

Charles Foster reviews the European Court judgement on Diane Pretty

Hemlock in Strasbourg

The European Convention on Human Rights (ECHR) is less malleable and less of a euthanasist's charter than many commentators feared. That is the effect of the judgment of the European Court of Human Rights in *Pretty v United Kingdom* (www.echr.coe.int/Eng/judgments.htm)

The facts

Diane Pretty suffered from Motor Neurone Disease (*Triple Helix* 2002; Winter:7). She wanted to die but was physically unable to kill herself, so asked the Director of Public Prosecutions (DPP) for an undertaking that if her husband helped her to commit suicide he would not be prosecuted under s. 2(1) of the Suicide Act 1961, which makes assisting suicide a criminal offence. Unsurprisingly, the DPP refused. She challenged that refusal in the Divisional Court and the House of Lords, saying that the de facto prohibition on her suicide, which English law imposed, infringed various rights under the ECHR. The English courts dismissed her application. She went to Strasbourg. Her contentions, and the court's response to them, are considered under the headings of the individual Articles.

Article 2

Article 2(1) provides: 'Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of the court....' Mrs Pretty said that Article 2 protected not only the right to life but also the right to choose whether or not to go on living. Nonsense, said the court. A right to life is not a right to be killed.

Article 3

This provides: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment....' Mrs Pretty's difficulty here was in establishing that the UK Government had subjected her to ill-treatment. She suffered terribly, of course, but her disease caused her suffering, not the government. Certainly the DPP's failure to give the undertaking did not amount to treatment or subjection to treatment. The Convention's Articles had to be considered together in line with their overall purpose. Article 3 had to be read together 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. It did not give any individual a right to require a state to permit or facilitate his or her death.

Article 8

Insofar as relevant this says:

1. Everyone has the right to respect for his private and family life....
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

Mrs Pretty said that this gave her a right to self-determination. She had a right to decide how to live, and a right to decide when and how to die.

The Court thought there was something in this. But that was not the end of the matter. It went on to say that Article 8(2) justified an interference with the Article 8(1) right. It was legitimate for the

criminal law to protect a class of potentially vulnerable people by a law like s. 2(1) of the Suicide Act, even though that might sometimes affect the Article 8(1) rights of some members of that class.

Article 9

This provides:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.'

Mrs Pretty argued that she had a belief in assisted suicide which the law prevented her from manifesting. The Court gave this short shrift. A belief in assisted suicide was different from religious or comparable beliefs of the type that the Article existed to protect. Diane Pretty was free to think what she wanted about assisted suicide, but a right to think what one wants does not mean that one has a right to do anything one wants in pursuit of that belief.

Article 14

This provides: 'The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

Mrs Pretty said that she was discriminated against because of her disability. If she were not disabled she would be able to kill herself, but because she was disabled she could not. The prohibition against assisted suicide therefore discriminated against her. This was wrong, said the Court. It was reasonable for legislation not to distinguish between those who could kill themselves and those who, by reason of a disability, could not.

Conclusion

Mrs Pretty's case was an audacious attempt to use the ECHR to do precisely the opposite of what it primarily exists to do. She sought to say that her right not to be killed gave her a right to be killed. She sought to use legislation which was designed to protect vulnerable people in a way which would have increased vulnerability.

The Court was having none of it. In a judgment which reviewed a vast number of authorities on all the cornerstone articles, it has laid down a number of important markers which will prevent subsequent abuse of the Convention. In rejecting Mrs Pretty's submissions the Court went back to basics. Except in relation to Article 8, its construction of the Articles was conservative in the way it must be if the Convention is not to be a joke. Article 8 is elastic, and it is right that 8(1) should be allowed to stretch to fit all corners of human life. But the Court's conclusions on Article 8(2) indicate that it will not allow a few tragic but unusual individuals to re-write the laws by which contracting states protect against dangers facing whole classes of vulnerable people.

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