



## Lambert and Others v. France: there would be no violation of Article 2 of the European Convention on Human Rights in the event of implementation of the *Conseil d'État* judgment of 24 June 2014

In today's **Grand Chamber** judgment<sup>1</sup> in the case of [Lambert and Others v. France](#) (application no. 46043/14) the European Court of Human Rights held, by a majority, that there would be **no violation of Article 2 (right to life)** of the European Convention on Human Rights in the event of implementation of the *Conseil d'État* judgment of 24 June 2014.

The case concerned the judgment delivered on 24 June 2014 by the *Conseil d'État* authorising the withdrawal of the artificial nutrition and hydration of Vincent Lambert.

The Court observed that there was no consensus among the Council of Europe member States in favour of permitting the withdrawal of life-sustaining treatment. In that sphere, which concerned the end of life, States must be afforded a margin of appreciation. The Court considered that the provisions of the Act of 22 April 2005, as interpreted by the *Conseil d'État*, constituted a legal framework which was sufficiently clear to regulate with precision the decisions taken by doctors in situations such as that in the present case.

The Court was keenly aware of the importance of the issues raised by the present case, which concerned extremely complex medical, legal and ethical matters. In the circumstances of the case, the Court reiterated that it was primarily for the domestic authorities to verify whether the decision to withdraw treatment was compatible with the domestic legislation and the Convention, and to establish the patient's wishes in accordance with national law.

The Court's role consisted in examining the State's compliance with its positive obligations flowing from Article 2 of the Convention.

The Court found the legislative framework laid down by domestic law, as interpreted by the *Conseil d'État*, and the decision-making process, which had been conducted in meticulous fashion, to be compatible with the requirements of Article 2.

The Court reached the conclusion that the present case had been the subject of an in-depth examination in the course of which all points of view could be expressed and that all aspects had been carefully considered, in the light of both a detailed expert medical report and general observations from the highest-ranking medical and ethical bodies.

### Principal facts

The applicants, who are all French nationals, are Mr Pierre Lambert and his wife Mrs Viviane Lambert, who were born in 1929 and 1945 respectively and live in Reims, Mr David Philippon, who was born in 1971 and lives in Mourmelon, and Mrs Anne Tuarze, who was born in 1978 and lives in Milizac. They are the parents, a half-brother and a sister respectively of Vincent Lambert, who was born on 20 September 1976.

1. Grand Chamber judgments are final (Article 44 of the Convention). All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

Vincent Lambert sustained serious head injuries in a road-traffic accident on 29 September 2008, which left him tetraplegic and in a state of complete dependency. From September 2008 to March 2009 he was hospitalised in Châlons-en-Champagne Hospital. From March to June 2009 he was cared for in the heliotherapy centre in Berck-sur-Mer, before being moved on 23 June 2009 to the unit in Reims University Hospital providing care to patients in a vegetative or minimally conscious state, where he remains to date.

Vincent Lambert receives artificial nutrition and hydration which is administered enterally, through a gastric tube. In 2011 his condition was characterised as minimally conscious and in 2014 as vegetative.

In 2012 Vincent Lambert's carers observed increasing signs of what they believed to be resistance on his part to daily care. In early 2013 the medical team initiated the collective procedure provided for by the Act of 22 April 2005 on patients' rights and end-of-life issues (known as the "Leonetti Act"). Rachel Lambert, the patient's wife, was involved in the procedure, which resulted in a decision by Dr Kariger, the doctor in charge of Vincent Lambert and head of the department in which he is hospitalised, to withdraw the patient's nutrition and reduce his hydration. That decision was put into effect on 10 April 2013.

On 9 May 2013 the applicants applied to the urgent-applications judge of the Châlons-en-Champagne Administrative Court, seeking an injunction ordering the hospital to resume feeding and hydrating Vincent Lambert normally and to provide him with whatever care his condition required.

In an order dated 11 May 2013 the urgent-applications judge granted their request.

