



Raad voor Europa: “Euthanasie moet altijd verboden zijn”

ECLJ: Major Victory for Life in Europe: “Euthanasia Must Always be Prohibited”

Persbericht ECLJ, 26 januari 2012

The European Centre for Law and Justice (ECLJ) welcomes the adoption, by the Parliamentary Assembly of the Council of Europe (PACE), of a Resolution setting the principle that “Euthanasia, in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit, must always be prohibited.” This is the first time, in the past decades, that euthanasia is so clearly rejected by a European political institution.

This Resolution is a major victory for the protection of life and dignity; it comes a year after the European Court asserted that there is no right to euthanasia or assisted suicide under the European Convention. It is a new major victory for life and dignity, states Grégor Puppink, Director of the ECLJ. It should have a direct impact on the upcoming judgement of the European Court in the case Koch v. Germany concerning the ban of assisted suicide in Germany.

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On 25 January 2012, the Parliamentary Assembly of the Council of Europe has adopted a resolution setting the following: “Euthanasia, in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit, must always be prohibited.”

The purpose of the resolution (n°1859/2012) entitled “Protecting human rights and dignity by taking into account previously expressed wishes of patients” is to define the principles that should govern the practice of “living wills” or “advance directives” in Europe.

Those “living wills” or “advance directives” are aimed at enabling patients to express in advance his wishes relating to a medical intervention or treatments, in case he is not able to express his wishes at the time of the intervention. Those directives may apply for example when there is a doubt on the necessity or opportunity to reanimate a patient or to continue to use extraordinary means to maintain him alive. In such situations, their previously expressed wishes should be taken into account.

Because those “living wills” or “advance directives” are open to many abuses, and are a “backdoor” for introducing euthanasia or assisted suicide into legislation, the PACE has made a list of principles that shall govern this practice in the 47 States of the Council of Europe.

This list is based on principles elaborated in three documents previously adopted in the Council of Europe,[1] including the Convention on human rights and biomedicine (Oviedo Convention), which legally binds the majority of member States. But because of the growing concerns around euthanasia, the Assembly estimated that it is necessary to recall explicitly the basic principle that intentional killing must always be prohibited. The prohibition of euthanasia is also a fundamental rule of the medical deontology.

This is the reason why the first principle enunciated by the Resolution is the clear ban of euthanasia. Then comes the list of principles and guidelines. Another positive principle, also introduced by the Italian MP Mr Luca Volontè, has to be underlined; it expresses that “in case of doubt, the decision must always be pro-life and in favour of the prolongation of life”. (§ 7.8.)



For Dr Grégor Puppink, Director of the ECLJ, “this Resolution is a clear indication that the growing majority of Europeans is opposed to euthanasia. The many abuses occurring in the countries allowing euthanasia are alarming and constitute violations of true human rights. It is convincing that euthanasia must always be prohibited. The small number of European States allowing euthanasia shall review their legislation according to the principles set forth by the PACE.”

Even if this resolution is not legally binding on Member states, it has a real influence on the legislative process and on the judicial process, especially on the case-law of the European Court of Human Rights.

– On the legislative process, the Assembly “recommends that the Committee of Ministers [the 47 national ambassadors in Strasbourg] bring the Resolution to the attention of member states, with a request for implementation.”

– On the judicial process, this Resolution will have an impact on the European Court of Human Rights, in particular on its future decision in the case Koch v. Germany. In this case, the Court is mainly called to decide whether or not the ban of “assisted suicide” in Germany respects the Convention. In this case, the applicant, Mr. Ulrich Koch, complains for the refusal by the German administration to give to his late wife authorization to obtain a lethal substance in order to commit suicide. The Resolution of the PACE shall have an important impact on this case. (see here the detailed analysis of that case by the ECLJ)

Just a year ago, on January 20th 2011, the European Court delivered another judgment (Haas versus Switzerland) on assisted suicide. Although admitting a sort of right to self-suicide, the Court denied the existence of a right to assisted suicide stemming from the European Convention and guaranteed by the State; but still, the Court did not rule –as the PACE does now- that assisted suicide or euthanasia is a violation per se of the right to life guaranteed by the European Convention of Human Rights. (See here the ECLJ analysis of that case)

As Mr. Luca Volontè, chairman of EPP Group in the PACE, underlines, “last year we have obtained a great victory reaffirming the right of medical practitioners to conscientious objection; today we have also fought a good battle and we have won, thanks God, against a real ideological tyranny of culture of death (...); now euthanasia is completely banned from PACE”. Thanks are also to Mr Volontè and to all the distinguished members of the Assembly who have supported this text in support of life and dignity.

