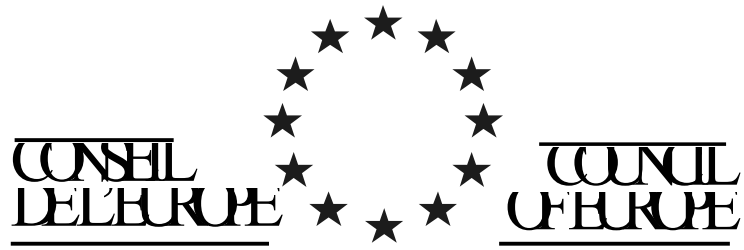

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF PRETTY v. THE UNITED KINGDOM

(Application no. 2346/02)

JUDGMENT

STRASBOURG

29 April 2002

FINAL

29/07/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Pretty v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr M. PELLONPÄÄ, *President*,
Sir Nicolas BRATZA,
Mrs E. PALM,
Mr J. MAKARCZYK,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 19 March and 25 April 2002,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 2346/02) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a United Kingdom national, Mrs Diane Pretty ("the applicant"), on 21 December 2001.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

2. The applicant is a 43-year-old woman. She resides with her husband of twenty-five years, their daughter and granddaughter. The applicant suffers from motor neurone disease (MND). This is a progressive neuro-degenerative disease of motor cells within the central nervous system. The disease is associated with progressive muscle weakness affecting the voluntary muscles of the body. As a result of the progression of the disease, severe weakness of the arms and legs and the muscles involved in the control of breathing are affected. Death usually occurs as a result of weakness of the breathing muscles, in association with weakness of the muscles controlling speaking and swallowing, leading to respiratory failure and pneumonia. No treatment can prevent the progression of the disease.

3. The applicant's condition has deteriorated rapidly since MND was diagnosed in November 1999. The disease is now at an advanced stage. She is essentially paralysed from the neck down, has virtually no decipherable speech and is fed through a tube. Her life expectancy is very poor, measurable only in weeks or months. However, her intellect and capacity to make decisions are unimpaired. The final stages of the disease are exceedingly distressing and undignified. As she is frightened and distressed at the suffering and indignity that she will endure if the disease runs its course, she very strongly wishes to be able to control how and when she dies and thereby be spared that suffering and indignity.

4. Although it is not a crime to commit suicide under 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 (section 2(1) of the Suicide Act 1961).

5. Intending that she might commit suicide with the assistance of her husband, the applicant's solicitor asked the Director of Public Prosecutions (DPP), in a letter dated 27 July 2001 written on her behalf, to give an undertaking not to prosecute the applicant's husband should he assist her to commit suicide in accordance with her wishes.

6. In a letter dated 8 August 2001, the DPP refused to give the undertaking:

> "Successive Directors – and Attorneys General – have explained that they will not grant immunities that condone, require, or purport to authorise or permit the future commission of any criminal offence, no matter how exceptional the circumstances. ..."

7. On 20 August 2001 the applicant applied for judicial review of the DPP's decision and the following relief:

– an order quashing the DPP's decision of 8 August 2001;

– a declaration that the decision was unlawful or that the DPP would not be acting unlawfully in giving the undertaking sought;

– a mandatory order requiring the DPP to give the undertaking sought; or alternatively

– a declaration that section 2 of the Suicide Act 1961 was incompatible with Articles 2, 3, 8, 9 and 14 of the Convention.

8. On 17 October 2001 the Divisional Court refused the application, holding that the DPP did not have the power to give the undertaking not to prosecute and that section 2(1) of the Suicide Act 1961 was not incompatible with the Convention.

9. The applicant appealed to the House of Lords. They dismissed her appeal on 29 November 2001 and upheld the judgment of the Divisional Court. In giving the leading judgment in *The Queen on the Application of Mrs Dianne Pretty (Appellant) v. Director of Public Prosecutions (Respondent) and Secretary of State for the Home Department (Interested Party)*,

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Suicide, assisted suicide and consensual killing

10. Suicide ceased to be a crime in England and Wales by virtue of the Suicide Act 1961. However, section 2(1) of the Act provides:

> "A person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years."

Section 2(4) provides:

> "No proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions."

11. Case-law has established that an individual may refuse to accept life-prolonging or life-preserving treatment:

> "First it is established that the principle of self-determination requires that respect must be given to the wishes of the patient, so that if an adult patient of sound mind refuses, however unreasonably, to consent to treatment or care by which his life would or might be prolonged, the doctors responsible for his care must give effect to his wishes, even though they do not consider it to be in his best interests to do so ... To this extent, the principle of the sanctity of human life must yield to the principle of self-determination ..." (Lord Goff in *Airedale NHS Trust v. Bland* [1993] AC 789, at p. 864)

12. This principle has been most recently affirmed in *Ms B. v. an NHS Hospital*, Court of Appeal judgment of 22 March 2002. It has also been recognised that "dual effect" treatment can be lawfully administered, that is treatment calculated to ease a patient's pain and suffering which might also, as a side-effect, shorten their life expectancy (see, for example, *Re J* [1991] Fam 3).

