

Press release issued by the Registrar

CHAMBER JUDGMENT IN THE CASE OF PRETTY v. THE UNITED KINGDOM

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case *Pretty v. the United Kingdom* (application no. 2346/02). The Court unanimously found the application admissible and held that there had been:

- **no violation of Article 2** (right to life) of the European Convention on Human Rights,
- **no violation of Article 3** (prohibition of inhuman or degrading treatment or punishment),
- **no violation of Article 8** (right to respect for private life),
- **no violation of Article 9** (freedom of conscience), and
- **no violation of Article 14** (prohibition of discrimination).

1. Principal facts

Diane Pretty is a United Kingdom national, born in 1958 and living in Luton. She is dying of motor neurone disease, a degenerative disease affecting the muscles, for which there is no cure.

The disease is now at an advanced stage; the applicant is paralysed from the neck downwards and her life expectancy is very poor. However, her intellect and capacity to make decisions are unimpaired. Given that the final stages of the disease are distressing and undignified, she wishes to be able to control how and when she dies and be spared that suffering and indignity.

Although it is not a crime to commit suicide in English law, the applicant is prevented by her disease from taking such a step without assistance. It is however a crime to assist another to commit suicide under section 2 § 1 of the Suicide Act 1961. Ms Pretty wishes to be assisted by her husband in committing suicide, but the Director of Public Prosecutions (DPP) has refused her request to guarantee her husband freedom from prosecution if he does so. Her appeals against that decision have been unsuccessful.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 21 December 2001. The Court decided on 22 January 2002 to give priority to the case and to communicate the application to the United Kingdom Government as matter of urgency¹. On 19 March 2002 the Court held a public hearing on the admissibility and the merits of the case, which Ms Pretty and her husband, Brian Pretty, attended.

Judgment was given by a Chamber of seven judges, composed as follows:

Matti **Pellonpää** (Finnish), *President*,
Nicolas **Bratza** (British),
Elisabeth **Palm** (Swedish),
Jerzy **Makarczyk** (Polish),
Marc **Fischbach** (Luxemburger),
Josep **Casadevall** (Andorran),
Stanislav **Pavlovschi** (Moldovan), *judges*,

and also Michael **O'Boyle**, *Section Registrar*.

3. Summary of the judgment²

Complaints

The applicant complains, under Article 2 of the Convention, that it is for the individual to choose whether to live and that the right to die is the corollary of the right to live and also protected. Accordingly there is a positive obligation on the State to provide a scheme in domestic law to enable her to exercise that right.

She also complains under Article 3 that the United Kingdom Government is obliged not only to refrain from inflicting inhuman and degrading treatment itself, but also to take positive steps to protect persons within its jurisdiction from being subjected to such treatment. The only effective step available to protect the applicant in this way would be an undertaking not to prosecute her husband if he assisted her to commit suicide.

She further relies on Article 8, arguing that this explicitly recognises the right to self-determination, and Article 9, complaining that the failure to give the undertaking and provide a lawful scheme for allowing assisted suicide violates her right to manifest her beliefs. Under Article 14, she argues that the blanket prohibition on assisted suicide discriminates against those who are unable to commit suicide without assistance, whereas the able-bodied are able to exercise the right to die, under domestic law.

¹ The Court has applied Rule 41 (case priority) and Rule 40 (urgent notification of an application) of the Rules of Court.

2. This summary by the Registry does not bind the Court.

Decision of the Court

Admissibility

The Court considered that the application as a whole raised questions of law which were sufficiently serious that their determination should depend on an examination of the merits. It accordingly declared the application admissible.

Merits

Article 2

The Court recalled that Article 2 safeguarded the right to life, without which enjoyment of any of the other rights and freedoms in the Convention was rendered nugatory. It covered not only intentional killing, but also the situations where it was permitted to use force which resulted, as an unintended outcome, in the deprivation of life. The Court had moreover held that the first sentence of Article 2 § 1 enjoined States not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. This obligation might also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life was at risk from the criminal acts of another individual.

In its case-law in this area the Court had placed consistent emphasis on the obligation of the State to protect life. In these circumstances it was not persuaded that “the right to life” guaranteed in Article 2 could be interpreted as involving a negative aspect. Article 2 could not, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die; nor could it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life.

The Court accordingly found that no right to die, whether at the hands of a third person or with the assistance of a public authority, could be derived from Article 2. There had therefore been no violation of that provision.

