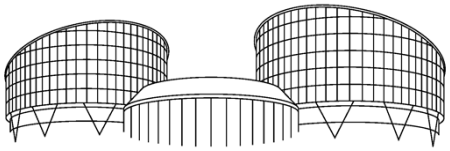

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF LINGS v. DENMARK

(Application no. 15136/20)

JUDGMENT

Art 10 • 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 • Absence of European consensus • Wide margin of appreciation not overstepped

STRASBOURG

12 April 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Lings v. Denmark,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Carlo Ranzoni, *President,*
Jon Fridrik Kjølbro,
Egidijus Kūris,
Branko Lubarda,
Gilberto Felici,
Saadet Yüksel,
Diana Sârcu, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to:

the application (no. 15136/20) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Danish national, Mr Svend Lings ("the applicant"), on 18 March 2020;

the decision to give notice to the Danish Government ("the Government") of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by Ordo Iuris Institute for Legal Culture, which had been granted leave by the Section Vice-President to intervene as third parties in the proceedings (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court);

Having deliberated in private on 22 March 2022,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. By a final judgment of the Supreme Court of 23 September 2019, the applicant, a retired physician, and member of an association in favour of euthanasia, was convicted of two counts of assisted suicide, and one count of attempted assisted suicide 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 of the Convention.

THE FACTS

2. The applicant was born in 1941 and lives in Kværndrup. He was represented by Mr Jonas Christoffersen, a lawyer practising in Copenhagen.

3. The Danish Government ("the Government") were represented by their Agent, Mr Michael Braad, from the Ministry of Foreign Affairs, and their Co-Agent, Ms Nina Holst-Christensen, from the Ministry of Justice.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant worked as a physician until 2010.

6. Around 2015, he founded an association called "Physicians in Favour of Euthanasia" (*Læger for Aktiv Dødshjælp*), for physicians aiming to have euthanasia made lawful in Denmark. In pursuance of this aim, the applicant prepared a guide "Medicines suited for suicide" (*Lægemidler der er velegnede til selvmord*), available on the internet. The guide combined a detailed procedure for how to commit suicide, including a list of about 300 common pharmaceuticals suited to committing suicide, and a description of the dose required to go through with the suicide, possible combinations of pharmaceuticals and caveats about the various pharmaceuticals. The guide also provided advice on how a person could be assured of death by taking the recommended doses of medicines, including by combining different pharmaceuticals or by taking a full dose of a pharmaceutical in combination with a plastic bag over the head and a rubber band around the neck.

7. It was lawful under Danish law to publish such a guide on the Internet or elsewhere.

8. On the basis of a radio interview with the applicant in February 2017 in which he stated, *inter alia*, that he had assisted a patient with a terminal pulmonary condition in dying by administering the pharmaceutical Fenemal, the Patient Safety Authority (*Styrelsen for Patientsikkerhed*) reported the applicant to the police for violation of section 240 of the Penal Code, prohibiting assisted suicide. Moreover, on 3 March 2017 it withdrew the applicant's doctor's licence to practise, with the consequence, among other things, that the applicant could no longer prescribe medications for himself or others.

9. Subsequently, the applicant was charged with two counts of assisted suicide and one count of attempt.

10. By a judgment of 26 September 2018, the District Court of Svendborg (*Retten i Svendborg*) convicted the applicant of one count of assisted suicide and one count of attempt. He was sentenced to 40 days' imprisonment, suspended.

11. On appeal to the High Court of Eastern Denmark (*Østre Landsret*), by a judgment of 30 January 2019 the applicant was convicted of all three counts and sentenced to 60 days' imprisonment, suspended.

12. On appeal to the Supreme Court (*Højesteret*), on 23 September 2019 the High Court judgment was upheld.

13. More concretely, in respect of count 1) the applicant was convicted of attempted assisted suicide committed on 23 March 2017, having together with a co-defendant prescribed medications for A, who wanted to commit suicide. The suicide attempt had failed. The applicant stated that A had contacted him and told him that he suffered from neurological diseases. The applicant had spoken to A several times on the telephone, and they had also

communicated by email. The applicant had asked the co-defendant to prescribe Fenemal for A; the applicant had known that A would use the medication to commit suicide. The co-defendant confirmed the correctness of this statement and explained that he had been contacted by the applicant, who had asked him to prescribe Fenemal for A as the applicant could not prescribe any medications himself because his doctor's licence to practise had been withdrawn. A confirmed that he had been in contact with the applicant, who had helped him obtain the required medication. Since his attempted suicide, A had received medications for his physical pain and his anxiety, and his condition had therefore improved.

