

Some legal issues arising from the practice of euthanasia in Europe

Chiara Berneri, Ph.D.

BPP University Law School, London U.K.

Introduction

The practice of euthanasia and physician-assisted suicide has become increasingly common and has been at the center of heated moral and political debates for the last three decades.¹ In many countries, the debate has thus far been won by euthanasia supporters: in some cases the practice has been legalized, and in other cases it has simply become tolerated².

To understand the complexity of the phenomenon, it would be valuable to look at the situation in Europe, where the practice of euthanasia and physician-assisted suicide is variegated. For example, in Greece,³ as well as in Poland, euthanasia is still a crime against life;⁴ in the Netherlands, Belgium, and Luxembourg, it has been completely legalized;⁵ and in some other states, such as Italy⁶ and England,⁷ passive forms of euthanasia are tolerated under some circumstances. Moreover, the euthanasia issue in Europe has been dealt with not just nationally but also internationally by the European Court of Human Rights (ECtHR). The ECtHR has not made a statement against euthanasia and, relying on the margin of appreciation doctrine, which I will both explain and analyze in Part II of this essay, has delegated to the signatory states the decision of whether they allow it and to what extent.

The aim of this paper is to try to understand some of the many legal issues that the practice of euthanasia has raised in Europe. In order to do so, I will focus on the respective approaches of Belgium and the ECtHR. With respect to the Belgian approach, I will highlight the paradox of legalizing euthanasia, on the one hand, and outlawing the death penalty, on the other. With respect to the ECtHR approach, I will highlight its poor protection of basic human rights due to a distorted application of the margin of appreciation doctrine. Finally, I will offer some conclusions.

What does euthanasia really mean?

The language surrounding the euthanasia debate can be very confusing and merits commentary before delving into the two case studies I want to present. There are problems of ambiguity, false-distinctions, and covert assumptions, which muddle conversation about end-of-life issues at every level: moral, legal, political,

and medical.

The *Canadian Oxford Dictionary* defines euthanasia as “an act of painlessly killing, esp. at the patient’s request, a person or animal suffering from an incurable condition.” This definition describes euthanasia as an active process. Both in cases when a person directly and deliberately causes a patient’s death, and in those when death is the result of withdrawing or withholding treatment to let a person die, the agency of the subject is always active.

However, the pro-euthanasia debate is today dominated by people who wish to draw a distinction between active and passive euthanasia. This distinction is based on the idea that withdrawing or withholding treatment in order to cause death is not an action but an omission. According to this view, active euthanasia encompasses cases in which a person directly and deliberately causes the patient’s death, whereas passive euthanasia covers situations in which treatment is withdrawn or withheld. While this distinction seems to appeal many academics and physicians, it blurs the black and white line between the difference in killing someone and in letting someone die naturally. Euthanasia, exercised both via “action” or “omission” is always an act of killing someone who, otherwise, would live days, weeks or years longer.

There are different types of euthanasia. Euthanasia can be non-voluntary: this occurs when the person is unable to ask to be killed (perhaps they are unconscious or otherwise unable to communicate), or to make a meaningful choice between living and dying, and an appropriate person makes the decision on their behalf, perhaps in accordance with a living will, or previously expressed wishes. Euthanasia can be indirect: this occurs when the treatment given to reduce pain has the foreseeable side effect of causing the patient to die sooner.

Euthanasia is also distinguished from physician-assisted suicide, which is when the person who wants to die needs help to kill him/herself, asks for it and receives it. The distinction between euthanasia and physician-assisted suicide is subtle, at best. Euthanasia involves killing another person at his/her request; physician-assisted suicide is cooperating in the suicide of another person at his/her request. In the former case, a physician, for example, might inject

the lethal dose; while in the latter case the physician might simply prescribe the lethal dose to be taken by the person. While in the case of physician assisted suicide the doctor does not physically make the injection, the result achieved is exactly the same: provoking the death of a person that, otherwise, would die at a later stage.