In September 2013 a fresh collective procedure was initiated. Dr Kariger consulted six doctors, including three from outside the hospital. He also convened two meetings with the family, on 27 September and 16 November 2013, following which Rachel Lambert and six of Vincent Lambert's eight brothers and sisters argued in favour of discontinuing artificial nutrition and hydration, while the applicants argued in favour of maintaining it. On 9 December 2013 Dr Kariger called a meeting of all the doctors and almost all the members of the care team. He and five of the six doctors consulted stated that they were in favour of withdrawing treatment. On conclusion of the consultation procedure Dr Kariger announced on 11 January 2014 in a decision stating reasons – a summary of which was read out to the family – his intention to discontinue artificial nutrition and hydration from 13 January 2014, subject to an application to the administrative court.

On 13 January 2014 the applicants made a further urgent application to the Châlons-en-Champagne Administrative Court, seeking an injunction prohibiting the hospital and the doctor concerned from withdrawing Vincent Lambert's nutrition and hydration and an order for his immediate transfer to a specialised extended care facility in Oberhausbergen. In a judgment of 16 January 2014 the Administrative Court suspended the implementation of Dr Kariger's decision. In three applications lodged on 31 January 2014 Rachel Lambert, one of Vincent Lambert's nephews and Reims University Hospital appealed against that judgment to the urgent-applications judge of the *Conseil d'État*.

At the hearing on the urgent application held on 6 February 2014 the President of the Judicial Division of the *Conseil d'État* decided to refer the case to the full court sitting as a Judicial Assembly. The hearing took place on 13 February 2014 and the *Conseil d'État* delivered its ruling on 14 February 2014. The *Conseil d'État* first defined the role of the urgent-applications judge called upon to rule in such a case, and then found that the provisions of the Leonetti Act applied to Vincent Lambert and that artificial nutrition and hydration fell into the category of treatment that could be withheld on grounds of unreasonable obstinacy. It went on to find that its task was to satisfy itself that the statutory conditions governing any such decision had been met. To that end it needed to have the fullest information possible at its disposal, in particular concerning Vincent Lambert's state of health. Accordingly, the *Conseil d'État* considered it necessary to order an expert medical report to be prepared by practitioners with recognised expertise in neuroscience and to invite the National

Medical Academy, the National Ethics Advisory Committee and the National Medical Council and Mr Leonetti, the rapporteur for the Act of 22 April 2005, to submit general written observations designed to clarify for it the application of the concepts of unreasonable obstinacy and sustaining life artificially in terms of the law. Lastly, the *Conseil d'État* rejected the applicants' request for Vincent Lambert to be transferred to the specialised extended care facility.

After receiving the expert medical report on 26 May 2014, and the general observations, the *Conseil d'État* delivered its judgment on 24 June 2014. It observed first of all that, in this type of dispute, it was for the urgent-applications judge to examine any grounds of appeal based on the Convention, and dismissed those raised by the applicants. Going on to examine the arguments based on the Leonetti Act, it stated that the sole fact that a person was in an irreversible state of unconsciousness or had lost his or her autonomy irreversibly and was thus dependent on artificial nutrition and hydration did not by itself amount to a situation in which the continuation of treatment would appear unjustified on grounds of unreasonable obstinacy. The *Conseil d'État* observed that in assessing whether the conditions for the withdrawal of artificial nutrition and hydration were met, the doctor in charge of the patient had to base his or her decision on a range of medical and non-medical factors whose relative weight could not be determined in advance but would depend on the circumstances of each patient; in addition to the medical factors, the doctor had to attach particular importance to any wishes the patient might have expressed previously, whatever their form or tenor. The doctor also had to take into account the views of the person of trust, of the members of the patient's family or, failing that, of another person close to the patient. The *Conseil d'État* pointed out in that regard that where the patient's wishes remained unknown, they could not be assumed to consist in a refusal by the patient to be kept alive.