B. Domestic review of the legislative position

13. In March 1980 the Criminal Law Revision Committee issued its fourteenth report, "Offences against the Person" (Cmnd 7844), in which it reviewed, *inter alia*, the law relating to the various forms of homicide and the applicable penalties. In Section F, the situation known as mercy killing was discussed. The previous suggestion of a new offence applying to a person who from compassion unlawfully killed another person permanently subject, for example, to great bodily pain and suffering and for which a two-year maximum sentence was applicable, was unanimously withdrawn. It was noted that the vast majority of the persons and bodies consulted were against the proposal on principle and on pragmatic grounds. Reference was made also to the difficulties of definition and the possibility that the

"suggestion would not prevent suffering but would cause suffering, since the weak and handicapped would receive less effective protection from the law than the fit and well".

14. It did however recommend that the penalty for assisting suicide be reduced to seven years, as being sufficiently substantial to protect helpless persons open to persuasion by the unscrupulous.

15. On 31 January 1994 the report of the House of Lords Select Committee on Medical Ethics (HL Paper 21-I) was published following its inquiry into the ethical, legal and clinical implications of a person's right to withhold consent to life-prolonging treatment, the position of persons unable to give or withhold consent and whether and in what circumstances the shortening of another person's life might be justified on the grounds that it accorded with that person's wishes or best interests. The Committee had heard oral evidence from a variety of government, medical, legal and non-governmental sources and received written submissions from numerous interested parties who addressed the ethical, philosophical, religious, moral, clinical, legal and public-policy aspects.

16. It concluded, as regards voluntary euthanasia:

> "236. The right to refuse medical treatment is far removed from the right to request assistance in dying. We spent a long time considering the very strongly held and sincerely expressed views of those witnesses who advocated voluntary euthanasia. Many of us have had experience of relatives or friends whose dying days or weeks were less than peaceful or uplifting, or whose final stages of life were so disfigured that the loved one seemed already lost to us, or who were simply weary of life ... Our thinking must also be coloured by the wish of every individual for a peaceful and easy death, without prolonged suffering, and by a reluctance to contemplate the possibility of severe dementia or dependence. We gave much thought too to Professor Dworkin's opinion that, for those without religious belief, the individual is best able to decide what manner of death is fitting to the life that has been lived.
>
> 237. Ultimately, however, we do not believe that these arguments are sufficient reason to weaken society's prohibition of intentional killing. That prohibition is the cornerstone of law and of social relationships. It protects each one of us impartially, embodying the belief that all are equal. We do not wish that protection to be diminished and we therefore recommend that there should be no change in the law to permit euthanasia. We acknowledge that there are individual cases in which euthanasia may be seen by some to be appropriate. But individual cases cannot reasonably establish the foundation of a policy which would have such serious and widespread repercussions. Moreover, dying is not only a personal or individual affair. The death of a person affects the lives of others, often in ways and to an extent which cannot be foreseen. We believe that the issue of euthanasia is one in which the interest of the individual cannot be separated from the interest of society as a whole.
>
> 238. One reason for this conclusion is that we do not think it possible to set secure limits on voluntary euthanasia ...
>
> 239. We are also concerned that vulnerable people – the elderly, sick or distressed – would feel pressure, whether real or imagined, to request early death. We accept that, for the most part, requests resulting from such pressure or from remediable depressive

illness would be identified as such by doctors and managed appropriately. Nevertheless we believe that the message which society sends to vulnerable and disadvantaged people should not, however obliquely, encourage them to seek death, but should assure them of our care and support in life ..."

17. In light of the above, the Select Committee on Medical Ethics also recommended no change to the legislation concerning assisted suicide (paragraph 262).

III. RELEVANT INTERNATIONAL MATERIALS

18. Recommendation 1418 (1999) of the Parliamentary Assembly of the Council of Europe recommended, *inter alia*, as follows (paragraph 9):

"... that the Committee of Ministers encourage the member States of the Council of Europe to respect and protect the dignity of terminally ill or dying persons in all respects:

...

c. by upholding the prohibition against intentionally taking the life of terminally ill or dying persons, while:

i. recognising that the right to life, especially with regard to a terminally ill or dying person, is guaranteed by the member States, in accordance with Article 2 of the European Convention on Human Rights which states that 'no one shall be deprived of his life intentionally';

ii. recognising that a terminally ill or dying person's wish to die never constitutes any legal claim to die at the hand of another person;

iii. recognising that a terminally ill or dying person's wish to die cannot of itself constitute a legal justification to carry out actions intended to bring about death."

IV. THIRD-PARTY INTERVENTIONS

A. Voluntary Euthanasia Society

19. The Voluntary Euthanasia Society, established in 1935 and being a leading research organisation in the United Kingdom on issues related to assisted dying, submitted that as a general proposition individuals should have the opportunity to die with dignity and that an inflexible legal regime that had the effect of forcing an individual, who was suffering unbearably from a terminal illness, to die a painful protracted death with indignity, contrary to his or her express wishes, was in breach of Article 3 of the Convention. They referred to the reasons why persons requested assisted

deaths (for example unrelieved and severe pain, weariness of the dying process, loss of autonomy). Palliative care could not meet the needs of all patients and did not address concerns of loss of autonomy and loss of control of bodily functions.

