



## Medical decision to withdraw life-sustaining treatment from patient who had drawn up advance directives did not violate Convention

In today's Chamber judgment<sup>1</sup> in the case of [Medmoune v. France](#) (application no. 55026/22) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 2 (right to life) of the European Convention on Human Rights.**

In this case, the applicants complained of an infringement of the right to life of A.M., their brother and husband, as a result of a medical decision to withdraw his life-sustaining treatment. The particularity of the case was that the patient had drawn up advance directives stating that he wished life-sustaining treatment to be continued even in the event that he permanently lost consciousness and was no longer able to communicate with his relatives.

The Court began by finding that the French legislative framework was compatible with the requirements of Article 2, including as regards the right not to apply patients' advance directives.

In the Court's view, the choice made by the French legislature fell within the discretion ("margin of appreciation") afforded to the States Parties in such matters when deciding what criteria to take into account and also how best to weigh them up in order to strike a fair balance between the competing interests at stake. The Court further noted that the Constitutional Council had considered that the provisions of Article L. 1111-11 of the Public Health Code, in referring to advance directives that were "manifestly inappropriate or incompatible with the medical situation" of the patient, were neither vague nor ambiguous. The Court was of the same opinion, observing that the wording assumed full significance in the medical context for which it was intended, in view of doctors' duty to preserve the dignity of those who were dying.

The Court then noted that the family members had been involved in the decision-making process and that their opinion had been taken into account. The decision to withdraw treatment of 15 July 2022 had been made as part of the collective procedure provided for by law. The Court thus concluded that the decision-making process in the case at hand had satisfied the requirements of Article 2 of the Convention.

Lastly, as regards the judicial remedies available to the applicants, the Court noted that the urgent-applications judges of both Lille Administrative Court and the *Conseil d'État* had heard and determined the matter in accordance with the adversarial principle and had given duly reasoned decisions, taking into account the various aspects of the case, including the patient's advance directives. The applicants had thus been afforded a judicial remedy satisfying the requirements of Article 2 of the Convention.

The Court concluded that the domestic authorities had complied with their duties ("positive obligations") flowing from Article 2 of the Convention. There had therefore been no violation of that provision.

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](http://www.coe.int/t/dghl/monitoring/execution).

## Principal facts

The applicants are Rachida Medmoune and Saida Medmoune, French nationals, and Zohra Medmoune, a Moroccan national, who were born in 1976, 1979 and 1986 respectively. They live in Bruay-sur-l'Escault.

On 18 May 2022 A.M., who was the 44-year-old brother of the first two applicants and husband of the third, was run over by a commercial vehicle that he was repairing. He was left with severe polytrauma complicated by cardiorespiratory arrest, and his brain was deprived of oxygen for seven minutes. He was admitted that day to the Valenciennes Hospital intensive care unit, where examinations showed that there were no brain-stem reflexes, no brain activity and severe anoxic injuries.

On 31 May 2022 the medical team initiated the collective procedure provided for in Article R. 4127-37-2 of the Public Health Code. On 1 June 2022, upon its completion, they decided to withdraw treatment as of 9 June 2022. On 8 June 2022 the urgent-applications judge of the Lille Administrative Court, sitting as a member of a three-judge bench, suspended the implementation of the decision to withdraw treatment.

On 15 July 2022 the head of the Valenciennes Hospital intensive care unit decided that treatment would be withdrawn under deep, continuous sedation on 22 July 2022.

On 20 July 2022 the applicants lodged an urgent application for protection of a fundamental freedom with the Lille Administrative Court. The urgent-applications judge dismissed the application on 22 July 2022.

The applicants appealed to the *Conseil d'État*, seeking a preliminary reference on constitutionality to the Constitutional Council. On 10 November 2022 the Constitutional Council, after observing that the matter concerned the wording "where the advance directives are manifestly inappropriate or incompatible with the medical situation" in the third paragraph of Article L. 1111-11 of the Public Health Code, found that the provision was compliant with the Constitution.

On 29 November 2022 the urgent-applications judge of the *Conseil d'État*, sitting as a member of a three-judge bench, dismissed the applicants' action.