14. In respect of count 2) the applicant was convicted of assisted suicide committed in the spring of 2017, having prior to B's death dispensed a dose of Fenemal to him, knowing full well that it was intended for his suicide. B had become paralysed in most of his body following a stroke; he no longer found life worth living and wanted to die. The applicant stated that he had visited B and advised him how to commit suicide in accordance with the guide that he had uploaded to the Internet. Subsequently, he had discussed with another person whether it was possible to procure pills for B, but he did not know whether that person had ever supplied the pills. The applicant had not himself provided any medication for B. According to the statement given by B's former wife, B had tried to be allowed to go to Switzerland for euthanasia. However, no psychiatrists would issue a medical certificate saying that B was mentally prepared, as required by the Swiss authorities. B's former wife had then contacted the applicant asking him to help B. They had met with the applicant, who had indicated that he could establish contact with someone who could procure the medication. Subsequently, B's former wife had received a supply for B, which she handed over to B, who had later stated that he now had what he needed. In May 2017, the family had had a farewell dinner with B, and the next day B's former wife had received a telephone call from the nursing home and been told that B was fast asleep and that it was not possible to waken him up. B had passed away a couple of days later.

15. In respect of count 3), the applicant was convicted of assisted suicide, committed between 17 July and 6 August 2018. C was 85 years old. She suffered from many infirmities but was not seriously ill. She wished to end her life and had procured the necessary pills herself. On 17 July 2018, she had contacted the applicant by email and asked for his assistance. The applicant and C had exchanged at least nine emails between 17 July 2018 and 8 August 2018. On 19 July 2018 the applicant had asked C which medication she had procured. On 27 July 2018 the applicant had confirmed that the medications at her disposal were excellent and also recommended that she look at the general guide on how to commit suicide, which was available on the website of the network. On 29 July 2018 he was helping her finding the general guide. On 6 August 2018 he confirmed that it was a good idea to combine the medication with a plastic bag over her head, in which connection

he had written: "If you are able to go through with it, you will be 100% certain. Remember in that case that it is necessary to put a rubber band around the neck." On 10 August 2018, C had been found dead in her bed with a plastic bag over her head.

16. In its judgment of 23 September 2019, the Supreme Court stated:

"Liability for assisted suicide or attempts at assisted suicide

By the High Court judgment, [the applicant] was found guilty on two counts of violation of section 240 of the Penal Code for assisted suicide and one count of an attempt at assisted suicide. This case concerns whether, according to the findings of fact of the High Court, the acts performed by [the applicant] as described in the three counts are punishable because they are considered assistance as set out in the provision, and whether the conditions for imposing a sentence for the attempt have been met. In that case, there is also the issue of the length of the sentence.

It is a punishable offence under section 240 of the Penal Code to assist another person in ending his or her life, but it is not a punishable offence to attempt to take one's own life. Accordingly, this provision independently criminalises assisted suicide. The Supreme Court finds that it will be determined based on an interpretation of this provision what kinds of assistance fall within the scope of the liability, for which reason it is not possible simply to use as a basis those kinds of complicity that are punishable under the general rule of law set out in section 23 of the Penal Code as complicity in offences. Minor assistance may fall outside the scope of criminal offences under section 240.

As regards count 2), [the applicant] has been found guilty of violation of section 240 of the Penal Code because he procured medications for B prior to B's death on 7 May 2017, knowing full well that the medications were intended for his suicide. As regards count 1), [the applicant] has been found guilty of attempted violation of section 240 because he procured medications for A, knowing full well that the medications were intended for A's suicide, which suicide failed, however.

The Supreme Court concurs in the finding that [the applicant's] acts as described in count 1) and count 2) are punishable as assisted suicide as set out in section 240 of the Penal Code. As regards count 1), the Supreme Court concurs in the finding that the conditions for sentencing someone for an attempt have been met as the maximum penalty under section 240 of a fine or imprisonment for a term not exceeding three years makes it possible to sanction attempts, see section 21(3) of the Penal Code. [The applicant's] submission concerning the legislative history of section 240 cannot lead to a different conclusion.

As regards count 3), [the applicant] has been found guilty of having in emails exchanged with C advised her about suicide methods, including by confirming the choice of medications and by confirming that it was a good idea to combine them with a plastic bag and by writing, 'If you are able to go through with it, you will be 100% certain. Remember in that case that it is necessary to put a rubber band around the neck.' Thereby, he assisted her in committing suicide by taking medicines and putting a plastic bag over her head and closing it with a rubber band.

