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Krzysztof Orzeszyna
John Paul II Catholic University of Lublin, Poland
ORCID: 0000-0003-0733-6028
krzysztof.orzeszyna@kul.pl

The Right to a Natural and Dignified Death

Prawo do naturalnego i godnego umierania

SUMMARY

The article addresses the issue of the right to natural and dignified dying in the case-law of the European Court of Human Rights. The right to life enshrined in Article 2 of the European Convention on Human Rights is currently balanced in judicial practice with the right to privacy. The right to effectively demand inflicting death is usually located in the sphere of autonomous human decisions. However, not only is the construction of such a right contrary to the principle of dignity of every person, but it would erode the guarantees vested in any terminally-ill person. The analysis of Strasbourg's case-law setting a common standard for the ECHR Member States does not make it possible to assume the existence of the right to death as a subjective right of an individual. In the area of the protection of human life, States are obliged to take positive action. That relatively established case-law was clearly modified in the case of *Lambert and others v. France*, as the Court crossed the red line in favour of passive euthanasia, accepting the vague French procedural rules recognizing artificial nutrition and hydration of the patient as a form of therapy that may be discontinued.

Keywords: right to life; right to a natural and dignified death; right to privacy; overzealous treatment

INTRODUCTION

The right to a natural and dignified death concerns two fundamental values: an absolute requirement of respecting and protecting the inherent and inalienable dignity of man and the right to respect for human life, and the right to privacy. The limitation of the right to decide on one's own is dictated by the necessity of protecting another fundamental right of the person, i.e. the right to protect the life of any person. Thus, there are two conflicting values – a restriction on the fundamental right to privacy of a given person is justified by the need to protect another fundamental right of the same person, i.e. the right to right to life. It is indisputable

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in our civilization that the right to protect life is placed higher within the hierarchy of norms, because by its very nature it is a prerequisite for respecting all other rights and freedoms. Therefore, it becomes necessary to hierarchize both these principles in the light of common axiology. When seeking the balance, it can be concluded that the requirement to respect the life of every person must not lead to challenging the essence of the right to privacy. It is therefore important to look for restrictions on the right to the protection of life in the principle of proportionality. The limits of the right to the protection of private life must be determined by confronting other principles and values.

SUICIDE ASSISTED BY ANOTHER PERSON OR A STATE BODY

The fundamental human right to life does not entail the assumption of the right to death[1]. On the other hand, the modern world is characterised by the growing importance of privacy. This is completely in line with the expectations of a man who is increasingly striving to expand his freedom and autonomy[2]. In modern legal systems, privacy expresses the aspirations of contemporary man to be the master of his destiny. Autonomy in the sphere of decisions made in the medical context is undoubtedly a manifestation of these trends and directions of thinking. The right to effectively demand inflicting death in the situation of unbearable suffering is also usually located in the sphere of autonomous human decisions[3]. However, not only is the construction of such a right contrary to the principle of dignity of every person, but it would erode the guarantees granted to each terminally-ill person[4]. The European Convention for the Protection of Human Rights and Fundamental Freedoms[5] guarantees every person under Article 2 the right to life rooted in the dignity of the human person. The law must not deprive a person of their inalienable dignity, but the law may shape the means of protection of that dignity in various ways, extending or restricting them[6].

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[1] J.-F. Renucci, *Droit européen des droits de l'homme. Droits et libertés fondamentaux garantis par la CEDH*, Paris 2013, pp. 78–79.

[2] D. Manaï, *Droits de l'homme et biomédecine*, [in:] *Introduction aux droits de l'homme*, eds. M. Hertig Randall, M. Hottelier, Genéve–Zurich–Bâle 2014, pp. 662–663.

[3] M. Safjan, *Eutanazja a autonomia pacjenta. Granice ochrony prawnej*, [in:] *Między życiem a śmiercią. Uzależnienia, eutanazja, sytuacje graniczne*, eds. W. Bołoz, M. Ryś, Warszawa 2002, pp. 162–163.

[4] K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, *Prawo międzynarodowe praw człowieka*, Warszawa 2020, p. 267.

[5] Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (Journal of Laws 2003, no. 61, item 284 as amended), hereinafter: ECHR.

[6] M. Safjan, *Eutanazja a autonomia pacjenta – granice ochrony prawnej*, [in:] *Prawo – społeczeństwo – jednostka. Księga jubileuszowa dedykowana Profesorowi Leszkowi Kubickiemu*, eds. A. Łopatka, B. Kunicka-Michalska, S. Kiewlicz, Warszawa 2003, p. 252.

