



**University of
Sunderland**

Christie, Laura (2020) Article 2: Right to Life v Right to Die.
Sunderland Student Law Journal, 1. pp. 30-34. ISSN 2634 -193X

Downloaded from: <http://sure.sunderland.ac.uk/id/eprint/12058/>

Usage guidelines

Please refer to the usage guidelines at
<http://sure.sunderland.ac.uk/policies.html> or alternatively contact
sure@sunderland.ac.uk.

Article 2: Right to Life v Right to Die

Laura Christie (2020) SSLJ 1, 30-34

Stage Two LLB Student, University of Sunderland

Abstract

Article 2 of the European Convention on Human Rights protects an individual's right to life. The article states that everyone shall have the right to life and 'everyone's right to life shall be protected by law'. The Article however does not grant the right to die, as alluded to in the case of *Pretty v UK* 2002.¹ Issues regarding being given the right to die are ongoing within the UK with 'more than 90% of the UK's population believing assisted dying should be legalised for those suffering from terminal illnesses'.² Due to these issues, it is questioned whether the UK amend the law to allow for assisted dying in certain circumstances under the proposed British Bill of Rights.

Keywords

Assisted Dying, Right to Life, British Bill of Rights, Human Rights

¹ ECHR (2346/02).

² Owen Bowcott, 'Legalise assisted dying for terminally ill, say 90% of people in UK', *The Guardian*, (London, 3rd March 2019) <<https://www.theguardian.com/society/2019/mar/03/legalise-assisted-dying-for-terminally-ill-say-90-per-cent-of-people-in-uk>> Accessed 9th March 2019.

The British Bill of Rights 2015 was a proposal put forward by the Conservative Party in their 2015 election manifesto. The primary aim was to repeal the Human Rights Act 1998 and replace it with the British Bill of Rights. In creating the British Bill of Rights, it would 'break the formal link between the British Courts and the European Court of Human Rights and make the Supreme Court the ultimate arbiter of human rights matters in the UK.'³ The European Convention on Human Rights and the articles contained within it are incorporated into the United Kingdom by the Human Rights Act 1998. The Human Rights Act 1998 is an Act of Parliament with an aim to incorporate the rights set out in the European Convention on Human Rights into UK law. The Human Rights Act 1998 has three main effects. The most important is outlined in Section 2 of the Act and states that anyone can seek justice in a British court rather than having to seek justice in the European Court of Human Rights which is situated in Strasbourg, France.

Article 2 of the European Convention on Human Rights states that everyone has the right to life. It can be argued that the right to life is an absolute right, this is a right which has no restrictions or limitations. However, it is in fact a limited right.⁴ This means that the right to life can be taken away by the state in certain and extreme circumstances. Under the Suicide Act 1961 s2(1), in the UK it is an offence for one person to assist someone in the act of killing themselves, however it is not a criminal offence for someone to commit suicide if they do it on their own. *Pretty v UK (2002)* is a well-known case in regards to Article 2 of the European Convention on Human Rights. Mrs Pretty was living with a condition called motor neurone disease and wished to control how and when she was to die but needed the help of her husband.⁵ Mrs Pretty argued that the right to life included her choice to carry on living it or not and was seeking to challenge the Suicide Act 1961. The court refused to allow her husband to be free of any prosecution if he was to assist in her death as the right to life 'cannot, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die'.⁶ The case signifies the importance of the right to life, and reinforces the concept that this right cannot be interpreted in a different way to allow for a different meaning.

³ The Conservative Party, 'Strong Leadership, a clear economic plan, a brighter, more secure future' (2015) < <https://www.conservatives.com/manifesto2015>> Accessed 10th March 2019.

⁴ 'Article 2: Right to Life' (*Equality and Human Rights Commission, 15th November 2018*) < <https://www.equalityhumanrights.com/en/human-rights-act/article-2-right-life> > Accessed 6th June 2019.

⁵ *Pretty v UK 2002 (2346/02)*.

In the case of *Purdy v DPP* (2009), Ms Purdy had been diagnosed with multiple sclerosis and knew her condition was only going to get worse.⁷ She wished to go abroad to die in dignity and sought to clarify if her husband would be prosecuted if he was to help her do this. The court agreed that the law on assisted suicide was unclear and it was noted that:

‘the director of public prosecutions should be required to publish his policy identifying the facts and circumstances that would be taken into account in considering whether to prosecute people for aiding and abetting an assisted suicide abroad’.⁸

This case provided an opportunity to clarify the law on assisted suicide. It was made clear by the DPP who published a set of guidelines for prosecutors to follow. It consisted of factors that they should take into account when hearing a case of assisted suicide. For those that consider this route to end their life. These guidelines should be used after the British Bill of Rights is introduced as it sets a precedent for others to follow. In relation to Article 2 the right to life, this case shows that the courts do not permit the distortion of the language to create the right to die.