Article 3

It was, the Court noted, beyond dispute that the respondent Government had not, themselves, inflicted any ill-treatment on the applicant. Nor was there any complaint that the applicant was not receiving adequate care from the State medical authorities. The applicant had claimed rather that the refusal of the DPP to give an undertaking not to prosecute her husband if he assisted her to commit suicide and the criminal law prohibition on assisted suicide disclosed inhuman and degrading treatment for which the State was responsible. This claim however placed a new and extended construction on the concept of treatment. While the Court had to take a dynamic and flexible approach to the interpretation of the Convention, any interpretation had also to accord with the fundamental objectives of the Convention and its coherence as a system of human rights protection. Article 3 had to be construed in harmony with Article 2. Article 2 was first and foremost a prohibition on the use of lethal force or other conduct which might lead to the death of a human being and did not confer any claim on an individual to require a State to permit or facilitate his or her death.

The Court could not but be sympathetic to the applicant's apprehension that without the possibility of ending her life she faced the prospect of a distressing death. Nonetheless, the positive obligation on the part of the State which had been invoked would require that the State sanction actions intended to terminate life, an obligation that could not be derived from Article 3. The Court therefore concluded that no positive obligation arose under Article 3 in this context and that there had, accordingly, been no violation of that provision.

Article 8

The applicant was prevented by law from exercising her choice to avoid what she considered would be an undignified and distressing end to her life. The Court was not prepared to exclude that this constituted an interference with her right to respect for private life as guaranteed under Article 8 § 1.

The Court recalled that an interference with the exercise of an Article 8 right would not be compatible with Article 8 § 2 unless it was "in accordance with the law", had an aim or aims that was or were legitimate under that paragraph and was "necessary in a democratic society" to attain such aim or aims.

The only issue arising from the arguments of the parties was the necessity of any interference and those arguments had focussed on its proportionality. In this connection the applicant had attacked the blanket nature of the ban on assisted suicide.

The Court found, in agreement with the House of Lords, that States were entitled to regulate through the operation of the general criminal law activities which were detrimental to the life and safety of other individuals. The law in issue in this case, section 2 of the Suicide Act, was designed to safeguard life by protecting the weak and vulnerable and especially those who were not in a condition to take informed decisions against acts intended to end life or to assist in ending life.

The Court did not consider that the blanket nature of the ban on assisted suicide was disproportionate. The Government had stated that flexibility was provided for in individual cases by the fact that consent was needed from the DPP to bring a prosecution and by the fact that a maximum sentence was provided, allowing lesser penalties to be imposed as appropriate. It did not appear to be arbitrary for the law to reflect the importance of the right to life, by prohibiting assisted suicide while providing for a system of enforcement and adjudication which allowed due regard to be given in each particular case to the public interest in bringing a prosecution, as well as to the fair and proper requirements of retribution and deterrence.

Nor in the circumstances was there anything disproportionate in the refusal of the DPP to give an advance undertaking that no prosecution would be brought against the applicant's husband. Strong arguments based on the rule of law could be raised against any claim by the executive to exempt individuals or classes of individuals from the operation of the law. In any event, the seriousness of the act for which immunity was claimed was such that the decision of the DPP to refuse the undertaking sought could not be said to be arbitrary or unreasonable.

The Court concluded that the interference could be justified as "necessary in a democratic society" for the protection of the rights of others. There had therefore been no violation of Article 8.

Article 9

The Court observed that not all opinions or convictions constituted beliefs as protected by Article 9 § 1. The applicant's claims did not involve a form of manifestation of a religion or belief, through worship, teaching, practice or observance as described in the second sentence of the first paragraph. The term "practice" did not cover each act which was motivated or influenced by a religion or belief. To the extent that the applicant's views reflected her commitment to the principle of personal autonomy, her claim was a restatement of the complaint raised under Article 8. The Court concluded that there had been no violation of Article 9.

Article 14

For the purposes of Article 14 a difference in treatment between persons in analogous or relevantly similar positions was discriminatory if it had no objective and reasonable justification, that is if it did not pursue a legitimate aim or if there was not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Discrimination could also arise where States without an objective and reasonable justification failed to treat differently persons whose situations were significantly different.

There was, in the Court's view, objective and reasonable justification for not distinguishing in law between those who were and those who were not physically capable of committing suicide. Cogent reasons existed for not seeking to distinguish between those who were able and those who were unable to commit suicide unaided. The borderline between the two categories would often be a very fine one and to seek to build into the law an exemption for those judged to be incapable of committing suicide would seriously undermine the protection of life which the 1961 Act was intended to safeguard and greatly increase the risk of abuse. Consequently, there had been no violation of Article 14.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.