Opinion of three judges ... concerning count 3):

We concur in the finding that by giving advice in his email exchange with C, [the applicant] assisted her in a specific and significant way in committing suicide, and that the advice is not exempt from punishment due to the circumstance that his advice was based on a general guide that had lawfully been uploaded to the website of 'Physicians

in Favour of Euthanasia'. In this context, we have also taken into account that the specific advice offered by [the applicant] to C was suited to a greater extent than the general guide to intensifying her desire to commit suicide. In our opinion, there is no basis for finding that it would be contrary to Article 10 of the European Convention on Human Rights to convict the defendant on this count.

Opinion of [two] judges ... concerning count 3):

It appears from the case file that C contacted [the applicant] in July 2018 and indicated in her emails that she was 85 years old and suffered from many infirmities, that she wished to end soon and that things had been clarified with her close family. She had procured the necessary pills, and her intention was also to combine them with a plastic bag. She was very frightened of the potential risk that she would fail, and she was nervous as to whether she would be able to go through with it on her own. [The applicant] then passed on information from the lawful guide on the website, but he did not pass on any information not already available from the website. He neither advocated nor encouraged her to commit suicide. In these circumstances, we find that the information given by [the applicant] to C was not of such a nature that the information can independently be considered to constitute a punishable act of assistance in her ending her life. Accordingly, we find that [the applicant] must be acquitted on this count of violation of section 240 of the Penal Code, which must also be considered to accord best with Article 10 of the European Convention on Human Rights on the right to receive and give information, see in this respect the judgment delivered on 29 October 1992 by the European Court of Human Rights in cases 14234/88 and 14235/88, *Open Door and Dublin Well Woman v. Ireland*."

17. The Supreme Court, by a majority of three judges, sentenced the applicant to 60 days' imprisonment, suspended. It was taken into account as an aggravating circumstance that to a certain extent the acts were 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. It was considered a mitigating circumstance that the applicant was almost 78 years old. The minority of two judges found that the applicant should have a suspended sentence of imprisonment for a term of 30 days, since count 1) was merely an attempt and under count 3) he had not assisted to a significant extent. Moreover, the minority of the judges found that the acts had not been committed in a systematic manner.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

18. The relevant provisions of the Penal Code *(Straffeloven*) read as follows:

Section 21

(1) Acts aimed at inciting or assisting the commission of an offence are punishable as attempts if the offence is not completed.

(2) The penalty prescribed for an offence may be reduced for attempts, especially where an attempt reflects little strength or persistence of criminal intent.

(3) Unless otherwise provided, attempts will only be punished if the offence is punishable by imprisonment for a term exceeding four months.

Section 23

(1) The penalty provided for an offence applies to everybody who is complicit in the act by incitement, aiding or abetting. The punishment may be reduced where a person intended only to provide minor assistance or support an intent already formed, and where the offence has not been completed or intentional complicity failed.

(2) The punishment may also be reduced where a person is complicit in the breach of a special duty to which he is not subject.

(3) Unless otherwise provided, the punishment for complicity in offences that do not carry a sentence of imprisonment for a term exceeding four months may be remitted where the accomplice intended only to provide minor assistance or support an intent already formed, and where his complicity was due to negligence.

Section 239

Any person who kills another at such other person's explicit request is sentenced to imprisonment for a term not exceeding three years.

Section 240

Any person who assists someone in deliberately ending his life is sentenced to a fine or imprisonment for a term not exceeding three years.

19. Assisted suicide has been criminalised since 1930. Section 240 of the Penal Code was given its current wording by Act No. 218 of 31 March 2004.

20. In November 2004, the Ministry of Justice requested the Standing Committee on the Criminal Code (*Straffelovrådet*), which is an advisory body tasked with making recommendations on legislative issues related to criminal law, issues of principle relating to the stipulation of administrative criminal law provisions and the implementation in practice of crime policy measures, to consider the issue of whether to criminalise also general encouragement of suicide or suicide "recipes" not aimed at specific persons. In its Report No. 1462/2005 the said committee did not recommend the criminalisation of general encouragement to suicide. In respect of the scope of section 240 of the Penal Code it stated as follows:

