

[TRANSLATION]

THE FACTS

The applicant is a Spanish national. She was born in 1936 and lives in Porto do Son, Corunna (Spain). She was represented before the Court by Mr Jorge Arroyo Martínez and Mr José Luis Mazón Costa, of the Barcelona and Murcia Bars respectively.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 12 January 1998 Mr Ramón Sampedro Cameán (“Mr Sampedro”), who had been tetraplegic since the age of twenty-five following an accident on 23 August 1968, died a voluntary and painless death after having sought recognition from the Spanish courts since April 1993 of his right not to have the State interfere with his decision to end his life in that way.

Those proceedings, which he had instituted in the Barcelona civil courts, ended with a decision of the Constitutional Court of 18 July 1994 dismissing his *amparo* appeal on the ground that the remedies in the ordinary courts had not been properly used because the applicant had failed to bring his case in the courts with territorial jurisdiction. That decision was examined by the Commission, which declared the application (no. 25949/94) inadmissible on 17 May 1995 for non-exhaustion of domestic remedies.

The applicant, Mr Sampedro’s sister-in-law, is the heir legally appointed by him to continue the proceedings which he had instituted while he was alive.

On 12 July 1995 Mr Sampedro brought an action (*jurisdicción voluntaria*) in the Court of First Instance of Noia (Corunna) requesting:

“... that my general practitioner be authorised to prescribe me the medication necessary to relieve me of the pain, anxiety and distress caused by my condition without that act being considered under the criminal law to be assisting suicide or to be an offence of any kind; I fully accept the risk that such medication might entail and hope thus to be able, at the appropriate time, to die in dignity.”

In a judgment of 9 October 1995 the Barcelona Court of First Instance refused Mr Sampedro’s request, holding that Article 143 of the Criminal Code did not allow a court to authorise a third party to help a person to die or to bring about that person’s death.

Mr Sampedro appealed. In a decision (*auto*) of 19 November 1996, the Corunna *Audiencia provincial* upheld the judgment on the basis of Article 15 of the Constitution and the Constitutional Court's interpretation of that Article (see Relevant domestic law and practice, below), Articles 17 and 3 of the Civil Code, Article 409 of the former Criminal Code, and Article 143 of the new Criminal Code.

Mr Sampedro then lodged an *amparo* appeal with the Constitutional Court on the basis of the rights to human dignity and the free development of the personality, to life and to physical and psychological integrity, and to a fair trial (Articles 10, 15 and 24 of the Constitution). The appeal was registered on 16 December 1996. On 10 March 1997 Mr Sampedro was given twenty days in which to submit his final observations.

In the early hours of 12 January 1998 Mr Sampedro died, assisted by one or more anonymous persons. Criminal proceedings were instituted against a person or persons unknown for aiding and abetting suicide.

After Mr Sampedro's death, the applicant informed the Constitutional Court on 7 April 1998 that she intended to continue the proceedings instituted by Mr Sampedro in her capacity as his heir.

On 4 May 1998 the applicant reworded as follows the grounds of appeal submitted by Mr Sampedro in support of his *amparo* appeal in order to adapt them to the new situation arising as a result of his death: "[that] the *Audiencia [provincial]* should have acknowledged [Mr Sampedro's] right for his general practitioner to be authorised to administer him the medication necessary...".

In a decision of 11 November 1998 the Constitutional Court discontinued the proceedings and refused the applicant the right, in her capacity as Mr Sampedro's heir, to continue the proceedings brought by him. It did not rule, however, on the applicant's allegation regarding the excessive length of the proceedings in the Constitutional Court, which had still been pending at the time of Mr Sampedro's death. The following is an extract from the court's judgment:

"It must be acknowledged that our legal system allows continuity in the exercise of actions for the recognition and protection of certain personal rights by heirs and other persons after the death of the person bringing the action. Such is the case for actions concerning civil status, such as establishing descent ... and those concerning civil protection of the right to honour, personal and family privacy and personal image (section 6(2) of Institutional Law 1/1982 of 5 May 1982). Those substantive legal conditions do not suffice, however, to justify Mrs Sanles's request to continue the

proceedings merely on the basis of the declaration contained in Article 661 of the Civil Code... .