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The issue of rights of ill and dying persons within the system of the Council of Europe system was addressed in the Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine[7], which stipulates that respect for the autonomy of the will of the individual requires the individual's consent to any medical intervention. A similar provision has been set out in the Recommendations of the Parliamentary Assembly of the Council of Europe: Protection of the human rights and dignity of the terminally ill and the dying 1418 (1999)[8] and Protecting human rights and dignity by taking into account previously expressed wishes of patients 1859 (2012)[9]. Based on these documents, it is possible to reconstruct the European standard of the protection of the right to life of people in a vegetative state. The Convention is based on the assumption of the need to respect human rights and recognize the importance of human dignity. It establishes the principle of primacy of interests and welfare of the human being over the sole interest of society or science[10]. Recommendation 1418 points to the obligation to respect and protect the terminally ill or dying, rooted in the inviolable human dignity in all phases of life. Thus, the care of dying people stems from human dignity[11], and in a symbolic sense it is a reward for the support provided during infancy, since both the initial and final stages of human life are characterised by weakness and dependence on others[12]. Recommendation 1418 confirmed the prohibition of the conscious deprivation of life of terminally ill or dying people. The wish for death expressed by a terminally ill or dying person cannot constitute the basis for any demand or legal claim for the deprivation of life by another person, nor a legal justification for actions that may cause death[13].

An important role for the rights of people who are terminally ill or dying is played by the will of the patient, which must be taken into account by the medical doctor[14]. On the other hand, when a critical condition occurs, in the absence of

[7] Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, ETS no. 164, www.coe.int/en/web/conventions/full-list/-/conventions/treaty/164 [access: 25.04.2020].

[8] Recommendation 1418 (1999). Protection of the human rights and dignity of the terminally ill and the dying (25 June 1999), https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=16722&lang=en [access: 25.04.2020].

[9] Recommendation 1859 (2012). Protecting human rights and dignity by taking into account previously expressed wishes of patients (25 January 2012), http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=18064&lang=en [access: 25.04.2020].

[10] M. Safjan, *Prawo i medycyna*, Warszawa 1998, pp. 21–33.

[11] K. Orzeszyna, M. Skwarzyński, R. Tabaszewski, *op. cit.*, pp. 20–24.

[12] Recommendation 1418 (1999), points 5–6.

[13] *Ibidem*, points 9 c, i–iii.

[14] T. Kalita, *Prawo człowieka do śmierci przegląd orzecznictwa Europejskiego Trybunału Praw Człowieka. Artykuły wygłoszone podczas konferencji*, „Przegląd Prawno-Ekonomiczny" 2012, no. 4, p. 61.

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a declaration of the will of the patient or patient's representative, decisions taken by the doctor must be aimed at life and extending it[15]. People tired of suffering, considering their disease to be humiliating and degrading their human dignity, try seeking for the right to a dignified death, understood by them as a controlled deprivation of life. In the case of *Pretty v. United Kingdom*[16], the European Court of Human Rights (ECtHR) heard for the first time an application brought by a person claiming the right to put an end to her own life. The application concerned the criminalisation of assisted suicide. The Court pointed that Article 2 ECHR, as well as Article 3, cannot be interpreted as granting the right to death, since they are absolute in nature, they apply without any exception or reservation, even without the possibility of repealing under Article 15 ECHR[17]. According to the Court, one cannot derive from that provision a positive obligation, on the part of the State, of assistance in suicide, consisting in making a promise not to prosecute the applicant's husband if he assists her in committing suicide[18]. Nor has there been an infringement of Article 8, as the state complied with the conditions for the limiting clauses contained in that provision[19]. The Court also considered that, in the absence of a common European standard on this issue, the margin of appreciation of the state's interference in this aspect of the right to privacy is greater than in other areas[20].

In the case of *Haas v. Switzerland*[21], the applicant alleged a breach of Article 8 ECHR by the national authorities, namely the right to decide on his own death. The Court had to analyze the categories and hierarchy of rights, taking into account Article 8 in conjunction with Article 2 ECHR, which obliges the bodies to protect vulnerable people also from acts which endanger their lives[22]. The applicant argued that if he had not been administered a poisonous substance, the suicide act committed by him would have been devoid of dignity. However, the

[15] Recommendation 1418 (1999), points 9 b, iv.

[16] Judgement of the ECtHR of 29 April 2002, case 2346/02, *Pretty v. United Kingdom* (sect. 4).