Euthanasia is clearly different from “advanced care directives,” which consist in the medical, emotional, psychosocial, or spiritual types of care administered to a person who is terminally ill and which are aimed at reducing suffering rather than curing or killing.

Part I: Euthanasia in Belgium and its paradox

Belgium legalized active euthanasia with the Belgian Act on Euthanasia of May 28, 2002.⁸ Section 3(1) states that the physician who performs euthanasia does not commit any criminal offence if the patient is in a condition of “constant and unbearable physical or mental suffering that cannot be alleviated, resulting from a serious and incurable disorder caused by illness or accident.” Section 4(1) of the Bill also states that in case the person is no longer able to express his will, he can draw up an advance directive instructing the physician to perform euthanasia or designating a person that will inform the physician of his/her will.

Since 2002, Belgium’s law on euthanasia, which was originally drafted with the objective of putting an end to semi-clandestine practices, and thereby ensuring legal safety, has broadened its scope. On February 13, 2014, Belgium became the first country to allow voluntary child euthanasia without any age limit.⁹ The law amended the 2002 Euthanasia Act, which at Section 3 (1) now states that the physician who performs euthanasia commits no criminal offence if the patient is an adult, an emancipated minor or “a minor with the capacity of discernment and is conscious at the moment of making the request.” Compared to adult euthanasia, child euthanasia has a stricter application. Indeed, child euthanasia is confined to those children who experience unbearable physical suffering, while adult euthanasia extends to unbearable mental suffering, as well. For this reason people suffering from depression have already been euthanized,¹⁰ and the next frontier of euthanasia in Belgium may well be advanced dementia.¹¹

The story I am about to recall will show one of the paradoxes that can arise when euthanasia is chosen as a legal practice.

Frank Van Den Bleeken had already spent three decades in a Belgian jail for repeated rape convictions and murder when he raised complaints about the lack of access to psychological therapy during his 30-year incarceration. Since his complaints were not heard, he began for some years to make repeated requests to be euthanized, citing the unbearable mental suffering caused by the prospect of never being released on the

persistent basis of violent sexual impulses. According to him, the routine of daily prison life was inhumane and the only way to end his mental anguish was to die.¹²

Under Belgian law he was granted the right to die in September 2014 and was supposed to have been euthanized on January 11, 2015. However, four days after the scheduled date, the process was called off by the Ministry of Justice for undisclosed reasons. It was decided that he would instead be reassessed at a newly-opened psychiatric centre in Ghent and that afterward he would possibly be transferred to a centre in the Netherlands dealing with long-term prisoners.

Despite the Ministry’s intervention in the case of Mr. Van Den Bleeken, his physicians were quick to clarify that the decision not to euthanize him did not mean that prisoners could no longer request euthanasia.¹³ In other words, the case of Mr. Van Den Bleeken does not rule out euthanasia for prisoners; it simply delays it. There could be future cases in which prisoners denounce the inhuman conditions of prison and ask for euthanasia as an alternative. The alternative between an inhuman life in prison and death presents two major issues. The first concerns prison conditions. On November 25, 2014, the ECtHR found Belgium in breach of Art. 3 of the European Convention on Human Rights (ECHR), which pertains to the prohibition of “inhuman or degrading treatment.” The ECtHR urged the Belgian government to adopt “general measures guaranteeing prisoners adequate conditions of detention.”¹⁴ The ECtHR pointed out how in Belgium, the tendency to overcrowd inmates and to place them in unhygienic and dilapidated prisons was a structural problem. The ECtHR also pointed out how Belgium had been criticized by national and international observers for many years without making any improvements.¹⁵

At the time of writing this article, no major steps towards reforming prison conditions had yet been taken by the Belgian authorities at either at the political or legislative levels.¹⁶ As difficult as it may be for any government to pass a major prison reform bill, the legality of euthanasia is a factor that is not going to make the reform process any easier in Belgium. Indeed, in the case of Mr. Van Den Bleeken, the state was ready to accept his request for euthanasia rather than improving therapeutic services or to improve his living conditions in prison. As long as euthanasia stands as an alternative to confinement, as Van Den Bleeken’s physicians have insisted remains the case, there will be little incentive to bring the treatment of prisoners into line with more humane expectations.