"**2.2.1.** It is not a punishable offence to attempt to take one's own life, but it is a punishable offence under section 240 of the Penal Code to assist another person in ending his or her life. The maximum sentence is a fine or imprisonment for a term not exceeding three years. The offence is consummated when the victim dies. Depending on the circumstances, it is possible to sentence a person for an attempt at assisting another person in ending his or her life, see section 240, read with section 21, of the Penal Code. Attempts comprise any act aimed at inciting or assisting in the commission of an offence, see pp. 119ff of The Annotated Criminal Code (*Den kommenterede straffelov*) (on General rules). The question is whether section 240 only applies to physical and mental assistance of a qualified nature, or whether in accordance with the general Danish law rule on complicity set out in section 23 of the Penal Code, the provision also applies if the offender, by incitement, aiding or abetting, deliberately

> assists a particular person in committing suicide, see pp. 206ff (on General rules) and p. 314 (on Special rules) of The Annotated Criminal Code. For an act to be punishable under section 240, it is required in any circumstances that the offender must have performed a specific act of assistance with the intent that one or more specific persons commit suicide. Encouragement of suicide and descriptions of methods to commit suicide do not fall within the scope of section 240 if not directed at specific persons. Therefore, the presentation or dissemination of suicide recipes through Internet websites or the like cannot normally be punished under section 240.
>
> As mentioned above, a person can be sentenced for assistance under section 240 of the Criminal Code only if the purpose of the offence of assistance is a specific act of assistance. [...]".

21. The issue of euthanasia and assisted suicide has regularly been the subject of public and political debate in Denmark, but so far there has not been a political majority in Parliament in favour of amending section 240 of the Penal Code.

22. The issue of euthanasia and assisted suicide has also been considered by the Council of Ethics (*Det Etiske Råd*). The Council of Ethics is an independent body established in 1987 to advise Parliament, ministers and public authorities on ethical issues in health care while respecting the integrity and dignity of humans and future generations. In 1996, 2003 and 2012, the Council of Ethics published reports and recommendations on euthanasia and assisted suicide. A large majority of the seventeen members of the Council was against the legalisation of euthanasia and assisted suicide in all three reports. The Council has balanced the considerations, on the one hand factors like the right to personal autonomy and on the other hand factors like the sanctity of human life as a fundamental ethical standard and the incompatibility of euthanasia with an ethically appropriate relationship between a physician and a patient. The Danish Council of Ethics discussed the subject again in 2021 on the basis of a judgment delivered by the German Federal Constitutional Court in February 2020, which had ruled that the maintenance of a prohibition of assisted suicide was unconstitutional.

23. In 2018 Parliament amended the Danish Health Care Act (*sundhedsloven*), enhancing patients' right to refuse treatment, including life-sustaining treatment, which means that a patient who has come to terms with circumstances and does not want any life-sustaining treatment can refuse the treatment offered even though the consequence of withdrawing from life-sustaining treatment is that the patient will die right away. Moreover, a system of living wills has been set up under which individuals can make binding advance decisions to refuse life-sustaining treatment in specific situations that may occur some time in the future if they become permanently incompetent and are no longer able to exercise their right to personal autonomy. Prior to the adoption of the amendment bill, it was discussed at the readings in Parliament what is a dignified death and what is the right to personal autonomy, and it was discussed that it must be ensured that health care

professionals can discontinue life-sustaining treatment without fearing being charged with homicide on request.

24. Finally, in December 2020, all parties in Parliament concluded a political agreement to roll out an IT system that was to support a future right of elderly, feeble citizens to ask their physician to write a do-not-resuscitate order in the event that they suffer from heart failure. It is expected that a bill granting this right will be introduced in 2021/2022.

RELEVANT INTERNATIONAL AND EUROPEAN MATERIALS

25. Recommendation 1418 (1999) of the Parliamentary Assembly of the Council of Europe recommended, *inter alia*, as follows (paragraph 9):

> "... that the Committee of Ministers encourage the member States of the Council of Europe to respect and protect the dignity of terminally ill or dying persons in all respects:
>
> ...
>
> c. by upholding the prohibition against intentionally taking the life of terminally ill or dying persons, while:
>
> i. recognising that the right to life, especially with regard to a terminally ill or dying person, is guaranteed by the member States, in accordance with Article 2 of the European Convention on Human Rights which states that 'no one shall be deprived of his life intentionally';
>
> ii. recognising that a terminally ill or dying person's wish to die never constitutes any legal claim to die at the hand of another person;
>
> iii. recognising that a terminally ill or dying person's wish to die cannot of itself constitute a legal justification to carry out actions intended to bring about death."