20. They submitted that in comparison with other countries in Europe the regime in England and Wales, which prohibited assisted dying in absolute terms, was the most restrictive and inflexible in Europe. Only Ireland compared. Other countries (for example Belgium, Switzerland, Germany, France, Finland, Sweden and the Netherlands, where assistance must be sought from a medical practitioner) had abolished the specific offence of assisting suicide. In other countries, the penalties for such offences had been downgraded – in no country, save Spain, did the maximum penalty exceed five years' imprisonment – and criminal proceedings were rarely brought.

21. As regarded public-policy issues, they submitted that whatever the legal position, voluntary euthanasia and assisted dying took place. It was well known in England and Wales that patients asked for assistance to die and that members of the medical profession and relatives provided that assistance, notwithstanding that it might be against the criminal law and in the absence of any regulation. As recognised by the Netherlands government, therefore, the criminal law did not prevent voluntary euthanasia or assisted dying. The situation in the Netherlands indicated that in the absence of regulation slightly less than 1% of deaths were due to doctors having ended the life of a patient without the latter explicitly requesting this (non-voluntary euthanasia). Similar studies indicated a figure of 3.1% in Belgium and 3.5% in Australia. It might therefore be the case that less attention was given to the requirements of a careful end-of-life practice in a society with a restrictive legal approach than in one with an open approach that tolerated and regulated euthanasia. The data did not support the assertion that, in institutionalising voluntary euthanasia/physician-assisted suicide, society put the vulnerable at risk. At least with a regulated system, there was the possibility of far greater consultation and a reporting mechanism to prevent abuse, along with other safeguards, such as waiting periods.

B. Catholic Bishops' Conference of England and Wales

22. This organisation put forward principles and arguments which it stated were consonant with those expressed by other Catholic bishops' conferences in other member States.

23. They emphasised that it was a fundamental tenet of the Catholic faith that human life was a gift from God received in trust. Actions with the purpose of killing oneself or another, even with consent, reflected a damaging misunderstanding of the human worth. Suicide and euthanasia

were therefore outside the range of morally acceptable options in dealing with human suffering and dying. These fundamental truths were also recognised by other faiths and by modern pluralist and secular societies, as shown by Article 1 of the Universal Declaration of Human Rights (December 1948) and the provisions of the European Convention on Human Rights, in particular in Articles 2 and 3 thereof.

24. They pointed out that those who attempted suicide often suffered from depression or other psychiatric illness. The 1994 report of the New York State Task Force on Life and Law concluded on that basis that the legalising of any form of assisted suicide or any form of euthanasia would be a mistake of historic proportions, with catastrophic consequences for the vulnerable and an intolerable corruption of the medical profession. Other research indicated that many people who requested physician-assisted suicide withdrew that request if their depression and pain were treated. In their experience, palliative care could in virtually every case succeed in substantially relieving a patient of physical and psychosomatic suffering.

25. The House of Lords Select Committee on Medical Ethics (1993-94) had solid reasons for concluding, after consideration of the evidence (on a scale vastly exceeding that available in these proceedings), that any legal permission for assistance in suicide would result in massive erosion of the rights of the vulnerable, flowing from the pressure of legal principle and consistency and the psychological and financial conditions of medical practice and health-care provision in general. There was compelling evidence to suggest that once a limited form of euthanasia was permitted under the law it was virtually impossible to confine its practice within the necessary limits to protect the vulnerable (see, for example, the Netherlands government's study of deaths in 1990, recording cases of euthanasia without the patients' explicit request).

THE LAW

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

26. The relevant parts of Article 2 of the Convention provide:

> "1. 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 a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Submissions of the parties

1. The applicant

27. The applicant submitted that permitting her to be assisted in committing suicide would not be in conflict with Article 2 of the Convention, otherwise those countries in which assisted suicide was not unlawful would be in breach of this provision. Furthermore, Article 2 protected not only the right to life but also the right to choose whether or not to go on living. It protected the right to life and not life itself, while the sentence concerning deprivation of life was directed towards protecting individuals from third parties, namely the State and public authorities, not from themselves. Article 2 therefore acknowledged that it was for the individual to choose whether or not to go on living and protected her right to die to avoid inevitable suffering and indignity as the corollary of the right to life. In so far as the *Keenan* case referred to by the Government indicated that an obligation could arise for prison authorities to protect a prisoner who tried to take his own life, the obligation only arose because he was a prisoner and lacked, due to his mental illness, the capacity to take a rational decision to end his life (see *Keenan v. the United Kingdom*, no. 27229/95, ECHR 2001-III).

2. The Government

28. The Government submitted that the applicant's reliance on Article 2 was misconceived, being unsupported by direct authority and being inconsistent with existing authority and with the language of the provision. Article 2, guaranteeing one of the most fundamental rights, imposed primarily a negative obligation. Although it had in some cases been found to impose positive obligations, this concerned steps appropriate to safeguard life. In previous cases the State's responsibility under Article 2 to protect a prisoner had not been affected by the fact that he committed suicide (see *Keenan*, cited above) and it had also been recognised that the State was entitled to force-feed a prisoner on hunger strike (see *X v. Germany*, no. 10565/83, Commission decision of 9 May 1984, unreported). The wording of Article 2 expressly provided that no one should be deprived of their life intentionally, save in strictly limited circumstances which did not

apply in the present case. The right to die was not the corollary, but the antithesis of the right to life.