The second major issue, equally delicate if not more, concerns the death penalty. Capital punishment in Belgium was formally abolished on August 1, 1996 for all crimes, in both peacetime and wartime. The Kingdom of Belgium Foreign Affairs, Foreign Trade and Development Cooperation openly states on its website that “Belgium, along with a great many other countries,

believes that the death penalty is a serious assault on human dignity.”¹⁷ Even more vehemently, it professes that “Belgium [...] strongly condemn(s) the use of the death penalty” and that it has “long been working to fight this practice on the international scene.”¹⁸ Despite these statements, the case of Frank Van Den Bleeken seems, as it were, to introduce through the back window what was thrown out through the front door. This case has set a precedent in which prisoners can opt out of their prison sentence by requesting euthanasia, conceivably even in cases in which the applicant does not have to serve a life sentence. Although euthanasia, unlike the death penalty, is chosen rather than imposed, the inhuman conditions of Belgian prisons seem capable of institutionally coercing their consent to die, which is paradoxical.

Euthanasia in Belgium contradicts the ethos behind abolishing the death penalty and clearly stands in the way of addressing the real problems that attend prison life. Furthermore, by allowing prisoners to request euthanasia, the state seems to be giving up on the possibility of rehabilitation, opting instead to give prisoners the choice between two very brute realities: inhumane confinement or *de facto* suicide – the choice, as mentioned above, generates a form of institutional coercion. Without the euthanasia option, prisoners would have a real chance at rehabilitation, serving their human development, both in prison and (for those who are released) beyond.

Part II: The ECtHR and Euthanasia: An Unusual Use of the Margin of Appreciation Theory

The margin of appreciation theory cannot be found either in the text of the ECHR or in any of its preparatory works, but is a concept that, over the years, has been developed slowly through case law. The notion of margin of appreciation refers to the “room for maneuver” that the ECtHR is willing to leave to national authorities in fulfilling their human rights obligations.¹⁹ In simple terms, “the margin of appreciation is a tool of jurisprudential origin through which the ECtHR leaves the national authorities a certain amount of autonomy in applying the Convention.”²⁰

Although it has been argued that technically there is no limit to the articles of the Convention to which the margin of appreciation theory can be applied,²¹ some academics have pointed out that the ECtHR is not willing to invoke it with respect to absolute rights, such as Art. 3 (the right not to “be subjected to torture or to inhuman or degrading treatment”), or Art. 4 (the right not to “be held in slavery or servitude,” or “required to perform forced or compulsory labor”), or in case of an important limited right²² such as the right to life encompassed in Art. 2.²³ This view surely makes sense with regard to absolute rights which, by definition, are unlimited and cannot be

subjected to an incomplete application, but also with regard to the important limited right to life. Indeed, due to the implied principle of priority to rights, when dealing with this limited right, the ECtHR has to ensure that certain universal minimum standards are always met and that limitations are posed only at the margins.²⁴ For instance, the limitation imposed on this right is “the use of force which is no more than absolutely necessary” (Art. 2). Applying the ‘priority to rights principle’ to this article means that the lawfulness of the use of force limitation is not assessed by balancing the right with opposing state’s interests, but by evaluating whether, in the circumstances, a high evidential threshold of ‘absolute’ or ‘strict’ necessity was crossed through the use of force.²⁵

With particular regard to end-of-life issues, Art. 2 implies both positive and negative obligations for the state: positively, the state has a duty to protect life; negatively, it has a duty to refrain from the unlawful taking of life. With regards to end-of-life issues, Art. 2 directs the state to craft legislation that a) under its ‘positive obligations,’ would compel hospitals to adopt appropriate measures for the protection of patients’ lives; and b), under its ‘negative obligations,’ would prohibit the means and methods that result in killing patients. It is worth noting, the text of Art. 2 refers to the negative obligation of refraining from the use of force, which is not absolutely necessary, with no mention of the possibility of limiting this right through the use of euthanasia. To go around Art. 2, which implicitly resists the idea of euthanasia on the basis that the fundamental right to life is incommensurable with any right to die,²⁶ applicants seek permission from ECtHR by citing the violation of Art. 8, which protects personal autonomy.