COMPARATIVE LAW

26. In 2012 a comparative research in respect of forty-two Council of Europe Member States (see *Koch v. Germany*, no. 497/09, § 26, 19 July 2012) showed that in thirty-six countries (Albania, Andorra, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, France, Georgia, Greece, Hungary, Ireland, Latvia, Lithuania, the Former Yugoslav Republic of Macedonia, Malta, Moldova, Monaco, Montenegro, Norway, Poland, Portugal, Romania, Russia, San Marino, Spain, Serbia, Slovakia, Slovenia, Turkey, Ukraine and the United Kingdom) any form of assistance to suicide was strictly prohibited and criminalised by law. In Sweden and Estonia, assistance to suicide was not a criminal offence; however, Estonian medical practitioners were not entitled to prescribe a drug in order to facilitate suicide. Conversely, only four member States (Switzerland, Belgium, the Netherlands and Luxembourg)

allowed medical practitioners to prescribe lethal drugs, subject to specific safeguards.

27. The Government have submitted the following information about the current legislation in 20 member States, including Denmark, Norway, Sweden, France, the United Kingdom, Turkey, Bulgaria, Iceland, Ireland, Portugal, Spain, Luxembourg, Belgium, Switzerland, Germany, Italy, Austria, Estonia, the Netherlands and Finland.

28. Euthanasia is allowed in a number of countries under certain specified conditions, including Spain, the Netherlands, Luxembourg and Belgium. In Spain, following the recent adoption of an Act to this effect, it is now possible for patients suffering from a serious and incurable disease or a serious, chronic and disabling disorder causing unbearable suffering to request that health care professionals administer euthanasia. It is further required that an assessment must be performed by at least two external experts appointed by a regional evaluation commission. Other than the cases that have now been made lawful, all active contributions to or coordination of actions necessary to cause another person's death are criminalised in Spain. The Netherlands have criminalised euthanasia and assisted suicide. Physicians are, however, exempt from prosecution if six criteria have been met, including that the patient endures unbearable suffering without any prospect of improvement, that the patient has been examined by at least one external physician and that the euthanasia is performed in accordance with the existing health care guidelines. In Luxembourg and Belgium, euthanasia is also lawful under certain conditions, including that the patient's health problems are 'incurable' and the patient suffers from unbearable physical/mental pain, that the patient must have had a number of consultations with his or her physician on the subject and that the physician must have consulted another physician as well as a close relative of the patient (appointed by the patient).

29. In Portugal, euthanasia continues to be criminalised, but in January 2021 the Portuguese Parliament adopted a bill intended to make euthanasia and physician-assisted suicide lawful for terminally ill and wounded persons. However, the Portuguese Constitutional Court quashed the bill because it found it too unspecific. The ruling party has now introduced a revised bill, which takes into account the criticism raised by the Constitutional Court. If the bill is adopted by Parliament, the President may submit the bill to the Constitutional Court for review as part of the enactment process.

30. In a number of countries, euthanasia is criminalised, whereas assisted suicide is lawful in certain circumstances. Those countries are Sweden, Switzerland, Germany, Italy, Austria, Estonia and Finland. Assisted suicide is not criminalised in Sweden, but the Swedish Parliament recently adopted an amending Act making it a punishable act in certain circumstances to encourage or otherwise exert influence on another person to take his or her own life. In pursuance of this amending Act, any person who incites or otherwise exerts influence on another person to take his or her own life is

punished for encouragement of suicide or negligent incitement to suicide. This could be to introduce a suicidal person to a razor blade or to give detailed instructions to a person about a particular method of committing suicide, for example by sending him or her a so-called suicide manual. The exchange of general information on suicide issues has not been criminalised. In Switzerland, assisted suicide is lawful and is offered by various organisations. However, assisted suicide is punished by imprisonment or a pecuniary penalty if the person assisting in the suicide is motivated by self-serving ends. In Germany, assisted suicide has been decriminalised as a consequence of a judgment of the Federal Constitutional Court. Similarly, assisted suicide has been decriminalised in Austria since 31 December 2021 as a consequence of a decision made by the Constitutional Court of Austria. In Italy, both euthanasia and assisted suicide are criminalised. However, the case law of the Italian Constitutional Court has opened up for an exception in connection with life-sustaining treatment of an incurable disease under certain specified conditions, including if the person is kept alive by the treatment of vital functions while suffering from an incurable disease that causes unbearable physical or mental pain and if a public national health authority has granted an approval following consultation of the local committee on ethics.