[17] *Ibidem*, § 40; J.-F. Renucci, *op. cit.*, pp. 78–79; M. Amos, *Human Rights Law*, Oregon 2014, pp. 186–187.

[18] D. Manaï, *op. cit.*, p. 662; M. Wąsek-Wiaderek, *„Prawo do godnej śmierci" w orzecznictwie Europejskiego Trybunału Praw Człowieka*, [in:] *Eutanazja*, ed. M. Mozgawa, Warszawa 2015, p. 287.

[19] L. Bosek, *Wspomagane samobójstwo*, [in:] *Prawo wobec medycyny i biotechnologii. Zbiór orzeczeń z komentarzami*, ed. M. Safjan, Warszawa 2011, pp. 100–101; M. Grzymkowska, *Standardy bioetyczne w prawie europejskim*, Warszawa 2009, p. 196; eadem, *„Prawo do śmierci" w świetle orzeczenia Europejskiego Trybunału Praw Człowieka w sprawie Diane Pretty v. Wielka Brytania*, „Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego" 2003, pp. 93–109; R. Tabaszewski, *The Permissibility of Limiting Rights and Freedoms in the European and National Legal System Due to Health Protection*, "Review of European and Comparative Law" 2020, no. 3, pp. 63–64.

[20] L. Garlicki, *Komentarz do art. 8*, [in:] *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności*, vol. 1: *Komentarz do artykułów 1–18*, ed. L. Garlicki, Warszawa 2010, p. 502.

[21] Judgement of the ECtHR of 20 January 2011, case 31322/07, *Haas v. Switzerland*, § 13.

[22] *Ibidem*, § 54; D. Manaï, *op. cit.*, pp. 662–663.

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Court's judges concluded that the restrictions imposed by the State fell within the scope of the limiting clauses under Article 8 (2) ECHR, even though the applicant had difficulty in accessing these procedures (including the requirement to obtain a prescription and medical consultation). The Court also stressed that there was no consensus among European countries on the approach to euthanasia. The vast majority of countries attach more importance to the protection of human life than to the right to terminate it on request. It must therefore be assumed that the states have a wider margin of appreciation regarding the protection of two goods: the right to life and the freedom to decide about one's own death[23]. The European Court has long stressed that Article 2 ECHR indeed imposes certain positive obligations on Member States. Thus, both in the cases of *Haas v. Switzerland*[24] and *Keenan v. the United Kingdom*[25], addressing also the new issue of determination how far this principle applies to the case in which it is the individual concerned who poses a threat to his or her own life, the judges of the Court stated that in special circumstances (in the *Keenan* case: forced isolation), the state is obliged to protect life, including from self-destructive action[26].

This line of case-law, relatively clear so far, was distorted by the Court in the cases of *Koch v. Germany*[27], as it ruled that the State was obliged to put in place appropriate procedures for processing requests for assistance in "assisted suicide". In the Court's view, the refusal to decide on the merits of the applicant's appeals against the decision to make the poison available to applicant's wife constitutes an interference with his right to privacy. In such a situation, the applicant may argue that the decision of the German Federal Institute for Drugs and Medical Devices applied to him directly. The Court did not answer the question whether there is a "right to a dignified method of committing suicide"[28]. However, in addition, and this seems rather grotesque, the Court's judges noted that the German courts should have examined the merits of the applicant's allegations, and this was in a situation where his wife had already committed suicide and, under German law, her application for access to the poison could have not been accepted[29]. The same was true for

[23] M. Wąsek-Wiaderek, *op. cit.*, p. 292.

[24] *Haas v. Switzerland*, § 61.

[25] Judgement of the ECtHR of 3 April 2001, case 27229/95, *Keenan v. United Kingdom* (sect. 3), 2001-III.

[26] B. Gronowska, *Wyrok Europejskiego Trybunału Praw Człowieka w Strasburgu z dnia 3 kwietnia 2001 r. w sprawie Keenan przeciwko Wielkiej Brytanii (dot. problemu bezpieczeństwa osobistego osób pozbawionych wolności)*, „Prokuratura i Prawo" 2001, no. 7–8, pp. 160–161.

[27] Judgement of the ECtHR of 19 July 2012, case 497/09, *Koch v. Germany*.

[28] M. Wąsek-Wiaderek, *op. cit.*, p. 294.