When Art. 8 applies in cases concerning end of life, the ECtHR gives a broad margin of appreciation to signatory states. For this reason, in countries in which assisted suicide is not legal, the ECtHR finds they are not in violation of Art. 8,²⁷ whereas they may be deemed in violation where assisted suicide has been legalized.²⁸ Surprisingly, in some recent cases, the same margin of appreciation seems to have been granted in euthanasia requests where the applicant has paradoxically claimed a right to life. This has occurred despite the fact that the nature of the right to life excludes a balancing exercise between different interests and does not specify euthanasia as one of its justifiable limitations. Why, then, has the right to life been cited in euthanasia cases – a seemingly bizarre and contradictory legal path? The answer, simply, is that the right to life does not explicitly exclude euthanasia. The landmark case is *Lambert v France*.²⁹

Vincent Lambert sustained a head injury in a road accident in 2008. As a result, he became a tetraplegic. Mr. Lambert’s physician decided to discontinue artificial nutrition and hydration. The physician’s controversial decision was reviewed by

French *Conseil d'État* and declared lawful. But Mr. Lambert's parents, a half-brother, and a sister did not agree. The family applied to the ECtHR to contest the *Conseil d'État's* decision, arguing that by withdrawing artificial hydration and nutrition the French state contravened its obligation to protect life in Art. 2. The ECtHR, however, ruled that the *Conseil d'État's* judgment had not violated Art. 2 on the patient's right to life.³⁰ *Lambert v France* is an example of how the ECtHR is comfortable with using the margin of appreciation theory when dealing with a right – the right to life in this case – which the court ought to protect by all means, perhaps most especially in the case of vulnerable persons.

There are several implications that follow from *Lambert v. France*. First of all, it is important to point out that when it comes to end-of-life cases, the ECtHR has not read Art. 2 according to its literal definition – an approach which seems to be deliberate: a ploy to avoid a direct confrontation between the decision of the *Council d'État* and the right to life, which would have shifted the focus to the *Council's* obligation to protect life and to refrain from killing. But that is not what happened, for we know that the judgment was focused on Art. 8 and personal autonomy. Furthermore, the court ruled that the law should be interpreted with a 'broad margin of application' because the Council of Europe had not reached consensus regarding euthanasia and the withdrawal of life-sustaining treatments. In practice, this will mean that end-of-life issues will be treated by the courts as having little or nothing to do with the right to life, essentially demoting the original status accorded to the inviolable right to life by the Council of Europe. This being said, even if one were in agreement with the ECtHR's limited way of reading Art. 2 (namely, that signatory states should be granted discretionary power in deciding whether personal autonomy could prevail over the protection of the right to life), the way in which the margin of appreciation doctrine was applied in this case seems to be questionable and, frankly, worrying.

As things now stand, active euthanasia and assisted suicide are illegal in France. However, French law allows the discontinuation of treatments to a patient if continuing them would demonstrate "unreasonable obstinacy."³¹ Deciding who gets to make this call, and on what basis, further complicates matters, for despite the stress on personal autonomy found elsewhere in the French legal tradition, the patient's wishes and the views of his family merely 'complement' the attending physician's assessment of the medical situation. Indeed, the patient's wishes are in "no way determinative of the final outcome of the doctor's decision."³² Furthermore, French law only requires that physicians meet three criteria in deciding whether to withdraw treatment: futility, disproportion, and sustaining life artificially.³³ Once these criteria are met, the collective procedure of considering the patient's will is nothing more than a

