

Group Briefing

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Withdrawal of artificial nutrition and hydration: who decides?

ARTHUR COX - KEY CONTACTS



ORLA KEANE
PARTNER
+353 1 618 0434
orla.keane@arthurcox.com



JOANELLE O'CLEIRIGH
PARTNER
+353 1 618 0402
joanelle.ocleirigh@arthurcox.com

Medical practitioners often find themselves in the unenviable position of having to decide whether to withdraw or discontinue treatment that is artificially prolonging a patient's life. This can sometimes raise ethical and legal issues for the doctor concerned. How can doctors be sure that their decision is on the right side of the law? What should they do if a family member disagrees with their decision? This arose recently in the much-publicised case of French national, Vincent Lambert.

THE VINCENT LAMBERT CASE

In 2008, Vincent Lambert, a 32-year old nurse, was left in a vegetative state after sustaining serious head injuries in a motor-cycle accident. Doctors used artificial nutrition and hydration, administered through a gastric tube, to keep him alive. By 2012, however, he was becoming increasingly resistant to being fed. In 2014, his doctor decided to remove the gastric tube as its only effect was to sustain Mr Lambert's life artificially.

Mr Lambert's parents and two of his siblings argued that this would be in breach of the right to life guaranteed by Article 2 of the European Convention on Human Rights. Article 2 of the Convention imposes a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction.

FRENCH LAW: WITHDRAWAL OF ARTIFICIAL LIFE-SUSTAINING TREATMENT

French law does not authorise euthanasia or assisted suicide. However, it allows doctors to discontinue or withhold treatment which is futile or disproportionate, or where the only purpose or effect of the treatment is to sustain life artificially.

Where a patient is unable to express his/her wishes, and the withdrawal of treatment would put his/her life at risk, doctors in France must follow a 'collective procedure'. This requires them to consult with the patient's care team; at least one doctor; a person designated as a 'person of trust' by the patient pre-injury; the family; and those close to the patient.

THE DECISION TO WITHDRAW TREATMENT IN MR LAMBERT'S CASE

The collective procedure was followed in Mr Lambert's case. Mr Lambert's wife and six of his eight siblings were in favour of withdrawing treatment, as were five of the six doctors consulted. His parents and two remaining siblings were against it however, and they obtained a court order preventing the doctor from removing the tube.

Mr Lambert's wife, his nephew and the hospital appealed this order to France's highest court, the Conseil d'Etat.

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

FRANCE'S HIGHEST COURT: DOCTOR'S DECISION NOT UNLAWFUL

The Conseil d'Etat found that the doctor's decision to withdraw artificial nutrition and hydration was not unlawful and that all the conditions imposed under French law had been met. The Court had regard to the view of three recognised specialists in neuroscience that Mr Lambert's condition corresponded to a vegetative state and that his brain damage was irreversible.

Mr Lambert's parents and two of his siblings went to the European Court of Human Rights.

THE ROLE OF THE EUROPEAN COURT

States have 'a margin of appreciation', or room for manoeuvre, as to whether or not to permit the withdrawal of artificial life-sustaining treatment, and also as regards the means of striking a balance between the protection of a patient's right to life and the protection of their right to respect for their private life and their personal autonomy. This margin of appreciation is not unlimited, however, and the European Court can review whether a State has complied with its obligations under Article 2 of the Convention to take appropriate steps to safeguard the lives of those within its jurisdiction.

EUROPEAN COURT: NO VIOLATION OF RIGHT TO LIFE

The European Court was satisfied that France had complied with its obligation under Article 2 of the Convention. In reaching this decision, the European Court had regard to:

- » the existence in French law and practice of a regulatory framework compatible with the requirements of Article 2;
- » the fact that account had been taken of Mr Lambert's previously expressed wishes not to be kept alive artificially, and the wishes of those close to

him, as well as the opinions of other medical personnel; and

- » the availability of recourse to the French courts in the event of doubt as to the best decision to take in Mr Lambert's interests.

FIVE JUDGES DISAGREED

Five of the seventeen judges who heard the case disagreed with this decision, describing it as "*frightening*". They did not believe that Mr Lambert was in an "end-of-life" situation: he was not brain dead; could breathe on his own; could digest food (though he had difficulty swallowing); and there was no evidence that he was in pain. They also thought that the majority had placed too much weight on "*casual*" remarks Mr Lambert had allegedly made to his wife many years earlier to the effect that he did not want to be kept alive artificially. They expressed concern that:

"interpreting ex post facto what people may or may not have said years before (and when in perfect health) in casual conversations clearly exposes the system to grave abuse."

POSITION IN IRELAND

Issues similar to the issues in the Lambert case have arisen in the Irish courts over the last number of years. In 1996 in *In re a Ward of Court*, the Irish Supreme Court found that the withdrawal of artificial nutrition and hydration from a patient in a near persistent vegetative state for over 20 years was lawful. The patient, a ward of court, had been fed by means of a gastric tube for over four years. The Supreme Court said this was not in her best interests: the use of a gastric tube constituted medical treatment, not medical care; it was intrusive; it had no curative effect; and was merely

prolonging her life artificially. The Court said that the right to life implies the right to die a natural death, and not to have one's life maintained artificially against one's wishes. As the patient in this case was under the care of the Court, it fell to the Court to decide whether to remove the gastric tube. The Court said that although the views of the ward's committee and family could be taken into account, they could not prevail over its view as to what was in her best interests. The Court was very careful in its judgment to draw a line between ending life and allowing life to end.

We do not have a 'collective procedure' as exists in France. However, medical practitioners can look to the [Medical Council's Guide to Professional Conduct and Ethics](#) for guidance. This guide states that doctors:

- » have a responsibility to ensure their patients die with dignity, in comfort and with as little suffering as possible.
- » are not obliged to start or continue treatment or artificial nutrition and hydration that is futile or burdensome, even if such treatment may prolong life.
- » should carefully consider when to start and when to stop attempts to prolong life, while ensuring that patients receive appropriate pain management and relief from distress.
- » should respect a patient's advance healthcare plan on condition that: (i) the decision was an informed choice; (ii) the decision covers the situation that has arisen; and (iii) the patient has not changed his/her mind.

If in doubt, clear and practical legal advice can help address these sensitive issues to ensure appropriate decisions are made in a timely way and on a sound legal basis.

arthurcox.com

Dublin

+353 1 618 0000
dublin@arthurcox.com

Belfast

+44 28 9023 0007
belfast@arthurcox.com

London

+44 207 832 0200
london@arthurcox.com

New York

+1 212 782 3294
newyork@arthurcox.com

Silicon Valley

+1 650 943 2330
siliconvalley@arthurcox.com