After examining the procedure followed by Dr Kariger, the *Conseil d'État* found that it had not been tainted with any irregularity. On the merits, it held that the conclusions in the expert medical report confirmed those drawn by Dr Kariger as to the irreversible nature of the damage and Mr Lambert's clinical prognosis. Relying on the testimony of Mrs Rachel Lambert and of one of Vincent Lambert's brothers, according to which Mr Lambert had on several such occasions clearly voiced the wish not to be kept alive artificially if he were to find himself in a highly dependent state, the *Conseil d'État* found that Dr Kariger could not be regarded as having incorrectly interpreted the wishes expressed by the patient before his accident. It found, lastly, that Dr Kariger had obtained the views of the patient's family. The *Conseil d'État* concluded that all the conditions imposed by the law had been met and that the doctor's decision of 11 January 2014 to withdraw the artificial nutrition and hydration of Mr Vincent Lambert could not be held to be unlawful.

## Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) of the European Convention on Human Rights, the applicants submitted that the withdrawal of Vincent Lambert's artificial nutrition and hydration would be in breach of the State's obligations under that provision. Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment) of the Convention, they argued that depriving him of nutrition and hydration would constitute ill-treatment amounting to torture and alleged that the lack of physiotherapy since October 2012 and the lack of therapy to restore the swallowing reflex amounted to inhuman and degrading treatment in breach of that provision. They complained, under Article 8 (right to respect for private and family life), that the withdrawal of nutrition and hydration would also infringe Vincent Lambert's physical integrity. The applicants further complained, under Article 6 § 1 (right to a fair hearing) that the doctor who had taken the decision of 11 January 2014 had not been impartial, and that the expert medical report ordered by the *Conseil d'État* had not been fully adversarial.

The application was lodged with the European Court of Human Rights on 23 June 2014.

On 23 June 2014 the applicants filed a request with the Court under Rule 39 (interim measures) of the Rules of Court. By their request they sought, first, a stay of execution of the *Conseil d'État's* decision due on 24 June, in the event that it authorised the withdrawal of Vincent Lambert's nutrition and hydration, and second, his transfer to a care facility in Oberhausbergen or, at least, an indication that he should not be taken out of France.

On 24 June 2014, having taken note of the judgment delivered by the *Conseil d'État*, the Chamber to which the case had been assigned decided to indicate to the French Government that, pursuant to Rule 39 of the Rules of Court, in the interests of the parties and the proper conduct of the proceedings before it, they should stay the execution of the *Conseil d'État's* decision for the duration of the proceedings before the Court and gave notice of the application to the French Government. The Chamber also decided that the application would be given priority treatment,

On 4 November 2014 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A hearing was held in public in the Human Rights Building in Strasbourg on 7 January 2015.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,  
Guido **Raimondi** (Italy),  
Mark **Villiger** (Liechtenstein),  
Isabelle **Berro** (Monaco),  
Khanlar **Hajiyev** (Azerbaijan),  
Ján **Šikuta** (Slovakia),  
George **Nicolaou** (Cyprus),  
Nona **Tsotsoria** (Georgia),  
Vincent A. **de Gaetano** (Malta),  
Angelika **Nußberger** (Germany),  
Linos-Alexandre **Sicilianos** (Greece),  
Erik **Møse** (Norway),  
André **Potocki** (France),  
Helena **Jäderblom** (Sweden),  
Aleš **Pejchal** (the Czech Republic),  
Valeriu **Grițco** (the Republic of Moldova),  
Egidijus **Kūris** (Lithuania),

and also Erik **Fribergh**, *Registrar*.

## Decision of the Court

### [Standing to act in the name and on behalf of Vincent Lambert](#)

The Court noted that while the direct victim was unable to express his wishes, several members of his close family wished to express themselves on his behalf, while defending diametrically opposed points of view. The Court was required to establish whether the situation was one in which an application could be lodged in the name and on behalf of of a vulnerable person. A review of its relevant case-law revealed the following two main criteria: the risk that the direct victim would be deprived of effective protection of his or her rights, and the absence of a conflict of interests between the victim and the applicant.