formality; the real decision is only in the physician's hands.³⁴

In the Lambert case, the ECtHR ought to have declared that the French law allowing for the discontinuation of treatment was in violation of the most basic of human rights outlined in Art. 2, Art. 8, and even Art. 3, namely protection from torture and inhuman and degrading treatments. The court did not consider how such a law would require a physician to decide that it was time for his patient to be starved to death. And the Court seems to have failed in this crucial respect in order to privilege uncritically the margin of appreciation, which is a theory, to be sure, not a human life. Exonerating itself from all responsibility for the matter, the ECtHR stated 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."³⁵ After stating it had no business ruling in such matters, the ECtHR went on to express an opinion about the legislation put in place by the French government and how physicians reached their decision in Mr. Lambert's case, finding that everyone had been in line with the requirements of Art. 2.

Although the ECtHR stated that the margin of appreciation given to states is not unlimited, in this particular case it acted as though it were. In fact, in assessing the margin of appreciation of the Lambert case, the ECtHR did not indicate how the method chosen by the French authorities to "balance out" competing interests did not give enough weight to the value of personal autonomy; the result being that it did not declare the French legislation unlawful. In my opinion, however, it is evident from the text of the judgment that the will of the patient was far from clear, and that priority, therefore, ought to have been given to life rather than to the assumption that Mr. Lambert would have preferred death by starvation and dehydration.

It seems to me that the ECtHR's application of the margin of appreciation theory has compromised some of the most basic human rights it means to protect. I would respectfully point out that national legislation allowing euthanasia requires greater scrutiny, and that questions of life are paramount and should not be muddled by legal theory. Only in this way will the ECtHR regain its role as guardian of human rights and protector of the most vulnerable.

Conclusion

Law and the rights it protects, or the actions it condones, is one of the most influential ways of shaping society. When law prioritizes autonomy over life, as I believe is the tendency today in many European countries, the protection of basic human rights loses priority. This paper has examined two cases where

Legal issues arising from euthanasia

autonomy has trumped life in legal judgments concerning euthanasia and physician-assisted suicide in Belgium and the case law of the ECtHR.

The situation now in Belgium is such that the access to euthanasia for prisoners who cannot cope with inhumane conditions of incarceration acts as a counter-incentive to the improvement of prisons and paradoxically introduces a death-penalty-by-choice in a country where capital punishment was outlawed years ago.

Human rights are also compromised in the case law of the ECtHR with respect to the right to life and of self-determination when the patient cannot express him/herself. The Court has not sufficiently clarified how the right to self-determination, protected in art. 8, implies a right to die. Furthermore, in taking the view that a person's expressed desire to die is inviolable, it has prioritized self-determination over the right to life — a move that so radically departs (not for the first time in recent years) from the European legal tradition that it cries out for justification. Finally, the Court has not explained how others can be permitted to stand-in for incommunicable patients and to request euthanasia on their behalf, except to link one's loss of "usefulness" with the loss of his/her dignity, which is a very tenuous link indeed in regards to human beings whose dignity comes from simply being human beings.

Given what is at stake in terms of the protection of human rights, and how the lobby for euthanasia and physician-assisted suicide has led the courts into ambiguity with regards to basic human rights, I cannot see anyway forward other than to ask European citizens to seek the introduction of national legislation that completely prohibits the practice of euthanasia and physician-assisted suicide, lest we continue to be passive witness to the slow degradation of human rights. The lack of express national legislation banning all forms of euthanasia has left too much of what needs to be decided in the hands of the ECHR's judges. Here, as in all vacuum situations (or even as in grey situations in which the state prohibits only active euthanasia and physician-assisted suicide, but not the discontinuation of feeding and hydration treatments), ECHR's judges have shown the tendency to misinterpret the Convention, construing the request to die as a plea for mercy and the act of killing as merciful.

