



Refusal to grant paralysed patient authorisation to acquire lethal medication: German courts should have examined widower's complaint

In today's Chamber judgment in the case of [Koch v. Germany](#) (application no. 497/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights in respect of the German courts' refusal to examine the merits of Mr Koch's complaint.

The case concerned the German authorities' refusal to grant Mr Koch's late wife, who was almost completely paralysed and in need of artificial ventilation, authorisation to acquire a lethal dose of medication enabling her to commit suicide.

The Court held that the refusal of the German courts to examine the merits of Mr Koch's complaint about that decision, brought on behalf of his wife and on his own behalf, violated his procedural rights under Article 8.

Principal facts

The applicant, Ulrich Koch, is a German national who was born in 1943 and lives in Braunschweig. His wife suffered from almost complete paralysis after falling in front of her doorstep in 2002, so that she needed artificial ventilation and constant care from nursing staff. She therefore wished to end her life by committing suicide. In November 2004, she applied to the Federal Institute for Drugs and Medical Devices for authorisation to obtain a lethal dose of pentobarbital of sodium enabling her to commit suicide at home. The institute refused to grant her that authorisation, finding that her wish to commit suicide contravened the German Narcotics Act, which aimed at securing the necessary medical care of the population. Mr Koch and his wife appealed against the decision. On 12 February 2005, his wife committed suicide in Switzerland, assisted by the organisation *Dignitas*.

On 3 March 2005, the institute confirmed its decision and in April of that year Mr Koch lodged an action for a declaration that the institute's decisions had been unlawful and that it had had a duty to grant his wife the requested authorisation. On 21 February 2006, the action was declared inadmissible by the Cologne Administrative Court, which found that he lacked standing to lodge the action as he could not claim to be the victim of a violation of his own rights. At the same time, the court expressed the opinion that the institute's refusal had been lawful and in compliance with Article 8 of the Convention. In June 2007, the North-Rhine Westphalia Administrative Court of Appeal dismissed Mr Koch's request for leave to appeal. On 4 November 2008, the Federal Constitutional

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Court declared his constitutional complaint inadmissible (file no. 1 BvR 1832/07), finding in particular that he could not rely on a posthumous right of his wife to human dignity and that he was not entitled to lodge a complaint as her legal successor.

Complaints, procedure and composition of the Court

Mr Koch complained that the refusal to grant his late wife authorisation to obtain a lethal dose of medication had violated her rights under Article 8, in particular her right to a dignified death, and that it had violated his own right to respect for private and family life, as he was forced to travel to Switzerland to enable his wife to commit suicide. He further complained that the German courts had violated his rights under Article 13 (right to an effective remedy), by not allowing him to challenge the institute's refusal to grant his wife the requested authorisation.

The application was lodged with the European Court of Human Rights on 22 December 2008. A Chamber hearing was held on 23 November 2010. The complaint was declared admissible on 31 May 2011.

The associations *Dignitas*, which is based in Switzerland and aims to ensure that its members have a life and death in line with human dignity, and *Aktion Lebensrecht für alle*, based in Germany and dedicated to the protection of human life from conception to natural death, submitted comments as third parties.

Judgment was given by a Chamber of seven judges, composed as follows:

Peer **Lorenzen** (Denmark), *President*,
 Renate **Jaeger** (Germany),
 Mark **Villiger** (Liechtenstein),
 Isabelle **Berro-Lefèvre** (Monaco),
 Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),
 Zdravka **Kalaydjieva** (Bulgaria),
 Ganna **Yudkivska** (Ukraine), *judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 8

The Court first had to examine whether there had been an interference with Mr Koch's rights under Article 8, which the German Government had contested. The Court noted that his case had to be distinguished from cases brought by a deceased person's heir or relative solely on behalf of the deceased, in that he claimed a violation of his own rights under Article 8, arguing that his wife's suffering and the eventual circumstances of her death had affected him in his capacity as a compassionate husband and carer.

Mr Koch and his wife, having been married for 25 years, had shared a very close relationship. Mr Koch had accompanied her throughout her suffering and had finally accepted her wish to end her life and had travelled with her to Switzerland to realise that wish. His personal commitment had moreover been demonstrated by the fact that he had lodged an administrative appeal jointly with his wife and had pursued the domestic proceedings in his own name after her death. Under those exceptional circumstances, the Court accepted that Mr Koch had a strong and persisting interest in having the merits of the original case decided by the courts.

Furthermore, the case concerned fundamental questions evolving around a patient's wish to self-determinedly end his or her life, which were of general interest transcending the person and the interest of Mr Koch and his late wife.

Finally, the Court could not agree with the German Government's argument that there had been no need to grant Mr Koch the right to pursue his wife's case, as she could have awaited the outcome of the proceedings before the German courts. Those proceedings had only been terminated some three years and nine months after her death. The Court was moreover not convinced that requesting an injunction would have been suited to accelerate the proceedings, given the gravity of the claim and the irreversible consequences any granting of such a measure would necessarily have entailed.

In view of those considerations, the Court found that Mr Koch could claim to have been directly affected by the German authorities' refusal to grant his wife authorisation to acquire a lethal dose of pentobarbital of sodium. There had accordingly been an interference with his rights under Article 8.

As regards the question of whether Mr Koch's rights had been sufficiently safeguarded in the proceedings before the German courts, the Court observed that those courts had refused to examine the merits of his case. They had held that he could not rely on his own rights under German law or under Article 8 of the Convention and that he did not have standing to pursue his late wife's claim after her death. The German Government had not submitted that the refusal to examine the merits of the case had served any of the legitimate interests permitted under Article 8. Neither could the Court find that the interference with Mr Koch's rights had served any of those legitimate aims. There had accordingly been a violation of Mr Koch's right under Article 8 to see the merits of his complaint examined by the courts.

As regards the substance of Mr Koch's complaint, the Court considered that it was primarily up to the German courts to examine its merits, in particular in view of the fact that there was no consensus among the Member States of the Council of Europe as to the question of whether or not to allow any form of assisted suicide. Comparative research showed that only four of 42 States examined allowed medical practitioners to prescribe a lethal drug in order to enable a patient to end his or her life. Since the Court had found that the German authorities were under an obligation to examine the merits of the complaint, it decided to limit itself to examining the procedural aspect of Article 8 in Mr Koch's case.

Concerning the question of whether Mr Koch had the legal standing to complain about a violation of his late wife's rights, the Court referred to previous cases in which it had found that Article 8 was of a non-transferrable nature and that complaints under that Article could thus not be pursued by a close relative or other successor of the person concerned.² The Court had not been presented with sufficient reasons to depart from that finding in Mr Koch's case. He did not therefore have the legal standing to rely on his wife's rights under Article 8. That part of the complaint thus had to be rejected as inadmissible.

Other articles

In view of its findings under Article 8, the Court did not consider it necessary to examine whether there had also been a violation of Mr Koch's rights under Article 13 or under Article 6 § 1 (right of access to court).

² In particular *Sanles Sanles v. Spain* (48335/99), declared inadmissible on 26 October 2000

Just satisfaction (Article 41)

The court held that Germany was to pay Mr Koch 2,500 euros (EUR) in respect of non-pecuniary damage and EUR 26,736.25 in respect of costs and expenses.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.