



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

Information Note on the Court's case-law 41

April 2002

Pretty v. the United Kingdom - 2346/02

Judgment 29.4.2002 [Section IV]

Article 2

Positive obligations

Refusal to give undertaking not to prosecute husband for assisting wife to commit suicide: *no violation*

Article 3

Degrading treatment

Inhuman treatment

Refusal to give undertaking not to prosecute husband for assisting wife to commit suicide: *no violation*

Article 8

Article 8-1

Respect for private life

Refusal to give undertaking not to prosecute husband for assisting wife to commit suicide: *no violation*

Facts – The applicant, a 43-year old woman, suffers from motor neurone disease, an incurable degenerative disease which leads to severe weakness of the arms and legs and of the muscles involved in control of breathing, eventually resulting in death. The applicant's condition deteriorated rapidly after it was diagnosed in 1999 and the disease is at an advanced stage: she is paralysed from the neck down and has to be fed by a tube, but her intellect and capacity to take decisions are unimpaired. As the final stages of the disease are distressing and undignified, the applicant wishes to control how and when she dies. However, she is unable to commit suicide without assistance and it is a crime to assist another to commit suicide. The applicant's lawyer requested the Director of Public Prosecutions to give an undertaking that her husband would not be prosecuted if he assisted her to commit suicide. The request was refused and the Divisional Court refused an application for judicial review. The applicant's appeal was dismissed by the House of Lords in November 2001.

Law – Pursuant to Article 29 § 3 of the Convention, the Court declared the application admissible.

Article 2: The consistent emphasis in all the cases brought before the Court under this provision has been the obligation of the State to protect life and the Court was not persuaded that the right to life could be interpreted as involving a negative aspect. Article 2 is unconcerned with issues to do with the quality of living or what a person chooses to do with his or her life and it cannot, without a distortion of language, be interpreted as conferring a right to die, nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life. Accordingly, no right to die, whether at the hands of a third person or with the assistance of a public authority, can be derived from Article 2. Moreover, it was not for the Court in the present case to attempt to assess whether or not the state of law in any other country failed to protect the right to life. Even if circumstances prevailing in a particular country which permitted assisted suicide were found not to infringe Article 2, that would not assist the applicant's case, where the very different proposition that the United Kingdom would be in breach of its obligations under Article 2 if it did not allow assisted suicide had not been established.

Conclusion: no violation (unanimously).

Article 3: It was beyond dispute that the respondent Government had not 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. There was thus no act or "treatment": the applicant's claim that the refusal to give an undertaking not to prosecute her husband disclosed inhuman and degrading treatment for which the State was responsible in failing to protect her from suffering placed a new and extended construction on the concept of treatment which went beyond the ordinary meaning of the word. Article 3 must be construed in harmony with Article 2, which is first and foremost a prohibition on the use of lethal force or other conduct which might lead to death. The positive obligation on the part of the State which is invoked by the applicant would not involve the removal or mitigation of harm by, for instance, preventing any ill-treatment by public bodies or private individuals or providing improved conditions or care; it would require that the State sanction actions intended to terminate life, an obligation that cannot be derived from Article 3. Consequently, no positive obligation arose under that provision either to require an undertaking not to prosecute or to provide a lawful opportunity for any other form of assisted suicide.

Conclusion: no violation (unanimously).

Article 8: Although no previous case has established as such any right to self-determination as being contained in this provision, the notion of personal autonomy is an important principle underlying the interpretation of its guarantees. The ability to conduct one's life in a manner of one's own choosing may also include the opportunity to pursue activities perceived to be of a physically or morally harmful or dangerous nature for the individual concerned and even where the conduct poses a danger to health or, arguably, life, the case-law of the Convention institutions has regarded the State's imposition of compulsory or criminal measures as impinging on private life. In the sphere of medical treatment, the refusal to accept a particular treatment might, inevitably, lead to a fatal outcome, yet the imposition of medical treatment without consent would interfere with a person's physical integrity in a manner capable of engaging the rights protected by Article 8. The very essence of the Convention is respect for human dignity and human freedom. Without in any way negating the principle of sanctity of life, it is under Article 8 that notions of the quality of life take on significance and it could not be excluded that preventing the applicant from exercising her choice to avoid an undignified and distressing end to her life constituted an interference with her right to respect for her private life. Article 8 was therefore applicable. The only remaining issue was the necessity of any interference. Although the Government's assertion that the applicant had to be regarded as vulnerable was not supported by the evidence, States are entitled to regulate through the operation of the general criminal law activities which are

detrimental to the life and safety of other individuals and the relevant law in the present case was designed to safeguard life by protecting the weak and vulnerable. Many terminally ill individuals will be vulnerable and it is the vulnerability of the class which provides the rationale for the law in question. It is primarily for States to assess the risk and the likely incidence of abuse if the general prohibition on assisted suicides were relaxed or if exceptions were to be created. A blanket prohibition on assisted suicide is not, therefore, disproportionate. It did not appear to be arbitrary for the law to reflect the importance of 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 was the refusal to give an advance undertaking not to prosecute disproportionate: strong arguments based on the rule of law could be raised against any claim by the executive to exempt individuals or classes from the operation of the law and, in any event, the seriousness of the act for which immunity was claimed was such that the refusal could not be said to be arbitrary or unreasonable. Consequently, the interference could be justified as necessary in a democratic society.

Conclusion: no violation (unanimously).

Article 9: Not all opinions or convictions constitute beliefs in the sense of this provision and the applicant's claims did not involve a form of manifestation of a religion or belief. To the extent that her views reflected her commitment to the principle of personal autonomy, her claim was a restatement of the complaint under Article 8.

Conclusion: no violation (unanimously).

Article 14: It had been found under Article 8 that there are sound reasons for not introducing into the law exceptions to cater for those deemed not to be vulnerable, and similar cogent reasons existed under Article 14 for not seeking to distinguish between those who are and those who are not physically capable of committing suicide. The borderline between the two categories will 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 legislation was intended to safeguard and greatly increase the risk of abuse.

Conclusion: no violation (unanimously).