Dr. Chiara Berneri is a Lecturer of Constitutional Law and European Union Law at BPP University, London. Her research covers European Immigration issues and European Human Rights, with a particular focus on euthanasia and the display of religious symbols in public places. She is currently writing a book on family reunification rights in Europe (Oxford: Hart, forthcoming 2016).

Endnotes

- 1 Recently France has been debating the introduction of the "deep sleep" bill. See "France: Controversial Draft Law Revives Euthanasia Debate," *EuroNews*, March 10, 2015, <http://www.euronews.com/2015/03/10/france-controversial-draft-law-revives-euthanasia-debate>. The bill was approved by a large majority in the lower house in March 2015 but voted down by the senate in June 2015. The bill returned to the lower house, which is now in charge of redrafting it. On the moral debate on euthanasia see P. A. Singer and M. Siegler, "Euthanasia - A Critique," *The New England Journal of Medicine* 322 (1990): 1881-83; E. J. Emanuel, "What is the Great Benefit of Legalizing Euthanasia or Physician-Assisted Suicide?" *Ethics* 109 (1999): 629-42.
- 2 See for example Denmark and Finland.
- 3 See J. Lucy Pridgeon, "Euthanasia Legislation in the European Union: is a Universal Law Possible?" *Hanse Law Review* 2(1) (2006): 47-49.
- 4 On the Polish approach see A. Pacian, J. Pacian, and T.B. Kulik, "Practicing Euthanasia in Poland – Necessity or Freedom of Introducing and Application of Legal Regulations? – Discussion on the Legal Matters," *Romanian Journal of Bioethics* 9(4) (2011): 74-84.
- 5 Euthanasia was legalized in Belgium and in the Netherlands in 2002 and in Luxembourg in 2008. In Switzerland, active euthanasia is not legal, but physician assisted suicide is and has been since 1942 as a consequence of Art. 115 of the Swiss Criminal Code.
- 6 See in particular the famous Englaro case (Cassazione Civile - sezione I. 4-16/10/2007 n. 21748) in which the judges of the Italian *Corte di Cassazione* allowed the withdrawal of food and hydration to Eluana Englaro who, due to an accident, was in a permanent vegetative state.
- 7 With regard to England, see in particular R (*on the application of Debbie Purdy*) v *Director of Public Prosecutions and the Society for the Protection of Unborn Children* [2009] UKHL 45. The applicant launched a case to clarify whether or not her husband would risk being prosecuted if he helped her travel to a Dignitas clinic in Switzerland to die. The Director of Public Prosecutions issued guidelines in February 2010 setting out situations where a prosecution was not in the public interest, and therefore unlikely to happen. See "Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide,"