B. The Court's assessment

29. The Court's case-law accords pre-eminence to Article 2 as one of the most fundamental provisions of the Convention (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-47). It safeguards the right to life, without which enjoyment of any of the other rights and freedoms in the Convention is rendered nugatory. It sets out the limited circumstances when deprivation of life may be justified and the Court has applied a strict scrutiny when those exceptions have been relied on by the respondent States (ibid., p. 46, §§ 149-50).

30. The text of Article 2 expressly regulates the deliberate or intended use of lethal force by State agents. However, it has been interpreted as covering not only intentional killing but also the situations where it is permitted to "use force" which may result, as an unintended outcome, in the deprivation of life (ibid., p. 46, § 148). Furthermore, the Court has held that the first sentence of Article 2 § 1 enjoins the State 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 (see *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-III, p. 1403, § 36). This obligation extends beyond a primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions; it may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3159, § 115, and *Kılıç v. Turkey*, no. 22492/93, §§ 62 and 76, ECHR 2000-III). More recently, in *Keenan*, Article 2 was found to apply to the situation of a mentally ill prisoner who disclosed signs of being a suicide risk (see *Keenan*, cited above, § 91).

31. The consistent emphasis in all the cases before the Court has been the obligation of the State to protect life. The Court is not persuaded that "the right to life" guaranteed in Article 2 can be interpreted as involving a negative aspect. While, for example in the context of Article 11 of the Convention, the freedom of association has been found to involve not only a right to join an association but a corresponding right not to be forced to join an association, the Court observes that the notion of a freedom implies some measure of choice as to its exercise (see *Young, James and Webster v. the*

United Kingdom, judgment of 13 August 1981, Series A no. 44, pp. 21-22, § 52, and *Sigurđur A. Sigurjónsson v. Iceland*, judgment of 30 June 1993, Series A no. 264, pp. 15-16, § 35). Article 2 of the Convention is phrased in different terms. It is unconcerned with issues to do with the quality of living or what a person chooses to do with his or her life. To the extent that these aspects are recognised as so fundamental to the human condition that they require protection from State interference, they may be reflected in the rights guaranteed by other Articles of the Convention, or in other international human rights instruments. Article 2 cannot, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely 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.

32. The Court accordingly finds that 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 of the Convention. It is confirmed in this view by the recent Recommendation 1418 (1999) of the Parliamentary Assembly of the Council of Europe (see paragraph 24 above).

33. The applicant has argued that a failure to acknowledge a right to die under the Convention would place those countries which do permit assisted suicide in breach of the Convention. It is not for the Court in this case to attempt to assess whether or not the state of law in any other country fails to protect the right to life. As it recognised in *Keenan*, the measures which may reasonably be taken to protect a prisoner from self-harm will be subject to the restraints imposed by other provisions of the Convention, such as Articles 5 and 8, as well as more general principles of personal autonomy (see *Keenan*, cited above, § 92). Similarly, the extent to which a State permits, or seeks to regulate, the possibility for the infliction of harm on individuals at liberty, by their own or another's hand, may raise conflicting considerations of personal freedom and the public interest that can only be resolved on examination of the concrete circumstances of the case (see, *mutatis mutandis*, *Laskey, Jaggard and Brown v. the United Kingdom*, judgment of 19 February 1997, *Reports* 1997-I). However, even if circumstances prevailing in a particular country which permitted assisted suicide were found not to infringe Article 2 of the Convention, that would not assist the applicant in this 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 – has not been established.

34. The Court finds that there has been no violation of Article 2 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

35. Article 3 of the Convention provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Submissions of the parties

1. The applicant

36. Before the Court, the applicant focused her complaints principally on Article 3 of the Convention. She submitted that the suffering which she faced qualified as degrading treatment under Article 3 of the Convention. She suffered from a terrible, irreversible disease in its final stages and she would die in an exceedingly distressing and undignified manner as the muscles which controlled her breathing and swallowing weakened to the extent that she would develop respiratory failure and pneumonia. While the Government were not directly responsible for that treatment, it was established under the Court's case-law that under Article 3 the State owed to its citizens not only a negative obligation to refrain from inflicting such treatment but also a positive obligation to protect people from it. In this case, this obligation was to take steps to protect her from the suffering which she would otherwise have to endure.

37. The applicant argued that there was no room under Article 3 of the Convention for striking a balance between her right to be protected from degrading treatment and any competing interest of the community, as the right was an absolute one. In any event, the balance struck was disproportionate as English law imposed a blanket ban on assisting suicide regardless of the individual circumstances of the case. As a result of this blanket ban, the applicant had been denied the right to be assisted by her husband in avoiding the suffering awaiting her without any consideration having been given to the unique facts of her case, in particular that her intellect and capacity to make decisions were unimpaired by the disease, that she was neither vulnerable nor in need of protection, that her imminent death could not be avoided, that if the disease ran its course she would endure terrible suffering and indignity and that no one else was affected by her wish for her husband to assist her save for him and their family who were wholly supportive of her decision. Without such consideration of the facts of the case, the rights of the individual could not be protected.