31. Both euthanasia and assisted suicide are criminalised in Denmark, Norway, France, the United Kingdom, Iceland, Bulgaria and Turkey. However, in Denmark and Norway the distribution of general information on suicide methods is not criminalised. In France, the sanction for all kinds of propaganda for and/or marketing of products or methods that are recommended as means to commit suicide is imprisonment for a term of three years and a fine in the amount of EUR 45,000. In the United Kingdom, a bill on assisted dying was passed on 22 October 2021, allowing adults diagnosed with a terminal illness, under certain circumstances, to submit an application for assisted dying to the High Court. General information on suicide, for example on a website, may lead to the imposition of a sentence.

32. In Ireland, both euthanasia and assisted suicide are criminalised, but a bill has been introduced in the Lower House of the Irish Parliament to legalise voluntary euthanasia and assisted suicide for terminally ill persons. The bill is currently being considered by the Irish Committee on Legal Affairs, which has recommended that a specific committee be set up to draft the bill, considering the serious nature of the subject. The distribution of general information on suicide methods is not criminalised in Ireland.

THE LAW

33. The applicant complained that the Supreme Court's judgment of 23 September 2019 breached his right to freedom of expression guaranteed by Article 10 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

34. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Parties' arguments

35. The applicant submitted, *inter alia*, that the case concerned, on the one hand, the general right to receive information on assisted suicide, a matter in which the Government's previous wide margin of appreciation should now be decreased due the growing legalisation of assisted suicide in Europe and the increasing shift in public opinion on this subject.

36. On the other hand, the case concerned the applicant's right to freedom of expression. In essence the applicant had been convicted for orally providing individuals with information, which he could legally provide in writing to the general public in his guide on suicide. He referred to the finding of the minority of the Supreme Court in respect of count 3). Such an interference with his right to freedom of expression, which did not relate to the actual subject of the expression or information but rather to how and to whom it was provided, could not be considered proportionate.

37. The Government pointed out, *inter alia*, that encouragement of suicide and descriptions of methods to commit suicide fell outside the scope of section 240 of the Penal Code if it was not directed at specific persons. However, it was punishable under the said provision if the offender performed a specific act of assistance with the intent that an individual commit suicide. Thus, the guide to commit suicide, prepared by the applicant, was legal, whereas it was illegal for him to provide specific advice to particular persons on how they could commit suicide. In addition, under counts 1) and 2), the Supreme Court had unanimously found that, besides having given specific advice, the applicant had also performed specific acts,

by prescribing or procuring, via others, the medication necessary for the relevant persons to commit suicide.

38. In the Government's view, the Court should take into account that the case concerned difficult ethical and moral issues on which there was no consensus among the member States. Moreover, the current state of the law expressed the legislature's deliberate choice after regular review, most recently in 2018. Furthermore, the national courts had thoroughly reviewed the compatibility of the interference with the Convention, in accordance with the guidelines given by the Court in its case-law, for which reason States Parties should be allowed a wide margin of appreciation in determining whether assisted suicide should be allowed under national law.

39. Ordo Iuris Institute for Legal Culture submitted observations on, among other things, assisted suicide laws in Europe and international professional standards regarding physician-assisted suicide.

2. The Court's assessment

(a) Applicable principles

40. The general principles regarding the right to freedom of expression within the meaning of Article 10 of the Convention are well-settled in the Court's case-law, and summarised, for example, in *Perinçek v. Switzerland* [GC], no. 27510/08, §§ 131-136, 146-151, and 196-197, ECHR 2015 (extracts).

41. Moreover, it is established case-law that the national authorities enjoy a wide margin of appreciation in matters of morals, particularly in an area such as the present which touches on matters of belief concerning the nature of human life (see, among others, *Open Door and Dublin Well Woman v. Ireland*, 29 October 1992, § 68, Series A no. 246-A).

42. In addition, the quality of the parliamentary and judicial review of the necessity of a general measure, such as in the present case the criminalisation of assisted suicide, is of particular importance, including to the operation of the relevant margin of appreciation (see, among others, *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 108, ECHR 2013 (extracts); *Correia de Matos v. Portugal* [GC], no. 56402/12, §§ 117 and 129, 4 April 2018; and *M.A. v. Denmark* [GC], no. 6697/18, §§ 147-149, 9 July 2021).