There are two aspects to the right granted under that provision to continue legal proceedings: (a) it concerns legal rights and relations that are not exhausted in themselves but are projected onto the family group, extending beyond the holder of the right to other persons affected by the court decision recognising or remedying the right infringed, and, essentially, (b) ... not successors to legal proceedings under succession law, but successors *ope legis*, in so far as expressly provided for by law.

That said, in the case of the right to die in dignity by euthanasia without the intervention by a third party constituting a criminal offence, which was the right in respect of which Mr Sampedro lodged his *amparo* appeal, the above conditions are not met. There is no explicit legal provision to that effect (Article 661 of the Civil Code being limited to indicating the time at which succession takes effect) and the case does not concern rights such as a personal honour, reputation, image or privacy, the effects of which are not confined to the holder of the right but extend to his family circle or relatives. On the contrary, it is here a request of a “strictly personal” nature and inextricably linked to the person exercising it as “an act of will concerning that person alone” (Constitutional Court Judgment (“CCJ”) 120/1990, seventh ground, and CCJ 137/1990, fifth ground).

...

In the light of the foregoing, the request to continue the proceedings must be rejected. The applicant’s claim lapsed from the moment at which Mr Sampedro Cameán, the appellant, died and his heir, Mrs Manuela Sanles Sanles, cannot continue to rely on it in the constitutional proceedings. Our conclusion is further supported by the nature of an *amparo* appeal in constitutional proceedings, which has been established for the purpose of challenging actual and effective breaches of fundamental rights. As stated in the CCJ 114/1995, an *amparo* appeal “is not a proper remedy for requesting and obtaining an abstract and generic decision determining declarative claims which concern allegedly erroneous interpretations or incorrect applications of constitutional provisions, but only and exclusively those claims which are intended to re-establish or protect fundamental rights in the event of an actual and effective breach” (second ground).”

B. Relevant domestic law and practice

1. Civil Code

Article 661

“Heirs shall inherit all the rights and obligations of the deceased by the fact of his death alone.”

2. *Criminal Code*

Article 409 (former Code)

“Anyone who helps or encourages another to commit suicide shall be liable to a prison sentence [of six to twelve years]; if he assists to such an extent that he causes the death, he shall be liable to a prison sentence of twelve to twenty years.”

Article 143 (new Code)

“...

2. Anyone who performs an act necessary to assist another to commit suicide shall be liable to a prison sentence of two to five years.

3. If that assistance causes the death, the person providing it shall be liable to a prison sentence of six to ten years.

4. Anyone who, at the express, genuine and unequivocal request of a person suffering from a serious terminal illness or one causing him serious permanent and intolerable suffering, causes that person's death or actively performs an act necessary to assist him to die shall be liable to a sentence in the first or second category below the one provided for in paragraphs 2 and 3 of this Article”.

3. *Institutional Act 1/82 of 5 May 1982 for the protection of honour, privacy and image*

Section 6

“1. Where the holder of the infringed right dies without having been able to bring, either himself or through his legal representative, an action under this Act, on account of the circumstances in which the infringement occurred, the action may be brought by the persons referred to in section 4 [the person designated in the will or, failing that, the spouse, descendants, ascendants and brothers...]

2. Those persons may continue an action previously instituted by the holder of the infringed right when he dies.”

4. *Case-law of the Constitutional Court*

Judgment no. 120/90 of 27 June 1990

“... The right to life is, accordingly, an inherently positive and protective one which cannot therefore be considered as a right of freedom encompassing the right to die. It is not, however, inconsistent with that principle to acknowledge that, in so far as life is a personal asset forming an integral part of a person's freedom, an individual can dispose of his own life. However, such an example of “licence to act” (*agere licere*), in the sense of taking one's own life or accepting one's own death, is an act

permissible by law but not in any way a subjective right allowing an individual to solicit support from the public authorities to overcome resistance to his desire to die; still less is it a fundamental subjective right in respect of which that possibility would extend over and above even legislative resistance, which cannot reduce the essential content of a fundamental subjective right.

Accordingly, Article 15 of the Constitution, as in force, cannot be construed to guarantee the individual a right to his own death...”

COMPLAINTS

The applicant submitted that Mr Sampedro’s decision to request medical assistance to put a painless end to the suffering brought about by his paralysis fell fully within the scope of the right to private life guaranteed by Article 8 of the Convention. In her submission, the State’s interference, in the form of prohibitions laid down in the Criminal Code on assisting an individual to end his life, was unjustified.