- updated October 2014, https://www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.html
- ⁸ The Act is available at “The Belgian Act on Euthanasia of May 28th, 2002,” *Ethical Perspectives* 9 (2002): 182-88, accessed October 19, 2015, <http://www.ethical-perspectives.be/viewpic.php?LAN=E&TABLE=EP&ID=59>.
- ⁹ In the Netherlands, euthanasia is illegal for children under the age of 12.
- ¹⁰ See in particular the case of Nathan Verhelst. Nathan Verhelst was born a girl. He had hormone therapy, followed by a mastectomy and surgery to construct a penis but none of the operations worked as desired. He was given euthanasia on the grounds of “unbearable psychological suffering”.
- ¹¹ Early cases of dementia can already obtain euthanasia.
- ¹² See Lizzy Dearden, “Belgian Rapist and Murderer Frank Van de Bleeken Denied Request to Die in Prison,” *Independent*, January 6, 2015, <http://www.independent.co.uk/news/world/europe/belgian-rapist-and-murderer-frank-van-den-bleeken-denied-request-to-die-in-prison-9961262.html>.
- ¹³ Dearden, “Belgian Rapist”.
- ¹⁴ ECtHR case *Vasilescu v. Belgium*, application no. 64682/12. For a summary of the case see “Belgium: Court Recommends Improvements to Prison Conditions,” *Human Rights Europe*, November 25, 2014, <http://www.humanrightseurope.org/2014/11/belgium-court-recommends-improvements-to-prison-conditions/>.
- ¹⁵ Case *Vasilescu v. Belgium* paragraph 73.
- ¹⁶ A reform has been passed in March 2015 to scrap prison sentences less than 1 year from the criminal code. It does not say anything about improving life conditions of those that have to serve longer prison sentences. See “Belgium to Scrap Prison Sentences Less than 1 Year from Penal Code,” *RT*, March 22, 2015, <http://rt.com/news/243041-belgium-prison-reform-sentence/>.
- ¹⁷ “Death Penalty,” *Kingdom of Belgium Foreign Affairs, Foreign Trade and Development Cooperation*, accessed October 19, 2015, http://diplomatie.belgium.be/en/policy/policy_areas/human_rights/specific_issues/death_penalty/.
- ¹⁸ “Death Penalty.”
- ¹⁹ D. Spielmann, “Allowing the Right Margin the European Court of Human Rights and the National Margin of Appreciation Doctrine: Waiver or Subsidiarity of European Review?” *Cambridge Yearbook of European Legal Studies* 14(1) (2011): 383.
- ²⁰ J. Callewaert, “Quel Avenir pour la Marge d’Appréciation ?” in *Protecting Human Rights: The European Perspective. Studies in memory of Rolv Ryssdal*, eds., P. Mahoney, F. Matscher, H. Petzold and L. Wildhaber (Berlin: Carl Heymanns Verlag K.G., 2000), 149.
- ²¹ R.J. Macdonald, “The Margin of Appreciation in the Jurisprudence of the European Court of Human Rights,” in *International Law at the Time of its Codification, Essays in Honour of Judge Roberto Ago*, (Milan: Giuffrè, 1987), 192.
- ²² Absolute rights are rights that cannot be limited, reduced, or amended in any way. Limited Rights are rights that come with exceptions. These rights may be limited under explicit and finite circumstances that are encompassed in the article itself. Under the limitation the violation is lawful.
- ²³ J. Callewaert, “Is there a Margin of Appreciation in the Application of Articles 2, 3 and 4 of the Convention?” *Human Rights Law Journal* 19(6) (1998): 6.
- ²⁴ S. Greer, “The Interpretation of the European Convention on Human Rights: Universal Principle or Margin of Appreciation?” *UCL Human Rights Review* 3 (2010): 9.
- ²⁵ Greer, “The Interpretation.”
- ²⁶ ECtHR judgment *Pretty v UK*, application no. 2346/02.
- ²⁷ See for instance ECtHR judgment *Kock v Germany*, application no. 497/09 and *Pretty v UK*, application no. 2346/02.
- ²⁸ ECtHR judgment *Gross v Switzerland*, application no 67810/10.
- ²⁹ ECtHR judgment *Lambert and Others v France*, application no 46043/14.
- ³⁰ The applicants argued that a legitimate distinction exists 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 repeatedly in their observations that since the criterion of unreasonableness was not fulfilled the present case concerned intentional taking of life or euthanasia. The ECtHR, however, argued that the aim of the medical decision was not to put an end to life, but to discontinue a form of treatment, which had been allegedly refused by the patient. For this reason, the ECtHR concluded that this case was not about euthanasia.
- ³¹ LOI n° 2005-370 du 22 avril 2005 relative aux droits des malades et à la fin de vie (Leonetti Act 2005), available at <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000446240&categorieLien=id>.
- ³² *Lambert and Others v France*, application no 46043/14, Dissenting opinion paragraph 5.
- ³³ Article L. 1110-5 LOI n° 2005-370 du 22 avril 2005 relative aux droits des malades et à la fin de vie (Leonetti Act 2005).
- ³⁴ *Lambert and Others v France*, application no 46043/14, Dissenting opinion paragraph 5. Apparently the rationale of this law is to avoid putting pressure on the family and to avoid the sense of guilt in making such a decision.
- ³⁵ *Lambert and Others v France*, application no 46043/14, paragraph 181.