43. A further factor which has an impact on the scope of the margin of appreciation is the existence or not of common ground between the national laws of the contracting states (see, among others, *Parrillo v. Italy* [GC], no. 46470/11, §§ 176-179, ECHR 2015 and *M.A. v. Denmark,* cited above, §§ 151-160).

44. Finally, the Court's fundamentally subsidiary role in the Convention protection system has an impact on the scope of the margin of appreciation. The Contracting Parties, in accordance with the principle of subsidiarity, have

the primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols thereto, and in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court. Through their democratic legitimation, the national authorities are, as the Court has held on many occasions, in principle better placed than an international court to evaluate local needs and conditions (see, *inter alia*, *Lekić v. Slovenia* [GC], no. 36480/07, § 108, 11 December 2018; see also Protocol No. 15, which entered into force on 1 August 2021).

(b) Application of these principles to the present case

(i) Prescribed by law and legitimate aim

45. It is not in dispute between the parties that the applicant's conviction constituted an interference, prescribed by law, namely section 240 of the Penal Code, which pursued the legitimate aims of the protection of health and morals and the rights of others. The Court notes that regarding counts 1) and 2) the applicant was convicted not only for having provided guidance, but also for having, by specific acts, procured medications for the persons concerned (see paragraphs 13 and 14 above). The Court therefore finds reason to doubt whether in respect of these counts there was indeed an interference with the applicant's right to freedom of expression within the meaning of Article 10. Nevertheless, in the following it will proceed on the assumption that there was.

(ii) "Necessity in a democratic society"

46. Assisted suicide has been criminalised in the Danish legislation since 1930. The current wording of section 240 of the Penal Code is from 2004. For an act to be punishable under section 240, it is required that the offender must have performed a specific act of assistance with the intent that one or more specific persons commit suicide. Encouragement of suicide and descriptions of methods of committing suicide do not fall within the scope of section 240 if not directed at specific persons. Therefore, the presentation or dissemination of suicide recipes through Internet websites or the like cannot normally be punished under section 240 (see paragraph 20 above).

47. In the present case, the Court is not required to determine whether the criminalisation of assisted suicide is justified. Under the Court's well- established case-law, in proceedings originating in an individual application under Article 34 of the Convention, its task is not to review domestic law in *abstracto*. Instead, it must determine whether the manner in which it was applied to, or affected, the applicant gave rise to a violation of the Convention. It can thus only review whether or not the application of section 240 of the Penal Code in the case of the applicant was "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention (see, *inter alia*, *Perinçek v. Switzerland,* cited above, § 226).

48. The answer to the question whether such a necessity exists depends on the need to protect the "health and morals" and "the rights of others" in issue by way of criminal law measures.

49. Turning first to its case-law, the Court found in *Haas v. Switzerland* (no. 31322/07, § 54, ECHR 2011) that Article 2 of the Convention, which creates for the authorities a duty to protect vulnerable persons, even against actions by which they endanger their own lives, also obliges the national authorities to prevent an individual from taking his or her own life if the decision has not been taken freely and with full understanding of what is involved.

50. In *Koch v. Germany* (no. 497/09, § 51-52, 19 July 2012, and the references cited therein), the Court acknowledged that an individual's right to decide in which way and at which time his or her life should end, provided that he or she was in a position freely to form his or her own will and to act accordingly, was one of the aspects of the right to respect for private life within the meaning of Article 8 of the Convention.

51. Moreover, in *Gross v. Switzerland* (no. 67810/10, §§ 58-60, 14 May 2013) the Court considered that the applicant's wish to be provided with a dose of sodium pentobarbital allowing her to end her life fell within the scope of her right to respect for her private life under Article 8 of the Convention. It will be recalled that the case was referred to the Grand Chamber, which on 30 September 2014 declared it inadmissible for abuse of the right of application within the meaning of Article 35 § 3 (a) of the Convention.

52. There is no support in the Court's case-law, however, for concluding that a right to assisted suicide exists under the Convention, including in the form of providing information about or assistance that goes beyond providing general information about suicide (compare, under Article 2, *Pretty v. the United Kingdom*, no. 2346/02, § 40, ECHR 2002-III). Accordingly, as the applicant was not prosecuted for providing general information about suicide, including the guide on suicide that had been made publicly available, but was prosecuted for having assisted suicide through specific acts, the Court finds that the present case is not about the applicant's right to provide information that others under the Convention had a right to receive.

53. Before the Supreme Court, the applicant submitted that he had only assisted A, B and C by providing guidance and information, which was already legally accessible on the internet, and which failed to reach the threshold under section 240 of the Penal Code. He relied specifically on Article 10 of the Convention.