[29] M. Szeroczyńska, *Jak dać diabłu ogarek i nie poparzyć palców. Orzeczenie Trybunału Praw Człowieka w Strasburgu w sprawie Koch v. Niemcy (skarga nr 497/09) z 19 lipca 2012 r.*, www.prawaczlowieka.edu.pl/index.php?orzeczenie=3d41b7fd29fc9fc9b4ab18b63e1727b59b9eb5df1e2-b0 [access: 10.07.2020].

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the judgement in the case of *Gross v. Switzerland*[30], in which the Court found that Article 8 ECHR had been infringed due to the vagueness of Swiss law as regards the conditions for allowing an "assisted suicide". On the other hand, the ECtHR failed to decide whether the applicant should be entitled to a lethal dose of the drug.

In conclusion, it should be noted that with regard to assistance in suicide, the Court confirmed the essential content of Article 2 ECHR from which the right to death cannot be derived. On the other hand, according to the Court, the decision to end one's life, made deliberately and voluntarily, is protected as one of the aspects of the right to privacy. As regards the scope of access to the suicide assistance procedure, the Court leaves the Member States a wide margin of appreciation due to the lack of a common European approach to the problem of committing suicide in a dignified manner. At this point, however, it should be clearly stated that respecting the right to privacy of a human person should not violate the fundamental right to life, because the latter is the absolute right to be protected under Article 2 ECHR[31].

PASSIVE EUTHANASIA OR DISCONTINUATION OF OVERZEALOUS THERAPY? CROSSING THE RED LINE BY THE EUROPEAN COURT OF HUMAN RIGHTS

The Oviedo Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine states in Article 9 that the previously expressed wishes relating to a medical intervention by a patient who is not, at the time of the intervention, in a state to express his or her wishes shall be taken into account[32]. The French Public Health Code[33] provides for, among other things, the so-called testament of life, while its amendment under the

[30] Judgement of the ECtHR of 14 May 2013, case 67810/10, *Gross v. Switzerland*. The ruling was repealed by the Grand Chamber on 30 September 2014 which held the application inadmissible by reason of the applicant's abuse of the right of application.

[31] M. Wąsek-Wiaderek, *op. cit.*, pp. 297–298.

[32] A. Chanu, *Article 9*, [in:] *Convention sur les Droits de l'Homme et la Biomédicine. Analyses et commentaires*, eds. H. Gros Espiell, J. Michaud, G. Teboul, Paris 2010, p. 179.

[33] Code de la santé publique du 7 octobre 1953, www.legifrance.gouv.fr. Article L1110-5-1: Les actes mentionnés à l'article L. 1110-5 ne doivent pas être mis en œuvre ou poursuivis lorsqu'ils résultent d'une obstination déraisonnable. Lorsqu'ils apparaissent inutiles, disproportionnés ou lorsqu'ils n'ont d'autre effet que le seul maintien artificiel de la vie, ils peuvent être suspendus ou ne pas être entrepris, conformément à la volonté du patient et, si ce dernier est hors d'état d'exprimer sa volonté, à l'issue d'une procédure collégiale définie par voie réglementaire. La nutrition et l'hydratation artificielles constituent des traitements qui peuvent être arrêtés conformément au premier alinéa du présent article. Lorsque les actes mentionnés aux deux premiers alinéas du présent article sont suspendus ou ne sont pas entrepris, le médecin sauvegarde la dignité du mourant et assure la qualité de sa vie en dispensant les soins palliatifs mentionnés à l'article L. 1110-10.

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so-called Leonetti Act[34] on the rights of the ill and the end of life, and the amendment to this Act[35], contain regulations regarding the possibility of ceasing the treatment and the procedure for abandoning such therapy. In French law, patients express their will about what their treatment should look like when in a terminal, vegetative state or where at the same time they lose the ability to make informed decisions. The case of *Lambert and others v. France*[36], which raised public outrage not only in France, concerned the cessation of artificial nutrition of the patient, which was decided by the doctors and the patient's wife, which in turn was opposed by the parents, sister and half-brother of the patient. The case, which lasted several years, divided the relatives, lawyers, doctors and public opinion. It was being noted that the purpose of the Leonetti Act was to avoid euthanasia, while this case showed that this was questioned because of the unfortunate ending thereof[37].