38. The applicant also disputed that there was any scope for allowing any margin of appreciation under Article 3 of the Convention, although if there was, the Government could not be entitled to rely on such a margin in defence of a statutory scheme operated in such a way as to involve no consideration of her concrete circumstances. The applicant rejected as offensive the assertion of the Government that all those who were terminally ill or disabled and contemplating suicide were by definition

vulnerable and that a blanket ban was necessary so as to protect them. Any concern as to protecting those who were vulnerable could be met by providing a scheme whereby assisted suicide was lawful provided that the individual in question could demonstrate that she had the capacity to come to such a decision and was not in need of protection.

2. The Government

39. The Government submitted that Article 3 was not engaged in this case. The primary obligation imposed by this provision was negative: the State must not inflict torture or inhuman or degrading treatment or punishment. The applicant's case was based rather on alleged positive obligations. The Court's case-law indicated that where positive obligations arose they were not absolute but must be interpreted in such a way as not to impose an impossible or disproportionate burden on the authorities. Positive obligations had hitherto been found to arise in three situations: where the State was under a duty to protect the health of a person deprived of liberty, where the State was required to take steps to ensure that persons within its jurisdiction were not subjected to torture or other prohibited treatment at the hands of private individuals and where the State proposed to take action in relation to an individual which would result in the infliction by another of inhuman or degrading treatment on him. None of these circumstances were relevant in the applicant's case, as she was not being mistreated by anyone, she was not complaining about the absence of medical treatment and no State action was being taken against her.

40. Even if Article 3 were engaged, it did not confer a legally enforceable right to die. In assessing the scope of any positive obligation, it was appropriate to have regard to the margin of appreciation properly afforded to the State in maintaining section 2 of the Suicide Act 1961. The Government submitted that the prohibition on assisted suicide struck a fair balance between the rights of the individual and the interests of the community, in particular as it properly respected the sanctity of life and pursued a legitimate objective, namely protecting the vulnerable; the matter had been carefully considered over the years by the Criminal Law Revision Committee and the House of Lords Select Committee on Medical Ethics; there were powerful arguments, and some evidence, to suggest that legalising voluntary euthanasia led inevitably to the practice of involuntary euthanasia; and the State had an interest in protecting the lives of the vulnerable, in which context they argued that anyone contemplating suicide would necessarily be psychologically and emotionally vulnerable, even if they were physically fit while those with disabilities might be in a more precarious position as being unable effectively to communicate their views. Furthermore, there was a general consensus in Council of Europe countries, where assisted suicide and consensual killing were unlawful in all countries

except in the Netherlands. This consensus was also reflected in other jurisdictions outside Europe.

B. The Court's assessment

41. Article 3 of the Convention, together with Article 2, must be regarded as one of the most fundamental provisions of the Convention and as enshrining core values of the democratic societies making up the Council of Europe (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 34, § 88). In contrast to the other provisions in the Convention, it is cast in absolute terms, without exception or proviso, or the possibility of derogation under Article 15 of the Convention.

42. An examination of the Court's case-law indicates that Article 3 has been most commonly applied in contexts in which the risk to the individual of being subjected to any of the proscribed forms of treatment emanated from intentionally inflicted acts of State agents or public authorities (see, amongst other authorities, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25). It may be described in general terms as imposing a primarily negative obligation on States to refrain from inflicting serious harm on persons within their jurisdiction. However, in light of the fundamental importance of Article 3, the Court has reserved to itself sufficient flexibility to address the application of that Article in other situations that might arise (see *D. v. the United Kingdom*, judgment of 2 May 1997, *Reports* 1997-III, p. 792, § 49).

43. In particular, the Court has held that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman and degrading treatment or punishment, including such treatment administered by private individuals (see *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2699, § 22). A positive obligation on the State to provide protection against inhuman or degrading treatment has been found to arise in a number of cases: see, for example, *A. v. the United Kingdom* (cited above) where the child applicant had been caned by his stepfather, and *Z and Others v. the United Kingdom* ([GC], no. 29392/95, ECHR 2001-V), where four child applicants were severely abused and neglected by their parents. Article 3 also imposes requirements on State authorities to protect the health of persons deprived of liberty (see *Keenan*, cited above, concerning the lack of effective medical care of a mentally ill prisoner who committed suicide, and also *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

44. As regards the types of "treatment" which fall within the scope of Article 3 of the Convention, the Court's case-law refers to "ill-treatment"

that attains a minimum level of severity and involves actual bodily injury or intense physical or mental suffering (see *Ireland v. the United Kingdom*, cited above, p. 66, § 167; *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX). Where treatment humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see amongst recent authorities, *Price v. the United Kingdom*, no. 33394/96, §§ 24-30, ECHR 2001-VII, and *Valašinas v. Lithuania*, no. 44558/98, § 117, ECHR 2001-VIII). The suffering which flows from naturally occurring illness, physical or mental, may be covered by Article 3, where it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible (see *D. v. the United Kingdom* and *Keenan*, both cited above, and *Bensaid v. the United Kingdom*, no. 44599/98, ECHR 2000-I).

