



Resolution 1859 (2012)¹

Protecting human rights and dignity by taking into account previously expressed wishes of patients

Parliamentary Assembly

1. There is a general consensus based on Article 8 of the European Convention on Human Rights (ETS No. 5) on the right to privacy, that there can be no intervention affecting a person without his or her consent. From this human right flow the principles of personal autonomy and the principle of consent. These principles hold that a capable adult patient must not be manipulated and that his or her will, when clearly expressed, must prevail even if it signifies refusal of treatment: no one can be compelled to undergo a medical treatment against his or her will.

2. The Council of Europe has included this principle 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 (Oviedo Convention, ETS No. 164), which legally binds the majority of member States. The convention also covers the situation in which a patient is no longer able to express his or her will, by stipulating 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".

3. These wishes can be formalised through advance directives, living wills or continuing powers of attorney. In Recommendation CM/Rec(2009)11 on principles concerning continuing powers of attorney and advance directives for incapacity, the Committee of Ministers recommended that member States promote these practices, and laid down a number of principles to guide member States in regulating them.

4. However, in reality, the situation in Europe varies from state to state, ranging from no legislation whatsoever on advance directives to specific legislation which confers a binding effect on them. Even where specific legislation does exist, it is not always fully implemented. Thus, today, only a tiny minority of the Council of Europe's 800 million citizens actually have advance directives, living wills and/or continuing powers of attorney, making it difficult, if not impossible, to take their previously expressed wishes into account, and thus effectively protect their human rights and dignity.

5. This resolution is not intended to deal with the issues of euthanasia or assisted suicide. Euthanasia, in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit, must always be prohibited. This resolution thus limits itself to the question of advance directives, living wills and continuing powers of attorney.

6. The Parliamentary Assembly considers it essential that rapid progress be made in this area by member States to ensure that people's human rights and dignity are guaranteed across the whole continent. It thus recommends that member States:

6.1. sign, ratify and fully implement the Oviedo Convention, if they have not already done so;

6.2. apply Committee of Ministers Recommendation CM/Rec(2009)11 on principles concerning continuing powers of attorney and advance directives for incapacity;

1. Assembly debate on 25 January 2012 (6th Sitting) (see [Doc. 12804](#), report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Mr Xuclà i Costa). Text adopted by the Assembly on 25 January 2012 (6th Sitting). See also [Recommendation 1993 \(2012\)](#).

6.3. review, if need be, their relevant legislation with a view to possibly improving it:

6.3.1. for countries with no specific legislation on the matter – by putting into place a “road map” towards such legislation promoting advance directives, living wills and/or continuing powers of attorney, on the basis of the Oviedo Convention and Recommendation CM/Rec(2009)11, involving consultation of all stakeholders before the adoption of legislation in parliament, and foreseeing an information and awareness-raising campaign for the general public, as well as for the medical and legal professions after its adoption;

6.3.2. for countries with specific legislation on the matter – by ensuring that the relevant Council of Europe standards are met by this legislation, and that the general public, as well as the medical and legal professions, are sufficiently aware of it and implement it in practice.

7. The Assembly, recalling its [Recommendation 1418 \(1999\)](#) on the protection of the human rights and dignity of the terminally ill and the dying, recommends that national parliaments, when legislating in this field, respect the following principles, in addition to those enshrined in the Oviedo Convention and Committee of Ministers Recommendation CM/Rec(2009)11:

7.1. self-determination for capable adults in the event of their future incapacity, by means of advance directives, living wills and/or continuing powers of attorney, should be promoted and given priority over other measures of protection;

7.2. advance directives, living wills and/or continuing powers of attorney should, in principle, be made in writing and be fully taken into account when properly validated and registered (ideally in state registries);

7.3. there should be an option to divide the function of representing the person between an attorney for property and a separate person for health and welfare; provisions for the possibility of a public appointment should also be made in cases where the individual has made no appointment of his or her own, where this is in the best interest of the individual;

7.4. prior instructions contained in advance directives and/or living wills which are against the law, or good practice, or those which do not correspond to the actual situation that the interested party anticipated at the time of signing the document, should not be applied;

7.5. advance directives, living wills and/or continuing powers of attorney should be accessible to all; complicated forms or expensive formalities should thus be avoided;

7.6. capable adults should be encouraged to review at regular intervals (for example, once a year) the advance directives, living wills and/or continuing powers of attorney they have made, and should be able to revoke and/or change them at any time;

7.7. a system of supervision to fight abuse should be established under which a competent authority is empowered to investigate, and, if necessary, intervene, in particular in cases in which an attorney is not acting in accordance with the continuing power of attorney or in the interests of the granter;

7.8. surrogate decisions that rely on general value judgments present in society should not be admissible and, in case of doubt, the decision must always be for life and the prolongation of life.