EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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The decision to withdraw treatment in the case of a minor in a vegetative state complied with the requirements of the Convention

In its decision in the case of **Afiri and Biddarri v. France** (application no. 1828/18) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the decision to withdraw the life-sustaining treatment being administered to a 14-year-old girl in a vegetative state following acute cardio-respiratory failure.

The Court found that the legislative framework in force complied with **Article 2 (right to life) of the European Convention on Human Rights** and that, despite the fact that the applicants disagreed with the outcome of the decision-making process undertaken by the doctors, the process had satisfied the requirements of that Article. It also found that French law had provided for a judicial remedy that satisfied the requirements of Article 2.

On 9 January 2018 the applicants submitted a request for interim measures under Rule 39 of the Rules of Court. Their request was rejected on 23 January 2018.

Principal facts

The applicants, Djamila Afiri and Mohamed Biddarri, are French nationals who were born in 1966 and live in Longlaville and Joeuf respectively. They are the divorced parents of Inès, who is aged 14 and suffers from autoimmune myasthenia gravis.

On 22 June 2017 Inès was found unconscious following acute cardio-respiratory failure. She was taken to Nancy Regional University Hospital and was placed on an artificial ventilator in the resuscitation unit. The same day the applicants were informed of the seriousness of their daughter's clinical condition. After carrying out tests the medical team observed very serious neurological deterioration, with severe and widespread brain damage. The applicants were informed accordingly.

On 7 July 2017 a multi-disciplinary consultation meeting was held, attended by the full medical, paramedical and administrative team. All those present were in favour of withdrawing artificial ventilation, regarding its continuation as unreasonable obstinacy. The applicants were informed of the proposed action. On 10 July 2017 Dr B., head of the paediatric resuscitation unit, met with the applicants and told them that if they opposed the withdrawal of treatment their decision would be respected.

On 21 July 2017, in view of the lack of agreement with the parents on the withdrawal of treatment, the collective procedure provided for by Article L. 1110-5-1 of the Public Health Code was initiated, involving the full medical, paramedical and administrative team. Professor M., an honorary professor of paediatrics with a close interest in ethical and paediatric issues, took part as an external consultant. The participants reached the same conclusion regarding the withdrawal of treatment as the meeting of 7 July 2017, on account of the severity of the neurological damage, the virtually non-existent prospects for improvement or recovery, and the fact that the patient was in a minimally conscious state as she was in a persistent irresponsive coma and no longer had brainstem reflexes. The report on the meeting stated that, should the applicants wish their daughter to be kept alive artificially, a decent and appropriate life plan would be worked out. The report was sent to the applicants, who met the doctors on several occasions between 28 July and 23 August 2017.

On 11 September 2017 the applicants made an urgent application to the Administrative Court seeking a stay of execution of the decision of 21 July 2017 to withdraw treatment. In an order of 14

September 2017 the Administrative Court, sitting on an exceptional basis as a bench of judges, ordered an expert report, to be compiled by a panel of three experts.

The experts carried out clinical tests on Inès, reviewed the additional examinations and met with the various staff members concerned and with the applicants. They submitted their report on 17 November 2017.

Replying to the questions put by the Administrative Court, the experts stated that Inès's clinical state corresponded to a "persistent vegetative state", with an "extremely bleak neurological prognosis", in line with the findings of the hospital team, and that she was incapable of communicating with those around her. They noted the irreversible nature of some of the neurological lesions and the worsening of the patient's diagnosis since her admission to hospital. They concluded that it would be unreasonable to continue with respiratory support and artificial nutrition.

The experts noted that the applicants had shown little involvement in their daughter's care, and that their relationship with the paramedical staff had been very difficult generally. They observed that Inès had expressed a wish "not to live in the way she had at home during May and June 2017". They pointed to the practice in situations of this kind – which had been followed in this case by Dr B. and his team – whereby the professionals did not withdraw treatment against the parents' wishes. Lastly, the experts concluded that Inès's interests did not coincide with those of her parents. They therefore proposed, by way of exception, discontinuing the treatment and providing Inès with high-quality palliative care.

In an order of 7 December 2017 the Administrative Court, sitting as a bench of three judges, rejected the applicants' application. The judges based their decision on the findings of the expert report and noted that Inès's wishes had not been clearly established. They specified that the view of the parents carried particular weight but that the parents had displayed distrust of the doctors, without having formulated a plan for their daughter. The court considered that, despite the parents' objections, the continuation of treatment would amount to unreasonable obstinacy, and that the decision of 21 July 2017 had not constituted a serious and manifestly unlawful breach of a fundamental freedom.

On 20 December 2017 the applicants appealed to the *Conseil d'État*. In an order of 5 January 2018 the *Conseil d'État*, sitting on an exceptional basis as a three-person bench, dismissed their appeal. It considered that, in view of the medical data in the present case and notwithstanding the opposition of the parents, who had been involved at all times in the decision-making, the continuation of treatment was apt to amount to unreasonable obstinacy within the meaning of Article L. 1110-5-1 of the Public Health Code. It considered that the decision to withdraw treatment had satisfied the statutory requirements, and upheld the Administrative Court's finding that it had not constituted a serious and manifestly unlawful breach of a fundamental freedom.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 9 January 2018.