45. In the present case, it is beyond dispute that the respondent State has not, itself, inflicted any ill-treatment on the applicant. Nor is there any complaint that the applicant is not receiving adequate care from the State medical authorities. The situation of the applicant is therefore not comparable with that in *D. v. the United Kingdom*, in which an AIDS sufferer was threatened with removal from the United Kingdom to the island of St Kitts where no effective medical or palliative treatment for his illness was available and he would have been exposed to the risk of dying under the most distressing circumstances. The responsibility of the State would have been engaged by its act ("treatment") of removing him in those circumstances. There is no comparable act or "treatment" on the part of the United Kingdom in the present case.

46. The applicant has 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 disclose inhuman and degrading treatment for which the State is responsible as it will thereby be failing to protect her from the suffering which awaits her as her illness reaches its ultimate stages. This claim, however, places a new and extended construction on the concept of treatment, which, as found by the House of Lords, goes beyond the ordinary meaning of the word. While the Court must take a dynamic and flexible approach to the interpretation of the Convention, which is a living instrument, any interpretation must also accord with the fundamental objectives of the Convention and its coherence as a system of human rights protection. Article 3 must be construed in harmony with Article 2, which hitherto has been associated with it as reflecting basic values respected by democratic societies. As found above, Article 2 of the Convention is 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 does not confer any right on an individual to require a State to permit or facilitate his or her death.

47. The Court cannot but be sympathetic to the applicant's apprehension that without the possibility of ending her life she faces the prospect of a distressing death. It is true that she is unable to commit suicide herself due to physical incapacity and that the state of law is such that her husband faces the risk of prosecution if he renders her assistance. Nonetheless, the positive obligation on the part of the State which is relied on in the present case 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 of the Convention.

48. The Court therefore concludes that no positive obligation arises under Article 3 of the Convention to require the respondent State either to give an undertaking not to prosecute the applicant's husband if he assisted her to commit suicide or to provide a lawful opportunity for any other form of assisted suicide. There has, accordingly, been no violation of this provision.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

49. Article 8 of the Convention provides as relevant:

> "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."

A. Submissions of the parties

1. The applicant

50. The applicant argued that, while the right to self-determination ran like a thread through the Convention as a whole, it was Article 8 in which that right was most explicitly recognised and guaranteed. It was clear that the right to self-determination encompassed the right to make decisions about one's body and what happened to it. She submitted that this included the right to choose when and how to die and that nothing could be more intimately connected to the manner in which a person conducted her life than the manner and timing of her death. It followed that the DPP's refusal

to give an undertaking and the State's blanket ban on assisted suicide interfered with her rights under Article 8 § 1.

51. The applicant argued that there must be particularly serious reasons for interfering with such an intimate part of her private life. However, the Government had failed to show that the interference was justified as no consideration had been given to her individual circumstances. She referred here to the arguments also raised in the context of Article 3 of the Convention (see paragraphs 45-46 above).

2. The Government

52. The Government argued that the rights under Article 8 were not engaged as the right to private life did not include a right to die. It covered the manner in which a person conducted her life, not the manner in which she departed from it. Otherwise, the alleged right would extinguish the very benefit on which it was based. Even if they were wrong on this, any interference with rights under Article 8 would be fully justified. The State was entitled, within its margin of appreciation, to determine the extent to which individuals could consent to the infliction of injuries on themselves and so was even more clearly entitled to determine whether a person could consent to being killed.

B. The Court's assessment

1. Applicability of Article 8 § 1 of the Convention

53. As the Court has had previous occasion to remark, the concept of "private life" is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person (see *X and Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91, p. 11, § 22). It can sometimes embrace aspects of an individual's physical and social identity (see *Mikulić v. Croatia*, no. 53176/99, § 53, ECHR 2002-I). Elements such as, for example, gender identification, name and sexual orientation and sexual life fall within the personal sphere protected by Article 8 (see, for example, *B. v. France*, judgment of 25 March 1992, Series A no. 232-C, pp. 53-54, § 63; *Burghartz v. Switzerland*, judgment of 22 February 1994, Series A no. 280-B, p. 28, § 24; *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45, pp. 18-19, § 41; and *Laskey, Jaggard and Brown*, cited above, p. 131, § 36). Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world (see, for example, *Burghartz*, cited above, opinion of the Commission, p. 37, § 47, and *Friedl v. Austria*, judgment of 31 January 1995, Series A no. 305-B, opinion of the Commission, p. 20, § 45). Although no previous case has

established as such any right to self-determination as being contained in Article 8 of the Convention, the Court considers that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees.