The applicant maintained that Mr Sampedro had been claiming the right to a dignified life, or to non-interference with his wish to put an end to his undignified life, because his total paralysis had been a source of accumulated and intolerable suffering for him. She alleged that there had been a violation of Articles 2 and 3 of the Convention.

Relying on Articles 5 and 9 of the Convention, the applicant also complained of interference by the State with the exercise of Mr Sampedro’s right to freedom and to freedom of conscience.

The applicant considered it paradoxical at the least that a decision to commit suicide should be respected by the State, whereas assisting an invalid to commit suicide was punishable under the criminal law. She relied on Article 14 of the Convention.

The applicant complained, lastly, of an infringement of Mr Sampedro’s right to a fair hearing. Mr Sampedro had, she alleged, been the victim of a denial of justice in that the Constitutional Court had refused her the right to continue the legal proceedings, especially as a criminal investigation had been commenced after Mr Sampedro’s death against the persons who had allegedly helped him to die. Furthermore, Mr Sampedro’s case had not been heard within a reasonable time by the Constitutional Court. The applicant argued that the *amparo* appeal had been lodged on 16 December 1996 and had still been pending at the end of March 1997. Mr Sampedro died on 12 January 1998 and judgment was delivered on 11 November 1998 without

any priority having been given to it. She relied on Article 6 of the Convention.

THE LAW

Relying on Articles 2, 3, 5, 6, 8, 9 and 14 of the Convention, the applicant requested recognition of the right to a dignified life or a dignified death, or to non-interference with Mr Sampedro's wish to end his life, his total paralysis resulting in intolerable suffering for him. She also complained of interference by the State with the exercise of Mr Sampedro's right to freedom and to freedom of conscience, and of the inequality under the criminal law between suicide and assisting an invalid to commit suicide. She complained, lastly, of the unfairness and length of the proceedings in the Constitutional Court.

a. With regard to the substantive rights relied on by the applicant, the Court has previously held that, under Article 35 § 1 (former 26) of the Convention, the rules of admissibility must be applied with some degree of flexibility and without excessive formalism (see the *Cardot v. France* judgment of 19 March 1991, Series A no. 200, p. 18, § 34). Account also has to be taken of their object and purpose (see, for example, the *Worm v. Austria* judgment of 29 August 1997, *Reports 1997-V*, § 33) and of those of the Convention in general, which, in so far as it constitutes a treaty for the collective enforcement of human rights and fundamental freedoms, must be interpreted and applied so as to make its safeguards practical and effective (see, for example, the *Yaşa v. Turkey* judgment of 2 September 1998, *Reports 1998-VI*, § 64).

The Court reiterates that the system of individual petition provided under Article 34 of the Convention excludes applications by way of *actio popularis*. Complaints must therefore be brought by or on behalf of persons who claim to be victims of a violation of one or more of the provisions of the Convention. The concept of victim must, in theory, be interpreted autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act. In order for an applicant to be able to claim to be a victim of a violation of the Convention, they must be able to show that they have been directly affected by the impugned measure (see, for example, the *Open Door and Dublin Well Woman v. Ireland* judgment of 29 October 1992, Series A no. 246, § 44). However, victim status may exist even where there is no damage, such an issue being relevant under Article 41 of the Convention, for the purposes of which pecuniary or non-pecuniary damage flowing from the breach must be established (see, for

example, the *Wassink v. the Netherlands* judgment of 27 September 1990, Series A no 185, § 38, and the *Ilhan v. Turkey* [GC] judgment, no. 22277/93, § 52).

In the light of the foregoing, the Court notes that the issue whether the applicant may or may not claim compensation on her own account is distinct from the issue whether she can validly lodge the application. The applicant stated in her application, moreover, that she was complaining on behalf of Mr Sampedro, of whom she was the heir, and that Mr Sampedro, on account of his death, was no longer in a position to continue himself the proceedings instituted in the Constitutional Court on the basis of Articles 10, 15 and 24 of the Constitution.

