

Pretty v UK (Application no. 2346/02)

1) Reference Details

Jurisdiction: European Court of Human Rights

Date of Decision: 29 April 2002

Case Status: Decided on merits

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=698325&portal=hbkm&source=externalbydocnumber&table=1132746FF1FE2A468ACBCD1763D4D8149>

2) Facts

The applicant, a British national, was paralysed as a result of a degenerative and terminal illness, and sought a guarantee from the Director of Public Prosecutions (DPP) that her husband, if he helped her to commit suicide, would be immune from prosecution. Her intellect and capacity to make decisions remained unimpaired by the illness. She emphasised her determination to control how and when she died, but her disease prevented her from committing suicide which is legal under UK law. She claimed that the domestic law on assisted suicide infringed her rights under Articles 2, 3, 8, 9 and 14 of the European Convention on Human Rights.

3) Law

The applicant alleged infringement of Article 2 (right to life), Article 3 (prohibition of torture and degrading treatment), Article 9 (freedom of thought, conscience and religion) and Article 14 (non-discrimination).

The applicant sought to challenge the validity of the refusal of the DPP to assure her husband's immunity from prosecution, and Section 2(1) of the Suicide Act 1961, which made it a crime to assist another to commit suicide.

4) Legal Arguments

The Applicant

The applicant submitted that Article 2 protected the right to life, not life itself, and protected an individual from arbitrary deprivation of life by a third party, not from the individual's own choice to die. She argued that Article 3 encompasses a government's positive obligation to protect people from degrading treatment, which is what she believed the manner of her death if unassisted would amount to; that Article 8 encompassed the right to make decisions about one's own body and that the state's interference with this right was not justified; and that Article 9 protected her freedom to believe in the notion of assisted suicide, and that the blanket ban in the UK allowed no consideration of the applicant's personal circumstances.

Concerning Article 14, the applicant alleged that she suffered discrimination by being treated in the same way as those whose circumstances were completely different. She was prevented from enjoying the right to end her own life as exercised by others because of her disability. The applicant submitted that the Government justified the ban in terms of protecting the vulnerable, but as she was not vulnerable there was no objective or reasonable justification for the difference in treatment.

The Government

The Government submitted that Article 2 imposed primarily a negative obligation, and expressly provided that no one should be intentionally deprived of life save in very restricted circumstances which did not apply to this case. It submitted that Article 3 was not engaged in this case as again it had been found to comprise a primarily negative obligation except in three exceptional circumstances which did not apply to this case, and that even if it were engaged it would not confer a legally enforceable right to die.

Also that Article 8 in providing a right to family life did not provide a right to die, and even if it did then the State was entitled, within its margin of appreciation, to determine the extent to which an individual could inflict and injury on him/herself; and that the facts of the case did not fall within the ambit of Article 9 as it did not confer a general right of an individual to engage in any activity in pursuance of their beliefs. The Government argued that Article 14 did not apply as the applicant's complaints did not engage any of the substantive rights she relied upon. Further to this, it argued that even if Article 14 was engaged there would still be no discrimination as the applicant was in the same position as others who were unable to take their own lives without assistance, the Suicide Act 1961 conferred no right to commit suicide, and there were clear and reasonable justifications for any alleged difference in treatment.

5) Decision

The Court determined that the facts of the case fell within the ambit of Article 8, which was examined in conjunction with Article 14, focussing on the claim that she was prevented from exercising a right enjoyed by others who could end their lives without assistance because they were not prevented from doing so by any disability. The Court emphasised that under the Convention, discrimination may entail equal treatment of those in different conditions, but also reiterated that member states have a margin of appreciation in their application of the convention. In this case, the Court found the Government had reasonable justification for not creating different legal regimes concerning assisted suicide for those physically able and those physically unable due to the risk of abuse and undermining of the protection of life safeguarded by the 1961 Suicide Act. For these reasons, the Court unanimously found no violation of Article 14 of the Convention, and no violation of Articles 2, 3, 8 and 9.