54. The Government have argued that the right to private life cannot encapsulate a right to die with assistance, such being a negation of the protection that the Convention was intended to provide. The Court would observe that 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. The extent to which a State can use compulsory powers or the criminal law to protect people from the consequences of their chosen lifestyle has long been a topic of moral and jurisprudential discussion, the fact that the interference is often viewed as trespassing on the private and personal sphere adding to the vigour of the debate. However, even where the conduct poses a danger to health or, arguably, where it is of a life-threatening nature, the case-law of the Convention institutions has regarded the State's imposition of compulsory or criminal measures as impinging on the private life of the applicant within the meaning of Article 8 § 1 and requiring justification in terms of the second paragraph (see, for example, concerning involvement in consensual sado-masochistic activities which amounted to assault and wounding, *Laskey, Jaggard and Brown*, cited above, and concerning refusal of medical treatment, *Acmanne and Others v. Belgium*, no. 10435/83, Commission decision of 10 December 1984, Decisions and Reports (DR) 40, p. 251).

55. While it might be pointed out that death was not the intended consequence of the applicants' conduct in the above situations, the Court does not consider that this can be a decisive factor. 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 the consent of a mentally competent adult patient, would interfere with a person's physical integrity in a manner capable of engaging the rights protected under Article 8 § 1 of the Convention. As recognised in domestic case-law, a person may claim to exercise a choice to die by declining to consent to treatment which might have the effect of prolonging his life (see paragraphs 17-18 above).

56. In the present case, although medical treatment is not an issue, the applicant is suffering from the devastating effects of a degenerative disease which will cause her condition to deteriorate further and increase her physical and mental suffering. She wishes to mitigate that suffering by exercising a choice to end her life with the assistance of her husband. As stated by Lord Hope, the way she chooses to pass the closing moments of her life is part of the act of living, and she has a right to ask that this too must be respected (see paragraph 15 above).

57. 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 protected under the Convention, the Court considers that it is under Article 8 that notions of the quality of life take on significance. In an era of growing medical sophistication combined with longer life expectancies, many people are concerned that they should not be forced to linger on in old age or in states of advanced physical or mental decrepitude which conflict with strongly held ideas of self and personal identity.

58. In *Rodriguez v. the Attorney General of Canada* ([1994] 2 Law Reports of Canada 136), which concerned a not dissimilar situation to the present, the majority opinion of the Supreme Court considered that the prohibition on the appellant in that case receiving assistance in suicide contributed to her distress and prevented her from managing her death. This deprived her of autonomy and required justification under principles of fundamental justice. Although the Canadian court was considering a provision of the Canadian Charter framed in different terms from those of Article 8 of the Convention, comparable concerns arose regarding the principle of personal autonomy in the sense of the right to make choices about one's own body.

59. The applicant in this case is prevented by law from exercising her choice to avoid what she considers will be an undignified and distressing end to her life. The Court is not prepared to exclude that this constitutes an interference with her right to respect for private life as guaranteed under Article 8 § 1 of the Convention. It considers below whether this interference conforms with the requirements of the second paragraph of Article 8.

2. Compliance with Article 8 § 2 of the Convention

60. An interference with the exercise of an Article 8 right will not be compatible with Article 8 § 2 unless it is "in accordance with the law", has an aim or aims that is or are legitimate under that paragraph and is "necessary in a democratic society" for the aforesaid aim or aims (see *Dudgeon*, cited above, p. 19, § 43).

61. The only issue arising from the arguments of the parties is the necessity of any interference, it being common ground that the restriction on assisted suicide in this case was imposed by law and in pursuit of the legitimate aim of safeguarding life and thereby protecting the rights of others.

62. According to the Court's established case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued; in determining whether an interference is "necessary in a democratic society", the Court will take into account that a margin of appreciation is left to the national authorities, whose decision remains subject to review by the Court for conformity with the requirements of the Convention. The margin of appreciation to be accorded to the competent national authorities will vary

in accordance with the nature of the issues and the importance of the interests at stake.

63. The Court recalls that the margin of appreciation has been found to be narrow as regards interferences in the intimate area of an individual's sexual life (see *Dudgeon*, cited above, p. 21, § 52, and *A.D.T. v. the United Kingdom*, no. 35765/97, § 37, ECHR 2000-IX). Although the applicant has argued that there must therefore be particularly compelling reasons for the interference in her case, the Court does not find that the matter under consideration in this case can be regarded as of the same nature, or as attracting the same reasoning.

64. The parties' arguments have focused on the proportionality of the interference as disclosed in the applicant's case. The applicant attacked in particular the blanket nature of the ban on assisted suicide as failing to take into account her situation as a mentally competent adult who knows her own mind, who is free from pressure and who has made a fully informed and voluntary decision, and therefore cannot be regarded as vulnerable and requiring protection. This inflexibility means, in her submission, that she will be compelled to endure the consequences of her incurable and distressing illness, at a very high personal cost.

65. The Court would note that although the Government argued that the applicant, as a person who is both contemplating suicide and severely disabled, must be regarded as vulnerable, this assertion is not supported by the evidence before the domestic courts or by the judgments of the House of Lords which, while emphasising that the law in the United Kingdom was there to protect the vulnerable, did not find that the applicant was in that category.