Provisional edition

Protecting human rights and dignity by taking into account previously expressed wishes of patients

Resolution 1859 (2012)1

1. There is a general consensus based on Article 8 of the European Convention on Human Rights (ETS No. 5) on the right to privacy that there can be no intervention affecting a person without his or her consent. From this human right flow the principles of personal autonomy and the principle of consent. These principles hold that a capable adult patient must not be manipulated and that his or her will, when clearly expressed, must prevail even if it signifies refusal of treatment: no-one can be compelled to undergo a medical treatment against his or her will.

2. The Council of Europe has included this principle in the Convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine: Convention on human rights and biomedicine (Oviedo Convention, ETS No. 164), which legally binds the majority of member states. The convention also covers the situation in which a patient is no longer able to express his or her will, by stipulating that the previously expressed wishes relating to a medical intervention by a patient who is not, at the time of



the intervention, in a state to express his or her wishes “shall be taken into account”.

3. The ways in which these wishes can be formalised are advance directives, living wills or continuing powers of attorney. In Recommendation CM/Rec(2009)11 on principles concerning continuing powers of attorney and advance directives for incapacity, the Committee of Ministers recommended that member states promote these, and laid down a number of principles to guide member states in regulating them.

4. However, on the ground, the situation in Europe is very diverse, ranging from no legislation whatsoever on advance directives, to specific legislation which confers binding effect on them. Even where specific legislation does exist, it is not always fully implemented. Thus, today, only a tiny minority of the Council of Europe’s 800 million citizens actually have advance directives, living wills and/or continuing powers of attorney – making it difficult, if not impossible, to take their previously expressed wishes into account, and thus effectively protect their human rights and dignity.

5. This resolution is not intended to deal with the issues of euthanasia or assisted suicide. Euthanasia, in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit, must always be prohibited. This resolution thus limits itself to the question of advance directives, living wills and continuing powers of attorney.

6. The Parliamentary Assembly considers it essential that rapid progress be made in this area by member states to ensure that people’s human rights and dignity are guaranteed across the whole continent. It thus recommends that member states:

6.1. sign, ratify and fully implement the Oviedo Convention, if they have not already done so;

6.2. apply Committee of Ministers Recommendation CM/Rec(2009)11 on principles concerning continuing powers of attorney and advance directives for incapacity;

6.3. review, if need be, their relevant legislation with a view to possibly improving it:

6.3.1. for countries with no specific legislation on the matter – by putting into place a “road map” towards such legislation promoting advance directives, living wills and/or continuing powers of attorney, on the basis of the Oviedo Convention and Recommendation CM/Rec(2009)11, involving consultation of all stakeholders before the adoption of legislation in parliament, and foreseeing an information and awareness-raising campaign for the general public, as well as for the medical and legal professions after its adoption;

6.3.2. for countries with specific legislation on the matter – by ensuring that the relevant Council of Europe standards are met by this legislation, and that the general public, as well as the medical and legal professions, are sufficiently aware of it and implement it in practice.

7. The Assembly, recalling its Recommendation 1418 (1999) on the protection of the human rights and dignity of the terminally ill and the dying, recommends that national parliaments, when legislating in this field, respect the following principles, in addition to those enshrined in the Oviedo Convention and Committee of Ministers Recommendation CM/Rec(2009)11:

7.1. self-determination for capable adults in the event of their future incapacity, by means of advance directives, living wills and/or continuing powers of attorney, should be promoted and given priority over other measures of protection;

7.2. advance directives, living wills and/or continuing powers of attorney should, in principle, be made in writing and be fully taken into account when properly validated and registered (ideally in state registries);



7.3. there should be an option to divide the function of representing the person between an attorney for property, and a separate person for health and welfare; provisions for the possibility of a public appointment should also be made in cases where the individual has made no appointment him or herself, where this is in the best interest of the individual;

7.4. prior instructions contained in advance directives and/or living wills which are against the law, or good practice, or those which do not correspond to the actual situation that the interested party anticipated at the time of signing the document, should not be applied;

7.5. advance directives, living wills and/or continuing powers of attorney should be accessible to all; thus, complicated forms or expensive formalities should be avoided;

7.6. capable adults should be encouraged to review at regular intervals (for example, once a year) the advance directives, living wills and/or continuing powers of attorney they have made, and should be able to revoke and/or change them at any time;

7.7. a system of supervision to fight abuse should be established under which a competent authority is empowered to investigate, and, if necessary, intervene, in particular in cases in which an attorney is not acting in accordance with the continuing power of attorney or in the interests of the granter;

7.8. surrogate decisions that rely on general value judgements present in society should not be admissible and, in case of doubt, the decision must always be pro-life and the prolongation of life.

1 Assembly debate on 25 January 2012 (6th Sitting) (see Doc. 12804, report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Mr Xuclà i Costa). Text adopted by the Assembly on 25 January 2012 (6th Sitting).