



Haas v. Switzerland

[2011] ECHR 2422

Country: Switzerland

Region: Europe

Year: 2011

Court: The European Court of Human Rights

Health Topics: Health care and health services, Medicines, Mental health

Human Rights: Right to bodily integrity, Right to health

Facts

The applicant suffered from a serious bipolar disorder and wished to commit suicide and requested a lethal dose of sodium pentobarbital, which is available only on prescription, from several psychiatrists but was unsuccessful. The applicant then contacted various official bodies seeking permission to obtain the substance from a pharmacy without a prescription. The Federal Office of Justice responded that it did not have jurisdiction to grant his request. The Federal Department of Public Health and the Health Department of the Canton of Zurich both dismissed the applicant's request. They also noted that Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms does not impose on states a positive duty to create the conditions for committing suicide without the risk of failure or pain. This decision was upheld by the Administrative Court.

The applicant launched an appeal with the Federal Court. He argued that Article 8 of the Convention guaranteed the right to choose to die without state interference, subject to certain limits. The applicant further argued that the prescription requirement and the impossibility of obtaining such a prescription constituted an interference with his right to respect for his private life. The Federal Court dismissed the appeal.

The primary issue before the Court was whether the State's refusal to allow the applicant to obtain a lethal substance without a prescription and to enable the applicant to procure it in order to commit suicide was a violation of the right to private life under Article 8 of the Convention

Decision and Reasoning

The Court held that the applicant's right to private life under Article 8 of the Convention had not been violated, and dismissed the application.

The Court found that one aspect of the respect for private life guaranteed by Article 8 of the Convention is the right of an individual to decide how and when to end his or her life, provided that he or she had the capacity to make a decision and to take the appropriate action. The Court also noted that member States tend to place more weight on the protection of an individual's life under Article 2 of the Convention than on the right to end one's life. Thus, States have a considerable margin of appreciation in this area, and can take action to prevent individuals from ending their lives if such a decision is not taken freely and with full knowledge.

The Court found that the restriction of access to sodium pentobarbital was intended to protect health and public safety and to prevent crime. The prescription requirement pursued the legitimate aim of preventing individuals from making rash decisions and preventing abuse, which is an inherent risk in a system such as that in Switzerland where assisted suicide is permitted. The Court held that although a right to suicide exists, this does not confer upon states a positive duty to ensure a rapid and painless suicide for concerned parties. Indeed, under Article 2, the State must protect the right to life and therefore has an obligation to prevent abuse.

Decision Excerpts

“In the light of this case-law, the Court considers that 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 of the Convention.” (para 51)

â€œIn other words, unlike the Pretty case, the Court observes that the applicant alleges not only that his life is difficult and painful, but also that, if he does not obtain the substance in question, the act of suicide itself would be stripped of dignity. In addition, and again in contrast to the Pretty case, the applicant cannot in fact be considered infirm, in that he is not at the terminal stage of an incurable degenerative disease which would prevent him from taking his own life.â€• (para 52)

"However, it is of the opinion that the regulations put in place by the Swiss authorities, namely the requirement to obtain a medical prescription, pursue, inter alia, the legitimate aims of protecting everybody from hasty decisions and preventing abuse, and, in particular, ensuring that a patient lacking discernment does not obtain a lethal dose of sodium pentobarbital" (para 56)

Such regulations are all the more necessary in respect of a country such as Switzerland, where the legislation and practice allow for relatively easy access to assisted suicide. Where a country adopts a liberal approach in this manner, appropriate implementing measures for such an approach and preventive measures are necessary. The introduction of such measures is also intended to prevent organisations which provide assistance with suicide from acting unlawfully and in secret, with significant risks of abuse. (Para 57)