In the present case the Court did not discern any risk that Vincent Lambert would be deprived of effective protection of his rights since, in accordance with its consistent case-law, it was open to the applicants, as Vincent Lambert's close relatives, to invoke before the Court on their own behalf the right to life protected by Article 2.

In so far as one of the key aspects of the domestic proceedings had consisted precisely in determining Vincent Lambert's wishes and the *Conseil d'État* had found that Dr Kariger had not incorrectly interpreted those wishes, the Court did not consider it established that there was a convergence of interests between the applicants' assertions and what Vincent Lambert would have wished. It concluded that the applicants did not have standing to raise the complaints under Articles 2, 3 and 8 of the Convention in the name and on behalf of Vincent Lambert. The Court also refused Rachel Lambert's request to represent her husband as a third-party intervener.

Nevertheless, the Court did examine all the substantive issues arising in the present case under Article 2 of the Convention, given that they had been raised by the applicants on their own behalf.

## Article 2

Although Vincent Lambert was still alive, there was no doubt that if artificial nutrition and hydration were withdrawn, his death would occur within a short time. Accordingly, the Court considered that the applicants, in their capacity as Vincent Lambert's close relatives, could rely on Article 2.

Article 2 enjoined the State not only to refrain from the "intentional" taking of life (negative obligations), but also to take appropriate steps to safeguard the lives of those within its jurisdiction (positive obligations).

### **The State's negative obligations**

The Court first examined whether the present case involved the State's negative obligations.

The applicants acknowledged that the withdrawal of nutrition and hydration could be legitimate in cases of unreasonable obstinacy, and accepted that a legitimate distinction existed between, on the one hand, euthanasia and assisted suicide and, on the other hand, therapeutic abstention, consisting in withdrawing or withholding treatment that had become unreasonable. They argued that, since those criteria were not met, in their opinion, the present case concerned the intentional taking of life; they referred in that regard to the notion of euthanasia. The Government stressed that the aim of the medical decision was not to put an end to life, but to discontinue a form of treatment which was refused by the patient or – where the patient was unable to express his or her wishes – which, in the doctor's view, amounted to unreasonable obstinacy. They quoted the public rapporteur before the *Conseil d'État*, who, in his submissions of 20 June 2014, had noted that, in discontinuing treatment, a doctor was not taking the patient's life but was resolving to withdraw when there was nothing more to be done.

The Court observed that the Act of 22 April 2005 did not authorise either euthanasia or assisted suicide. It allowed doctors, in accordance with a prescribed procedure, to discontinue treatment only if continuing it demonstrated unreasonable obstinacy. The Court noted that both the applicants and the Government made a distinction between the intentional taking of life and therapeutic abstention. In the context of the French legislation, which prohibited the intentional taking of life and permitted life-sustaining treatment to be withdrawn or withheld only in certain specific circumstances, the Court considered that the present case did not involve the State's negative obligations under Article 2.

### **The State's positive obligations**

The Court examined the applicants' complaints solely from the standpoint of the State's positive obligations.

The Court stressed that the issue before it in the present case was not that of euthanasia, but rather the withdrawal of artificial life-sustaining treatment and observed that in a case such as the present one reference should be made, in examining a possible violation of Article 2, to Article 8 of the Convention.

The Court reiterated that in addressing the question of the administering or withdrawal of medical treatment it had taken into account the following factors (which it would take into account in examining the present case): the existence in domestic law and practice of a legislative framework compatible with the requirements of Article 2; whether account had been taken of the applicant's previously expressed wishes and those of the persons close to him, as well as the opinions of other medical personnel; and the possibility to approach the courts in the event of doubts as to the best decision to take in the patient's interests.

#### *The margin of appreciation*

The Court noted that no consensus existed among the Council of Europe member States in favour of permitting the withdrawal of artificial life-sustaining treatment, although the majority of States appeared to allow it. There was nevertheless consensus as to the paramount importance of the patient's wishes in the decision-making process. Accordingly, the Court considered that in this sphere concerning the end 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 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.