On 30 November 2022 the applicants requested an interim measure from the Court under Rule 39 of the Rules of Court, seeking a stay of execution of the decision of 15 July 2022 and a continuation of treatment pending the determination of their case. The duty judge decided not to indicate the requested interim measure to the Government.

On 26 December 2022 treatment was withdrawn from A.M., who passed away that day.

## Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) of the Convention, the applicants complained that A.M.'s right to life had been infringed as a result of the medical decision to withdraw his life-sustaining treatment. This had been despite the fact that he had drawn up advance directives stating that he "[wished] to be kept alive (even artificially) in the event that [he lost] consciousness (permanently) and [he was] no longer [able to] communicate with [his] relatives".

The applicants also submitted that the refusal to apply A.M.'s advance directives had breached his right to respect for private life and his freedom of thought, conscience and religion under Article 8 (right to respect for private and family life) and Article 9 (freedom of thought, conscience and religion) respectively of the Convention.

The application was lodged with the European Court of Human Rights on 30 November 2022.

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

Kateřina Šimáčková (the Czech Republic), *President*,  
María Elósegui (Spain),  
Mattias Guyomar (France),  
Andreas Zünd (Switzerland),  
Diana Sârcu (the Republic of Moldova),  
Mykola Gnatovskyy (Ukraine),  
Sébastien Biancheri (Monaco),

and also Victor Soloveytchik, *Section Registrar*.

## Decision of the Court

### Article 2

#### *Legislative framework*

The Court had previously pointed out on several occasions, in cases concerning the end of life of individuals who could not express their wishes, that the respondent State had put in place a legislative framework apt to ensure the protection of patients' lives (see [Sahed v. France](#) (dec.), § 82).

The applicants, criticising domestic law in particular, had emphasised that Article L. 1111-11 of the Public Health Code authorised doctors to override a patient's advance directives where they were "manifestly inappropriate". It thus, they argued, afforded doctors excessive discretion and created a risk of arbitrariness.

In this regard, the Court noted that under Article L. 1111-11 of the Public Health Code, all adults could draw up advance directives in case they should become unable to express their wishes.

According to Article R. 4127-37-1 of the Public Health Code, any refusal to apply advance directives – where the doctor had found them manifestly inappropriate or incompatible with the patient's medical situation – had to be made following a collective procedure, during which the doctor sought the opinions of the present members of the care team, where one existed, and of "at least one doctor acting as a consultant, with whom there [was] no hierarchical link". The decision had to provide reasons and be made known to the patient's designated person of trust or, failing that, his or her family or friends.

The general tenor of those provisions was that advance directives were of key importance but their application had not been recognised as mandatory.

In the Court's view, the choice thus made by the French legislature fell within the discretion ("margin of appreciation") afforded to the States Parties in such matters when deciding not only what criteria to take into account but also how best to weigh them up in order to strike a fair balance between the competing interests at stake.

The Court further noted that the Constitutional Council had considered that the provisions of Article L. 1111-11 of the Public Health Code, in referring to advance directives that were "manifestly inappropriate or incompatible with the medical situation" of the patient, were neither vague nor ambiguous. The Court was of the same opinion, observing that the wording assumed full significance in the medical context for which it was intended, in view of doctors' duty to preserve the dignity of those who were dying.

In addition, the Court reiterated that where the withdrawal of life-sustaining treatment was concerned, reference should be made, in examining a possible violation of Article 2, to Article 8 of the Convention (see [Lambert and Others v. France](#) [GC], § 142). However, the Court had previously found that although Article 8 guaranteed the right to personal autonomy as part of the right to respect for

private life, it did not oblige member States to give binding legal effect to advance directives, since that issue fell within their discretion (“margin of appreciation”) (see [Pindo Mulla v. Spain](#) [GC], § 153).

The Court further noted that the legislative framework had not been substantially changed since the case of [Sahed v. France](#) (dec.). It thus reaffirmed that the framework was compatible with the requirements of Article 2, including as regards the right not to apply patients’ advance directives.

#### *Decision-making process*

The Court noted that A.M.’s wishes in his advance directives had been taken into account in the decision-making process.

