



Information Note on the Court's case-law 261

April 2022

Lings v. Denmark - [15136/20](#)
Judgment 12.4.2022 [Section II]

Article 10

Article 10-1

Freedom of expression

Justified and proportionate conviction and suspended prison sentence imposed on pro-euthanasia physician for assistance and advice to specific persons on how to commit suicide: *no violation*

Facts – The applicant, a retired physician, and member of an association in favour of euthanasia, was convicted of one count of attempted assisted suicide (count 1) and two counts of assisted suicide (counts 2 and 3) concerning three persons, A, B and C respectively, under Article 240 of the Danish Penal Code. He was sentenced to 60 days' imprisonment, suspended. Maintaining that he had merely provided general advice about suicide, the applicant complained that his conviction was in breach of Article 10.

Law – Article 10: It was not in dispute that the applicant's conviction had constituted an interference, prescribed by law - section 240 of the Penal Code - , which had pursued the legitimate aims of the protection of health and morals and the rights of others. The Court noted that regarding counts 1 and 2 the applicant had been convicted not only for having provided guidance, but also for having, by specific acts, procured medications for A and B. Hence, there was reason to doubt whether in respect of these counts there had indeed been an interference with his right to freedom of expression within the meaning of Article 10. Nevertheless, the Court, proceeded on the assumption that there had been such an interference and examined the main question that arose, namely, whether or not the application of section 240 of the Penal Code in the applicant's case had been "necessary in a democratic society".

There was no support in the Court's relevant case-law under Articles 2 and 8 for concluding that a right to assisted suicide existed under the Convention, including in the form of providing information about or assistance that went beyond providing general information about suicide. Accordingly, as the applicant had not been prosecuted for providing general information about suicide, including the guide on suicide that he had prepared and that had been made publicly available on the internet, but had been prosecuted for having assisted suicide through specific acts, the case

was not about the applicant's right to provide information that others under the Convention had a right to receive.

In the circumstances of the case, the Court saw no reason to call into question the Supreme Court's conclusions. As regards counts 1 and 2 the Supreme Court had found unanimously that the applicant had provided guidance as well as procured medications, by specific acts, for A and B, in the knowledge that they had been intended for their suicide. Such acts were clearly covered by section 240 of the Penal Code, and implicitly, did not give rise to an issue under Article 10. As regards count 3 the majority had found the applicant guilty under the above provision in that he had assisted C in a specific and significant way in committing suicide, that his advice had not been exempted from punishment because it had been based on his lawful general guide, that his specific advice had been suited to a greater extent than the general guide to intensifying C's desire to commit suicide, and that his conviction would not be in breach of Article 10. It had been taken into account as an aggravating circumstance that to a certain extent the acts had been committed in a systematic manner and that the applicant had been charged on three counts, the last act being committed after he had been provisionally charged by the police for violation of section 240 of the Penal Code. The applicant's old age had been considered a mitigating circumstance. Further, taking into account the email exchanges between the applicant and C, the Court considered that the reasons relied on by the Supreme Court when finding that the act fell within the scope of section 240 of the Penal Code had been relevant and sufficient.

The Supreme Court had also made a thorough judicial review of the applicable law in the light of the Convention, including the Court's judgment in *Open Door and Dublin Well Woman v. Ireland*. That case differed significantly from the present one. In particular, it was undisputed that the applicant could legally publish his guide on suicide on the internet and could encourage to suicide if not directed at specific persons. The charges had concerned the applicant's concrete assistance or advice to three specific persons on how to commit suicide. The restriction in section 240 of the Penal Code had been imposed in order to protect such persons' health and well-being, by preventing other persons from assisting in their suicide.

Accordingly, the quality of the judicial review of the disputed general measure and its application in the present case militated in favour of a wide margin of appreciation as did the fact that the subject of assisted suicide concerned matters of morals and the comparative law research enabling the Court to conclude that the Member States of the Council of Europe were far from having reached a consensus on this issue.

Lastly, in the circumstances and bearing in mind that the sentence had been suspended, the conviction and the sentence had not been excessive.

In the light of all the above-mentioned considerations, the reasons relied upon by the domestic courts, and most recently the Supreme Court, had been both relevant and sufficient to establish that the interference complained of could be regarded as "necessary in a democratic society", proportionate to the aims pursued, and that the authorities of the respondent State had acted within their margin of appreciation, having taken into account the criteria set out in the Court's case-law.

Conclusion: no violation (unanimously)

(See also *Open Door and Dublin Well Woman v. Ireland*, [14235/88](#) and [14234/88](#), 29 October 1992, [Legal Summary](#); *Haas v. Switzerland*, [31322/07](#), 20 January 2011, [Legal Summary](#); *Koch v. Germany*, [497/09](#), 19 July 2012, [Legal Summary](#); *Gross v. Switzerland*, [67810/10](#), 14 May 2013, [Legal Summary](#); *Perinçek v. Switzerland* [GC], [27510/08](#), 15 October 2015, [Legal Summary](#))

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