#### *The legislative framework*

The applicants alleged that the Act of 22 April 2005 lacked clarity and precision and that it was not applicable to the case of Vincent Lambert, who was neither sick nor at the end of his life. They further maintained that the legislation did not define with sufficient precision the concepts of unreasonable obstinacy and treatment that could be withdrawn. They also complained of the process culminating in the doctor's decision of 11 January 2014.

The Court noted that, in its ruling of 14 February 2014, the *Conseil d'État* had determined the scope of application of the Act and held that it was applicable to all users of the health system, whether or not the patient was in an end-of-life situation.

In the same decision the *Conseil d'État* had interpreted the concept of treatment that could be withdrawn or limited. It had held that the legislature had intended to include among such forms of treatment all acts aimed at maintaining the patient's vital functions artificially, and that artificial nutrition and hydration fell into that category of acts.

Regarding the concept of unreasonable obstinacy, the Court noted that under the terms of Article L. 1110-5 of the Code of Public Health, treatment would amount to unreasonable obstinacy if it was futile or disproportionate or had "no other effect than to sustain life artificially". It was that last criterion which had been applied by the *Conseil d'État*.

In its judgment of 24 June 2014 the *Conseil d'État* had detailed the factors to be taken into account by the doctor in assessing whether the criteria for unreasonable obstinacy were met, while making clear that each situation had to be considered on its own merits. The Court noted that the *Conseil d'État* had established two important safeguards in that judgment. Firstly, it had stated that the sole fact that a person was in an irreversible state of unconsciousness or, *a fortiori*, had lost his or her autonomy irreversibly and was thus dependent on artificial nutrition and hydration, did not by itself amount to a situation in which the continuation of treatment would appear unjustified. It had also stressed that where a patient's wishes were not known, they could not be assumed to consist in a refusal to be kept alive.

The Court considered that the provisions of the Act of 22 April 2005, as interpreted by the *Conseil d'État*, constituted a legal framework which was sufficiently clear, for the purposes of Article 2 of the Convention, to regulate with precision the decisions taken by doctors in situations such as that in the

present case. It therefore concluded that the State had put in place a regulatory framework apt to ensure the protection of patients' lives.

#### *The decision-making process*

The Court noted that neither Article 2 nor its case-law could be interpreted as imposing any requirements as to the procedure to be followed with a view to securing a possible agreement. In those countries which authorised the withdrawal of treatment, and where the patient had not drawn up any advance directives, there existed a great variety of arrangements governing the taking of the final decision to withdraw treatment.

The Court observed that the collective procedure in the present case had lasted from September 2013 to January 2014 and that, at every stage of its implementation, it had exceeded the requirements laid down by law. It considered that the organisation of the decision-making process, including the designation of the person who took the final decision to withdraw treatment and the detailed arrangements for the taking of the decision, fell within the State's margin of appreciation. The Court noted that the procedure in the present case had been lengthy and meticulous, exceeding the requirements laid down by the law, and considered that, although the applicants disagreed with the outcome, that procedure had satisfied the requirements flowing from Article 2 of the Convention.

#### *The legal remedies used by the applicants*

The Court observed that the *Conseil d'État*, called upon for the first time to rule on an appeal against a decision to withdraw treatment under the Act of 22 April 2005, provided some important clarifications in its rulings concerning the powers of the urgent-applications judge in cases such as the present one. Not only could the judge suspend implementation of the doctor's decision, he or she could also conduct a full review of its lawfulness. He or she had to examine – in addition to the arguments alleging that the decision in question was unlawful – any arguments to the effect that the legislative provisions that had been applied were incompatible with the Convention.