First, the medical authorities could not be criticised for having made the initial decision to withdraw treatment, on 1 June 2022, without considering A.M.’s advance directives, since they had not been aware of their existence. Second, the urgent-applications judge of the Lille Administrative Court had, nevertheless, suspended the implementation of that decision on 8 June 2022. This first ruling by the domestic judge had allowed the situation to be re-examined in the light of the advance directives as part of the collective proceedings provided for by law. During the multidisciplinary and collective meetings that had accordingly taken place on 9 and 30 June and 7 and 11 July 2022, the advance directives had been duly taken into account before being found to be manifestly inappropriate and incompatible with the patient’s medical situation. It was only after noting that all the collective discussions on ethics had unanimously characterised the situation as unreasonable obstinacy that the medical team had, on 15 July 2022, made a fresh decision to withdraw treatment. Under those circumstances, it was apparent that A.M.’s wishes, as expressed in his advance directives, had been at the centre of the decision-making process.

The Court then noted that the members of A.M.’s family had been involved in the decision-making process and that their opinion had been taken into account. The medical team had given due consideration to the family’s opposition to the withdrawal of treatment but had stated that, although they could understand the position on a human level, they could not endorse it from a medical perspective.

Furthermore, the Court observed that the decision to withdraw treatment of 15 July 2022 had been made as part of the collective procedure provided for by law. The document concerning that decision, which had been provided to M.A.’s family on the same day, contained the signatures of ten doctors – including two from outside the intensive care team –, two nurses and two nurse managers.

The Court thus concluded that the decision-making process in the case at hand had satisfied the requirements of Article 2 of the Convention.

#### *Judicial remedies*

The Court pointed out that the applicants had had the opportunity to lodge urgent applications for protection of a fundamental freedom under Article L. 521-2 of the Administrative Courts Code, seeking the suspension of the decisions to withdraw treatment.

The urgent-applications judge of the Lille Administrative Court had granted the applicants’ request on 8 June 2022 by suspending the implementation of the initial decision to withdraw treatment of 1 June 2022, on the grounds that the doctors had assumed A.M. had not given advance directives. Both the urgent-applications judge of the Lille Administrative Court and the urgent-applications judge of the *Conseil d’État* had examined the decision to withdraw treatment of 15 July 2022 as members of a bench.

Furthermore, the urgent-applications judge of the Lille Administrative Court had given a ruling with sufficient promptness to ensure the effectiveness of the judicial review of the decisions to withdraw life-sustaining treatment.

Lastly, the Court noted that the urgent-applications judges of both Lille Administrative Court and the *Conseil d'État* had heard and determined the matter in accordance with the adversarial principle and had given duly reasoned decisions, taking into account the various aspects of the case, including A.M.'s advance directives.

With specific regard to the urgent-applications judge of the *Conseil d'État*, the Court noted that he had first indicated that the provisions of the third paragraph of Article L. 1111-11 of the Public Health Code, concerning advance directives, were contrary neither to the Constitution – referring to the Constitutional Council's preliminary ruling on constitutionality of 10 November 2022 – nor, in particular, to Article 2 of the Convention, given the discretion ("margin of appreciation") enjoyed by the States Parties in such matters under the Court's case-law. Second, he had dismissed the applicants' argument that the decision of 15 July 2022 had been made hastily. Third, he had verified the medical team's observation that any continuation of treatment would amount to unreasonable obstinacy, specifying the medical data which had led to that conclusion. And fourth, he had explained why, contrary to the applicants' assertions, A.M. could not be accommodated somewhere other than an intensive care unit or cared for without intensive, invasive treatment.

It followed from the above considerations that the applicants had been afforded a judicial remedy satisfying the requirements of Article 2 of the Convention.

The Court concluded that the domestic authorities had complied with their duties ("positive obligations") flowing from Article 2 of the Convention. There had therefore been no violation of that provision.

#### Articles 8 and 9

The Court considered that these two complaints were covered by the Article 2 complaint. Accordingly, there was no need to give separate rulings.

*The judgment is available only in French.*

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