



Case of Koch v. Germany

[2012] ECHR 1621

Country: Germany

Region: Europe

Year: 2012

Court: The European Court of Human Rights

Health Topics: Chronic and noncommunicable diseases, Controlled substances, Disabilities, Health care and health services, Medicines

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

Facts

The applicant's late wife suffered from total sensorimotor quadriplegia. The couple requested the German Federal Institute for Drugs and Medical Devices (the "Federal Institute") grant her authorization to obtain a lethal dose of pentobarbital of sodium so she could commit suicide. The Federal Institute refused the request on the grounds that the German Narcotics Act only allowed authorization for life-supporting or life-sustaining purposes. The couple travelled to Switzerland where the wife committed suicide with the help of an assisted-suicide organisation.

The applicant then lodged an action with the Cologne Administrative Court for a declaration that the Federal Institute's decision had been unlawful and that it had a duty to grant his wife the requested authorization. The applicant relied on Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which protects the right to respect for private and family life. The applicant also relied on similar protections under the German Basic Law. That court found the applicant lacked standing because he could not claim a violation of his own rights and refused to hear his case on the merits. The Administrative Court of Appeal upheld this decision. The Federal Constitutional Court also found his constitutional complaint inadmissible.

The primary issue before the European Court of Human Rights was whether the Federal Institute's decision and the administrative and domestic courts' refusal to examine the merits of the applicant's motion infringed his rights under Article 8 of the Convention.

Decision and Reasoning

The Court held that the applicant's rights under Article 8 of the Convention had been violated by the Federal Institute's decision and the administrative and domestic courts' refusal to examine the merits of the applicant's motion, and that the interference was not justified.

The Court found that the applicant could claim to have been directly affected by the Federal Institute's refusal to authorize the request for the lethal dose of drugs. The Court noted that the applicant and his wife had been married for 25 years and shared a close personal relationship. The applicant had accompanied his wife over the entire period of her suffering, launched an administrative appeal with his wife and pursued proceedings in his own name after her death.

The Court found that the Federal Institute's decision interfered with the applicant's rights under Article 8. The Court referred to its judgment in *Haas v Switzerland*, in which it held that an individual's right to decide the way in which their life should end is one of the aspects of the right to respect for private life.

The Court found that the German courts' refusal to examine the merits of the applicant's action had interfered with his rights under Article 8. The Court noted that assisted suicide is a topic over which Member State enjoys a wide margin of appreciation. As such, it is especially important that domestic courts examine claims in this context and provide redress where the Convention has been breached.

However, the Court declared that the applicant could not rely on a violation of his late wife's rights under the Convention.

Decision Excerpts

â€œ[The Court considers that the criteria developed in its previous case-law for allowing a relative or heir to bring an action before the Court on the deceased personâ€™s behalf are also of relevance for assessing the question whether a relative can claim a violation of his own rights under Article 8 of the Convention. The Court will thus proceed by examining the existence of close family tiesâ€; whether the applicant had a sufficient personal or legal interest in the outcome of the proceedingsâ€ and whether the applicant had previously expressed an interest in the case.â€ (para 44)

â€œThe Court finally considers that Article 8 of the Convention may encompass a right to judicial review even in a case in which the substantive right in question had yet to be established.â€ (para 53)

â€œComparative research shows that the majority of Member States do not allow any for assistance to suicideâ€; it follows that the State Parties to the Convention are far from reaching a consensus in this respect, which points towards a considerable margin of appreciation enjoyed by the State in this context.â€ (para 70)

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