54. As regards counts 1) and 2) the Supreme Court found unanimously that the applicant had not only provided guidance, but had also, by specific acts, procured medications for the persons concerned, in the knowledge that it was 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.

55. As regards count 3) it was found established that the applicant, in emails exchanged with C, had advised her about suicide methods, including by confirming the choice of medications and by confirming that it was a good idea to combine them with a plastic bag and by writing: "If you are able to go through with it, you will be 100% certain. Remember in that case that it is necessary to put a rubber band around the neck."

56. On the basis of an interpretation of section 240, in the light notably of the preparatory works, the legislative review, including Report No. 1462/2005 by the Standing Committee on the Penal Code (see paragraph 20 above), and the Convention, the majority of the Supreme Court found the applicant guilty under the said provision in that he had assisted C in a specific and significant way in committing suicide, that his advice was not exempted from punishment because it was based on his lawful general guide on the website of "Physicians in Favour of Euthanasia", that his specific advice was 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 of the Convention. The applicant was given a suspended sentence of 60 days' imprisonment. It was 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. It was considered a mitigating circumstance that the applicant was almost 78 years old.

57. The Court sees no reason to call into question the Supreme Court's conclusions. It notes that a crucial question was the distinction to be drawn between the legal general guide available on the internet and the specific information provided by the applicant to C. The majority found that the specific information provided by the applicant was "based" on the general guide (see paragraphs 6 and 15 above), and it does not appear that he added any information which did not follow from the general guide. However, the majority also found that the applicant's specific advice was suited to a greater extent than the general guide to intensifying C's desire to commit suicide. The Court notes in this respect that C in her first email of 17 July 2018 to the applicant had asked for his assistance, although she had already procured the necessary medication herself and was aware of the existence of the general guide on the internet. Moreover, the applicant and C exchanged at least nine emails in the period from 17 July to 8 August 2018, thus during a period of approximately three weeks. In these circumstances, the Court considers 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 were relevant and sufficient.

58. The Court also notes that the Supreme Court 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*, cited

above, about a restriction of an absolute nature on the provision of information to pregnant women concerning abortion facilities abroad, regardless of age or state of health or their reasons for seeking counselling on the termination of pregnancy. The interference concerned services which were lawful in other countries and which could be crucial to a woman's health and well-being (ibid., §§ 72-73). On that ground alone the Court found that it appeared overbroad and disproportionate (ibid., § 74). In addition, the counsellors neither advocated nor encouraged abortion, but confined themselves to an explanation of available options.

In the present case, it was undisputed that the applicant could legally publish his guide "Medicines suited for suicide" on the internet and could encourage to suicide if not directed at specific persons. The charges concerned the applicant's concrete assistance or advice to three specific persons, A, B and C, on how to commit suicide. The restriction in section 240 of the Penal Code was imposed in order to protect such persons' health and well-being, by preventing other persons from assisting in their suicide. The case at hand thus differs significantly from *Open Door and Dublin Well Woman v. Ireland.*

Having regard to the above, the Court considers that the quality of the judicial review of the disputed general measure and its application in the present case militates in favour of a wide margin of appreciation.

59. The Court notes that a criminal conviction is a serious sanction, having regard to the existence of other means of intervention and rebuttal, particularly through civil remedies (see, for example, *Perinçek v. Switzerland*, cited above, § 273). In the circumstances of the present case, however, the Court does not find the conviction and the sentence excessive, bearing also in mind that the sentence was suspended.

60. Another element, which speaks in favour of a wide margin of appreciation in the present case is the fact that the subject of assisted suicide concern matters of morals (see paragraph 41 above) and that the comparative law research (set out in paragraphs 26 to 32 above) enables the Court to conclude that the Member States of the Council of Europe are far from having reached a consensus on this issue (see paragraph 43 above; see also, for example, *Haas v. Switzerland*, cited above, § 55).

61. In the light of all the above-mentioned considerations, the Court considers that the reasons relied upon by the domestic courts, and most recently the Supreme Court in its judgment of 23 September 2019, were both relevant and sufficient to establish that the interference complained of can be regarded as "necessary in a democratic society", proportionate to the aims pursued, namely the protection of health and morals and the rights of others, and that the authorities of the respondent State acted within their margin of appreciation, having taken into account the criteria set out in the Court's case-law.

62. There has accordingly been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 12 April 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Carlo Ranzoni President