The Court noted that the *Conseil d'État* had examined the case sitting as a full court, which was highly unusual in injunction proceedings. In its judgment of 14 February 2014 it had considered it necessary to have the fullest information possible on Vincent Lambert's state of health. It had ordered an expert medical report which it had entrusted to three recognised specialists in neuroscience. In view of the scale and difficulty of the issues raised by the case, it had requested the National Medical Academy, the National Ethics Advisory Committee, the National Medical Council and Mr Jean Leonetti to submit general observations to it, in order to clarify in particular the concepts of unreasonable obstinacy and sustaining life artificially.

The Court noted that the expert report had been prepared in great depth. In its judgment of 24 June 2014 the *Conseil d'État* had begun by examining the compatibility of the relevant provisions of the Code of Public Health with Articles 2, 8, 6 and 7 of the European Convention on Human Rights, before assessing the conformity of Dr Kariger's decision with the provisions of the Code of Public Health. Its review had encompassed the lawfulness of the collective procedure and compliance with the substantive conditions laid down by law, which it had considered to have been satisfied. In the view of the *Conseil d'État*, those findings had confirmed those drawn by Dr Kariger.

The Court observed that the *Conseil d'État*, after stressing the particular importance which the doctor had to attach to the patient's wishes, had sought to ascertain what Vincent Lambert's wishes had been. As the latter had not drawn up any advance directives or designated a person of trust, the *Conseil d'État* had taken into consideration the testimony of his wife, Rachel Lambert, who had reported in precise detail and with the corresponding dates the remarks repeatedly made by her husband, the tenor of which had been confirmed by one of his brothers and indicated by several of Vincent Lambert's other siblings to have been in keeping with their brother's personality, past experience and views. The applicants, for their part, had not claimed that he would have expressed

remarks to the contrary. The *Conseil d'État* had observed, lastly, that the consultation of the family, prescribed by law, had taken place.

The Court pointed out that it was the patient who was the principal party in the decision-making process and whose consent must remain at its centre, even where the patient was unable to express his or her wishes.

The Court observed that, in the absence of advance directives, a number of countries required that efforts be made to ascertain the patient's presumed wishes, by a variety of means, and reiterated an earlier ruling in which it had recognised the right of each individual to decline to consent to treatment which might have the effect of prolonging his or her life. It took the view that the *Conseil d'État* had been entitled to consider that the testimony submitted to it was sufficiently precise to establish what Vincent Lambert's wishes had been.

The Court was keenly aware of the importance of the issues raised by the present case, which concerned extremely complex medical, legal and ethical matters. In the circumstances of the case, the Court reiterated that it was primarily for the domestic authorities to verify whether the decision to withdraw treatment was compatible with the domestic legislation and the Convention, and to establish the patient's wishes in accordance with national law.

The Court found the legislative framework laid down by domestic law, as interpreted by the *Conseil d'État*, and the decision-making process, which had been conducted in meticulous fashion in the present case, to be compatible with the requirements of Article 2.

As to the judicial remedies that had been available to the applicants, the Court reached the conclusion that the present case had been the subject of an in-depth examination in the course of which all points of view could be expressed and that all aspects had been carefully considered, in the light of both a detailed expert medical report and general observations from the highest-ranking medical and ethical bodies. The Court concluded that the domestic authorities had complied with their positive obligations flowing from Article 2 of the Convention, in view of the margin of appreciation left to them in the present case, and that there would be no violation of Article 2 of the Convention in the event of implementation of the *Conseil d'État* judgment of 24 June 2014.

### Article 8

The Court was of the view that the complaint raised by the applicants under Article 8 was absorbed by those raised by them under Article 2. In view of its finding concerning Article 2, the Court considered that it was not necessary to rule separately on that complaint.

### Article 6 § 1

Even assuming Article 6 § 1 to be applicable to the procedure resulting in the doctor's decision of 11 January 2014, the Court considered that the complaints raised by the applicants under that provision, to the extent that they had not been dealt with already under Article 2, were manifestly ill-founded.

## Separate opinion

Judges Hajiyev, Šikuta, Tsotsoria, de Gaetano and Gričco expressed a separate opinion, which is annexed to the judgment.

*The judgment is available in English and French.*

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