The Court notes the Constitutional Court's ruling to the effect that certain actions for the recognition and protection of personal rights, such as an action relating to civil status or civil protection of the right to honour and to private and family life, may be continued by heirs and other persons after the applicant's death. The Constitutional Court held, however, that *locus standi* under Article 661 of the Civil Code to continue legal proceedings concerns only successions *ope legis* (sic), that is, where expressly provided for by law. In respect of the alleged right to die in dignity without the commission of euthanasia by a third party constituting an offence, which was the right in respect of which Mr Sampedro had lodged his *amparo* appeal, the Constitutional Court found that there was no specific legal provision to that effect and that it did not extend to Mr Sampedro's family circle or relatives.

The Court considers it important to point out from the outset that it is not required to rule on whether or not there is a right under the Convention to a dignified death or a dignified life. It notes that the action (*jurisdicción voluntaria*) brought by Mr Sampedro in the Spanish courts was for recognition of his right to have his general practitioner prescribe him the medication necessary to prevent the suffering, distress and anxiety caused by his condition without that act being considered under the criminal law to be assisting suicide or to be an offence of any kind whatsoever. Admittedly, the applicant may claim to have been very affected by the circumstances surrounding Mr Sampedro's death despite the lack of close family ties. However, the Court considers that the rights claimed by the applicant under Article 2, 3, 5, 8, 9 and 14 of the Convention belong to the category of non-transferable rights. Consequently, the applicant cannot rely on those rights on behalf of Mr Sampedro in the context of his action in the domestic courts.

Referring to the decision given by the Constitutional Court in this case, the Court reiterates that the purpose of an *amparo* appeal is to protect individuals from actual and effective infringements of their fundamental rights. It is not a proper remedy for requesting and obtaining an abstract decision on claims concerning allegedly erroneous interpretations or incorrect applications of constitutional provisions, but only and exclusively claims intended to re-establish or protect fundamental rights where an actual and effective violation has been alleged. It cannot hold the Spanish authorities responsible for failure to comply with an alleged obligation to have a law passed decriminalising euthanasia. It notes, moreover, that Mr Sampedro ended his days when he wanted to and that the applicant cannot be substituted for Mr Sampedro in respect of his claims for recognition of his right to die in dignity, since such a right, supposing that it can be recognised in domestic law, is in any event of an eminently personal and non-transferable nature.

The Court concludes that the applicant cannot act on Mr Sampedro's behalf and claim to be a victim of Articles 2, 3, 5, 8, 9 and 14 of the Convention, as required by Article 34.

It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention for the purposes of Article 35 § 1 and must be rejected in accordance with Article 35 § 4.

b. With regard to the applicant's complaint about the length of the proceedings, and even supposing that the applicant can claim to be a victim, the Court considers that the period to be taken into consideration runs from 12 July 1995, the date on which Mr Sampedro lodged his application with the Court of First Instance of Noia for the prescription of medication necessary to prevent pain, distress and anxiety and which might, at the appropriate time, bring about his death. The Court considers, further, that the period in question extended to 11 November 1998, the date of the Constitutional Court's decision declaring his *amparo* appeal inadmissible. The period to be taken into account by the Court is thus three years and four months.

According to the Court's case-law, the reasonableness of the length of proceedings is to be assessed on the basis of the circumstances of the case and having regard to the criteria laid down by the Court's case-law, in particular, the complexity of the case, the conduct of the applicant and the conduct of the relevant authorities.

The Court has not noted any periods of inactivity which were particularly attributable to the applicant. With regard to the State's conduct and, in

particular, to that of the judicial authorities, the Court notes that, in the applicant's submission, Mr Sampedro's case was not heard within a reasonable time in the Constitutional Court because his *amparo* appeal was lodged on 16 December 1996 and was ready at the end of March 1997. Mr Sampedro died on 12 January 1998 and judgment was delivered on 11 November 1998, without any priority having been given to it.

The Court notes, however, that that lapse of time does not at first sight appear excessive, having regard to the circumstances and the novelty of the case, and having regard to the fact that the proceedings in question were for recognition of an alleged right to die in dignity, a right not recognised by domestic law. It considers that the length of the proceedings, when considered overall, appears acceptable, having regard to the fact that at the time of Mr Sampedro's voluntary death, a little less than thirteen months had elapsed since he had lodged his appeal, and that the Constitutional Court's decision following the applicant's request to continue the proceedings was delivered ten months later.

The Court considers that, in view of the circumstances of the case, the proceedings were not sufficiently long for it to be concluded that there has been an appearance of an infringement of Article 6 § 1 of the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent Berger
Registrar

Georg Ress
President