The European Court of Human Rights has also played its part in this tragic spectacle. The judges took the view that "it is the patient who is the principal party in the decision-making process and whose consent must remain at its heart; this is true even where the patient is unable to express his or her wishes"[38]. It was apparent from the testimony of the patient's wife and brother that patient had expressed a willingness to be disconnected from the medical equipment, that this was his actual decision[39]. Therefore, the majority of the ECtHR's judges adopted the view that the testimony of his wife and brother about talks on these issues should be considered sufficient to reconstruct the patient's will. However, the guideline on how to interpret the requirement of the patient's consent when unable to express it in a conscious way should be Article 2 of the Oviedo Convention, which stipulates the primacy of the interests and welfare of human beings over the exclusive interests of society or science. At the same time, the Convention provides that an intervention may only be carried out on a person who does not have the capacity to consent, for his or her direct benefit

[34] Loi nº 2005-370 du 22 avril 2005 relative aux droits des malades et à la fin de vie, JORF nº 116 du mai 2005.

[35] Loi nº 2016-87 créant de nouveaux droits en faveur des malades et des personnes en fin de vie, JORF nº 0028 du 3 février 2016, amending the Act of 22 April 2005, in its Article 2 applied the following general definition of overzealous treatment to therapies subject to cessation pursuant to Article L. 1110-5 of the French Public Health Code: "a treatment that is useless, disproportionate or having no other effect than the only artificial maintenance of life" also to artificial nutrition and hydration, regardless of its form.

[36] Judgement of the ECtHR (Great Chamber) of 5 June 2015, case 46043/14, *Lambert and others v. France*.

[37] J.-M. Guénois, *Des réactions de dépit et d'amertume*, « Le figaro » 2019, no. 23299, p. 3.

[38] § 178 of the Court's assessment. It should be noted that neither did V. Lambert use the means to express his will provided for the French Public Health Code nor he appointed an attorney, despite being a professional nurse.

[39] M. Boniecka, F. Sztandera, *Kryteria dyferencjacji dozwolonego od niedozwolonego zaniechania terapii – aspekty socjologiczne i prawne*, „Medyczna Wokanda" 2018, no. 10, p. 51.

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(Article 6 para. 1)[40]. In the whole case, the involvement of the Lambert family in the decision-making process may be problematic, which could constitute a potential space for abuse, all the more since French law does not provide for any mediation procedure, as other European Convention parties do, unless we assume the formal nature of such participation. It should be noted, however, that although the testimony of his wife, as the closest person, deserves special attention, it is obvious that the opinion expressed in informal conversations is another thing than an informed, binding expression of will in relation to one's future condition[41].

It must be stressed that never before has the ECtHR ruled on compliance with the convention norms of State action concerning the cessation of overzealous therapy in the form of discontinuation of artificial nutrition and hydration of an unconscious patient[42]. In view of the above, it was crucial in the case of *Lambert and others v. France* to determine whether the feeding and hydration of the patient in a chronic vegetative state should be regarded as a treatment which may be considered "overzealous"[43]. Deeming artificial nutrition and hydration a form of therapy was a view developed by scholars of law, while in 2016 after the amendment of the Act it was classified as a therapy that may be discontinued. This regulation is contradictory to the previous practice that if the feeding and hydration of a patient does not cause him or her suffering, these measures should be used as a proportional element of palliative medicine[44]. In the case of Lambert, the Conseil d'État also took the view that the mere use of enteral nutrition did not constitute overzealous therapy, the European Court pointed out the same (§ 159 of the Court's assessment). The medical factors referred to in the case which would justify the cessation of medical care were relatively trivial: deterioration of the patient's condition, which did not result in an increase in pain in enteral nutrition or other type of suffering[45]. The judges were not unanimous (12 to 5). Five judges (K. Hajiyev, J. Šikuta, N. Tsotsoria, V. Deateano, V. Grițco), in a separate opinion, considered that in matters as essential as the right to life, only circumstances

[40] A. Śledzińska-Simon, *Rola Europejskiego Trybunału Praw Człowieka w kształtowaniu standardów w zakresie bioetyki i biotechnologii*, [in:] *Prawa człowieka wobec rozwoju biotechnologii*, eds. L. Kondratiewa-Bryzik, K. Sękowska-Kozłowska, Warszawa 2013, pp. 95–96.

[41] M. Górski, *Glosa do wyroku Europejskiego Trybunału Praw Człowieka z dnia 5 czerwca 2015 r. w sprawie Lambert i inni przeciwko Francji (skarga nr 46043/14)*, „Zeszyty Naukowe Sądownictwa Administracyjnego" 2017, no. 2, p. 165.

[42] A. Bańczyk, *Zaprzestanie uporczywej terapii na tle orzeczenia Europejskiego Trybunału Praw Człowieka w sprawie Lambert i inni przeciwko Francji*, „Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego" 2017, vol. 15, p. 212.