It may be questionable as to the impact and control that the Suicide Act 1961 actually has upon society. This is because there are still cases where people do not follow the law that is contained within this act. The case of Daniel James involved the youngest UK citizen to die at Dignitas in Switzerland.⁹ In order for him to be able to do this he was assisted by his parents who paid for the procedure and to allow him to travel there. Under the Suicide Act 1961 s2(1), Daniel James’ parents should have been found guilty for helping him to die as they ‘assisted the suicide or attempted suicide of another person’, however the Crown Prosecution Service said that it was against the public interest to press any charges against them.¹⁰ The CPS decided it was against public interest as his parents had been distressed over the idea of him wanting to end his life and had tried continuously to change his mind, it was said that factors supporting that a prosecution was not needed outweighed all other factors that were taken into account. It could be said that this shows a development to allowing for assisted suicide

⁷ R (*Purdy*) v DPP (2009) UKHL 45.

⁸ *Ibid.*

⁹ *Daniel James v DPP* (2008) unreported - Richard Edwards, ‘Assisted Suicide: parents of Daniel James will not face charges’ *The Telegraph*, (London, 9th December 2008) <<https://www.telegraph.co.uk/news/worldnews/europe/switzerland/3690874/Assisted-suicide-parents-of-Daniel-James-will-not-face-charges.html>> Accessed 14th March 2019.

¹⁰ Suicide Act 1961 s.2(1).

in certain circumstances within the UK and it may be argued that the UK should follow in the footsteps of Switzerland and allow its citizens to be able to have the choice and the right to die. Switzerland does not allow an act of suicide to be done for reasons based upon self-interest. However, in order to do this Parliament would need to change and amend their law on the Suicide Act. This could be done by the introduction of a bill similar to Lord Falconers Assisted Dying Bill of 2014 and including this in the British Bill of Rights.

Lord Falconer's assisted Dying Bill 2014 was a proposal that would allow for terminally ill adults who had the mental capacity to make their own decision to have an assisted death with the approval of two medical doctors. This Bill was modelled around the Oregon Death with Dignity Act 1997 which allows for assisted dying in the US state of Oregon.¹¹ The act allows for citizens who are terminally ill to end their lives with assistance by a lethal dose of medication. It can be said that this proposed Bill conflicts with the right to life and contradicts what the courts ruled in *Pretty v UK*, that the right to life does not confer the right to die, hence the reason why the Bill did not progress.¹² If a similar Bill was to be introduced it may be argued that those that are a 'vulnerable persons, subject to more or less subtle pressures, may feel compelled to die.'¹³ This could be due to them feeling like a burden to others or due to other factors such as money for treatment or care. On the other hand, 'the key argument made by those who support liberalisation of the law is based on personal autonomy... Dignity in death is as important as dignity in life, and people should therefore have the right to decide the timing and circumstances of their own deaths.'¹⁴

Overall, it is realistic for the UK to be able to amend their laws on the issue of assisted dying and for it to be included in the British Bill of Rights under the right to life. This is due to the fact there has been Bills introduced into other countries based upon the same subject matter that have been successful and still are to this day. In order to achieve this, they would need to introduce a bill similar to Lord Falconer's proposed in 2014 or amend their laws surrounding

¹¹ 'Lord Falconers Assisted Dying Bill (2014)' < <https://www.dignityindying.org.uk/assisted-dying/the-law/lord-falconers-assisted-dying-bill-2014/> > Accessed 12th March 2019.

¹² *Pretty v UK* 2002 (2346/02).

¹³ Daniel Sokol, 'A step closer to the legalisation of assisted suicide?' (UK Human Rights Blog, 5th January 2012) < <https://ukhumanrightsblog.com/2012/01/05/a-step-closer-to-the-legalisation-of-assisted-suicide/> > Accessed 13th March 2019.

¹⁴Parliament 'The Right to Die and Assisted Suicide' (Parliament UK, 2015) < <https://www.parliament.uk/business/publications/research/key-issues-parliament-2015/social-change/debating-assisted-suicide/> > Accessed 6th June 2019.

the issue. The UK should use other European countries who permit assisted dying as their basis for reform. An example of this could be Switzerland who consider assisted suicide to be a crime only if the motive is one of selfishness. In order to monitor this and to make sure that the right to die is not being exploited, right to die organisations such as Dignitas could be created who could work along-side Parliament to monitor the assisted suicides within the country.