Relying on Articles 2 (right to life) and 8 (right to respect for private and family life) of the Convention, the applicants complained of the fact that the decision to withdraw the treatment of their minor daughter ultimately lay with the doctor despite the fact that they opposed it. They argued that they should have a right of co-decision under the collective procedure, in their capacity as the parents and persons with parental responsibility. Under Article 13 (right to an effective remedy), they contended that domestic law did not afford any effective remedy for parents opposed to a decision to withdraw treatment in respect of their minor child. The applicants further relied on Article 6 § 2 of the Oviedo Convention which provided that, where a minor did not have the capacity to consent to an intervention, it could not be carried out without the authorisation of his or her representative.

The decision was given by a Committee of three judges, composed as follows:

Erik **Møse** (Norway), *President*,
André **Potocki** (France),
Síofra **O'Leary** (Ireland), *judges*,

and Anne-Marie Dougin, *acting Deputy Section Registrar*.

Decision of the Court

Articles 2, 8 and 13

In so far as the applicants' complaints concerned the withdrawal of artificial life-sustaining treatment, the Court examined all the issues raised by the application from the standpoint of Article 2 of the Convention, in accordance with the criteria established in the cases of *Lambert and Others v. France* ([GC], no. 46043/14, ECHR 2015) and *Gard and Others v. the United Kingdom* ((dec.), no. 39793/17, 27 June 2017).

The legislative framework

The applicants maintained that domestic law did not make adequate provision for situations in which parents opposed a decision to withdraw treatment in respect of their minor child.

The Court reiterated its finding in the case of *Lambert and Others* to the effect that the legislative framework in force prior to the enactment of Law no. 2016-87 of 2 February 2016 had been sufficiently clear, for the purposes of Article 2 of the Convention, to regulate with precision the decisions taken by doctors to withdraw treatment taken to unreasonable lengths. The Court noted that the new legislation had not substantially amended the legal framework established by the Public Health Code. In the specific case of minor patients, Article R. 4127-42 of the Public Health Code provided that, where a doctor was treating a minor, he or she was required not just to consult the parents but also to attempt to obtain their consent. In the present case the *Conseil d'État* had specified that the doctor had a duty "to seek the agreement of the parents ..., to act with maximum beneficence towards the child and to make the child's best interests a prime consideration".

The Court concluded that the manner in which domestic law, as interpreted by the *Conseil d'État*, regulated situations in which the parents opposed a decision to withdraw treatment in respect of their minor child satisfied the requirements of Article 2 of the Convention.

The decision-making process

The applicants contested the decision-making process in so far as it merely provided for the parents of a minor patient to be consulted and did not give them a right of co-decision.

The Court pointed out that while the procedure under French law was described as "collective", the decision lay solely with the doctor treating the patient (*Lambert and Others v. France* [GC], no. 46043/14, ECHR 2015). In the present case the collective procedure had been conducted in accordance with the legislative framework and the parents in particular, as the persons with parental responsibility, had been consulted over the course of at least six formal meetings between 7 and 21 July 2017. The *Conseil d'État* had noted that, since Inès's wishes could not be established with certainty, the parents' view should carry particular weight, and that they had been involved at all times in the decision-making.

In the absence of consensus among the member States, the Court considered that the way in which the decision-making process was organised, including the designation of the person who took the final decision to withdraw treatment and the arrangements governing the taking of the decision, fell within the State's margin of appreciation.

The doctors and the care team had attempted to reach agreement with the applicants in the course of numerous meetings. The Court noted that the parents' wish not to discontinue their daughter's treatment had been respected by the doctors. Even before the start of the collective procedure, the doctor in charge of Inès's treatment had told the parents that their decision would be respected. At a meeting held after the decision to withdraw treatment, Dr B. had again made clear to the parents that such a decision would in no circumstances be implemented without their agreement. The Court therefore considered that, despite the fact that the applicants had disagreed with its outcome, the decision-making procedure applied had satisfied the requirements arising out of Article 2 of the Convention.

The judicial remedies

The applicants complained of the lack of an effective remedy in domestic law by which to contest the decision to withdraw treatment in respect of their minor child.

In its decision no. 2017-632 QPC of 2 June 2017 the Constitutional Council had ruled, firstly, that any decision to withdraw or limit life-sustaining treatment which would result in the death of a person unable to express his or her wishes had to be notified to the persons consulted by the doctor with a view to establishing the patient's wishes, in a manner that enabled them to exercise a remedy in good time; secondly, any such decision had to be open to appeal for the purposes of obtaining a stay of execution, and the appeal had to be considered without delay by the competent court. That ruling had been complied with in the present case.

The applicants had made an urgent application to the Administrative Court for protection of a fundamental freedom on the basis of Article L. 521-2 of the Administrative Courts Code. The urgent-applications judge had not merely assessed the need to stay execution of the doctor's decision but had also conducted a thorough review of the lawfulness of that decision, after ordering an expert medical report.

The Court therefore considered that French law had provided for a judicial remedy in conformity with the requirements of Article 2. It held that the domestic authorities had complied with their positive obligations under Article 2 of the Convention, in view of the margin of appreciation left to them in the present case.

It followed that the applicants' complaints were manifestly ill-founded and had to be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

Article 6 § 2 of the Oviedo Convention

The Court reiterated that it did not have jurisdiction to consider complaints under other international instruments (*García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). This complaint therefore had to be rejected under Article 35 § 4.

The decision is available only in 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.