[43] Loi nº 2016-87.

[44] B. Wach, *Próba oceny sytuacji granicznych związanych z chorobą i umieraniem*, „Etyka Praktyczna" 2012, no. 3, p. 56; M. Górski, *op. cit.*, p. 166.

[45] M. Górski, *op. cit.*, p. 166.

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which could be considered absolutely certain should be taken into account[46]. The Court held that this was not the case of passive euthanasia but discontinuation of life-support treatment[47].

If we are not able to assess the attitude of some family members and doctors in the Lambert case with such a tragic end of human life, this casts a shadow over our whole civilization. This is so since dying with dignity does not mean predicting that we will find ourselves in one physical and mental situation or another, but it means that we can rely on the love of other people[48].

What may give rise to serious doubts is the fact that the ECtHR has indiscriminately adopted as meeting Strasbourg standards the precise procedural regulation of the French legislature which generally defines the concept of overzealous therapy. It is even more astonishing, as this judgement will certainly contribute to a change in attitudes in ECHR States Parties towards deeming artificial nutrition and hydration a form of therapy that may be subject to discontinuation. It seems that, contrary to what the judges suggest, the Lambert case is a case of passive euthanasia rather than of discontinuation of life-supporting treatment. Thus, Article 2 ECHR has been infringed, since the discontinuation of overzealous therapy cannot be aimed at shortening life, but not to prolong dying and delay the inevitable death[49].

CONCLUSION

Everyone has the right to die with dignity, understood as the right to pass away naturally. For many years, the standards of medical therapy set by the ECtHR have pointed to two basic values: the right to life and the right to privacy. The Court has quite consistently pointed out that the right to life cannot form a base to derive the right to life, thus recognizing that Article 2 ECHR cannot be the basis for a legal claim for actions that may cause death. The concept of the right to death as a right that helps a future suicide to perform an act of self-destruction is also unacceptable.

In the very important case of Lambert, in fact setting a new standard, the European Court, on the basis of unclear procedural rules of French law, made a precarious interpretation of the provisions of the ECHR by considering artificial nutrition and hydration as a form of therapy that may be discontinued. Such a po-

[46] Point 4 of the separate opinion.

[47] J. Czepek, *Trybunał zgadza się na eutanazję bierną – Lambert i inni v. Francja*, https://strasbourgcaselaw.wordpress.com/2015/06/08/trybunal-zgadza-sie-na-eutanazje-bierna-lambert-i-inni-v-francja [access: 10.07.2020].

[48] M. de Viry, *Mourir dans la gignité, c'est s'en remettre à l'amour des hommes*, « Le figaro » 2019, no. 23299, p. 14.

[49] A. Bańczyk, *op. cit.*, p. 212.

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sition contradicts the State's duty to protect life, since every human being enjoys the fundamental freedom from all factors that arbitrarily deprive him or her of life prematurely, understood as the right to a natural death.

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STRESZCZENIE

W artykule została podjęta kwestia prawa do naturalnego i godnego umierania w orzecznictwie Europejskiego Trybunału Praw Człowieka. Prawo do życia gwarantowane w art. 2 Europejskiej Konwencji Praw Człowieka jest obecnie w praktyce orzeczniczej balansowane z prawem do prywatności. Prawo do skutecznego żądania zadania śmierci jest umiejscawiane w sferze autonomicznych decyzji człowieka. Jednak konstruowanie takiego prawa jest nie tylko sprzeczne z zasadą godności każdego człowieka, lecz także powodowałoby erozję gwarancji przyznanych każdej osobie znajdującej się w stanie terminalnym. Analiza orzecznictwa strasburskiego wyznaczającego wspólny standard dla państw-stron EKPC nie pozwala przyjąć istnienia prawa do śmierci jako prawa podmiotowego jednostki. Państwa w obszarze ochrony życia człowieka mają obowiązek podejmowania pozytywnych działań. Ta stosunkowo stała linia orzecznicza została wyraźnie zmieniona w sprawie *Lambert i inni przeciwko Francji*, ponieważ Trybunał przekroczył czerwoną linię na rzecz biernej eutanazji, akceptując niejasne francuskie przepisy proceduralne uznające sztuczne odżywianie oraz nawadnianie pacjenta za formę terapii podlegającej zaprzestaniu.

Słowa kluczowe: prawo do życia; prawo do naturalnego i godnego umierania; prawo do prywatności; uporczywa terapia