants' allegations concerning a violation of Article 6 (right to a fair hearing) were ill-founded because the doctor remained impartial throughout the process.

Decision Excerpts

The Court notes that no consensus exists among the Council of Europe member States in favour of

permitting the withdrawal of artificial life-sustaining treatment, although the majority of States appear to allow it. Accordingly, the Court considers that in this sphere concerning the end of life, as in that concerning the beginning of life, States must 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 regards 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. However, this margin of appreciation is not unlimited (ibid., ¶ 238) and the Court reserves the power to review whether or not the State has complied with its obligations under Article 2. Paras. 147-8.

It is the patient who is the principal party in the decision-making process and whose consent must remain at its centre; this is true even where the patient is unable to express his or her wishes. In the absence of advance directives or of a "living will", a number of countries require 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). The Court points out that in its judgment in *Pretty*, cited above (¶ 63), it recognised the right of each individual to decline to consent to treatment which might have the effect of prolonging his or her life. Accordingly, it takes the view that the *Conseil d'Etat* was 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. Paras. 178-80.

Copyright © 2015 www.GlobalHealthRights.org