66. Nonetheless, the Court finds, in agreement with the House of Lords and the majority of the Canadian Supreme Court in *Rodriguez*, that 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 (see also *Laskey, Jaggard and Brown*, cited above, pp. 132-33, § 43). The more serious the harm involved the more heavily will weigh in the balance considerations of public health and safety against the countervailing principle of personal autonomy. The law in issue in this case, section 2 of the 1961 Act, was designed to safeguard life by protecting the weak and vulnerable and especially those who are not in a condition to take informed decisions against acts intended to end life or to assist in ending life. Doubtless the condition of terminally ill individuals will vary. But many 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. Clear risks of abuse do exist, notwithstanding arguments as to the possibility of safeguards and protective procedures.

67. The applicant's counsel attempted to persuade the Court that a finding of a violation in this case would not create a general precedent or any risk to others. It is true that it is not this Court's role under Article 34 of the Convention to issue opinions in the abstract but to apply the Convention to the concrete facts of the individual case. However, judgments issued in individual cases establish precedents albeit to a greater or lesser extent and a decision in this case could not, either in theory or practice, be framed in such a way as to prevent application in later cases.

68. The Court does not consider therefore that the blanket nature of the ban on assisted suicide is disproportionate. The Government have stated that flexibility is provided for in individual cases by the fact that consent is needed from the DPP to bring a prosecution and by the fact that a maximum sentence is provided, allowing lesser penalties to be imposed as appropriate. The Select Committee report indicated that between 1981 and 1992 in twenty-two cases in which "mercy killing" was an issue, there was only one conviction for murder, with a sentence of life imprisonment, while lesser offences were substituted in the others and most resulted in probation or suspended sentences (paragraph 128 of the report cited at paragraph 21 above). It does not appear to be arbitrary to the Court 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 allows 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.

69. Nor in the circumstances is 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 in the present case cannot be said to be arbitrary or unreasonable.

70. The Court concludes that the interference in this case may be justified as "necessary in a democratic society" for the protection of the rights of others and, accordingly, that there has been no violation of Article 8 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

71. Article 9 of the Convention 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."

A. Submissions of the parties

1. The applicant

72. The applicant submitted that Article 9 protected the right to freedom of thought, which has hitherto included beliefs such as veganism and pacifism. In seeking the assistance of her husband to commit suicide, the applicant believed in and supported the notion of assisted suicide for herself. In refusing to give the undertaking not to prosecute her husband, the DPP had interfered with this right as had the United Kingdom in imposing a blanket ban which allowed no consideration of the applicant's individual circumstances. For the same reasons as applied under Article 8 of the Convention, that interference had not been justified under Article 9 § 2.

2. The Government

73. The Government disputed that any issue arose within the scope of this provision. Article 9 protected freedom of thought, conscience and religion and the manifestation of those beliefs and did not confer any general right on individuals to engage in any activities of their choosing in pursuance of whatever beliefs they may hold. Alternatively, even if there was any restriction in terms of Article 9 § 1 of the Convention, such was justifiable under the second paragraph for the same reasons as set out in relation to Articles 3 and 8 of the Convention.

B. The Court's assessment

74. The Court does not doubt the firmness of the applicant's views concerning assisted suicide but would observe that not all opinions or convictions constitute beliefs in the sense protected by Article 9 § 1 of the Convention. Her claims do 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. As found by the Commission, the term "practice" as employed in Article 9 § 1 does not cover each act which is motivated or influenced by a religion or belief (see *Arrowsmith v. the United Kingdom*, no. 7050/77, Commission's report of 12 October 1978, DR 19, p. 19, § 71). To the extent that the applicant's views reflect her commitment to the principle of personal autonomy, her claim is a restatement of the complaint raised under Article 8 of the Convention.

75. The Court concludes that there has been no violation of Article 9 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

76. Article 14 of the Convention 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."

A. Submissions of the parties

1. The applicant

77. The applicant submitted that she suffered from discrimination as a result of being treated in the same way as those whose situations were significantly different. Although the blanket ban on assisted suicide applied equally to all individuals, the effect of its application to her when she was so disabled that she could not end her life without assistance was discriminatory. She was prevented from exercising a right enjoyed by others who could end their lives without assistance because they were not prevented by any disability from doing so. She was therefore treated substantively differently and less favourably than those others. As the only justification offered by the Government for the blanket ban was the need to protect the vulnerable and as the applicant was not vulnerable or in need of protection, there was no reasonable or objective justification for this difference in treatment.

2. The Government

86. The Government argued that Article 14 of the Convention did not come into play as the applicant's complaints did not engage any of the substantive rights she relied on. Alternatively, there was no discrimination as the applicant could not be regarded as being in a relevantly similar situation to those who were able to take their own lives without assistance. Even assuming Article 14 was in issue, section 2(1) of the Suicide Act 1961 was not discriminatory as domestic law conferred no right to commit suicide and the policy of the law was firmly against suicide. The policy of the criminal law was to give weight to personal circumstances either at the stage of considering whether or not to prosecute or in the event of conviction, when penalty was to be considered. Furthermore, there was clear reasonable and objective justification for any alleged difference in

treatment, reference being made to the arguments advanced under Articles 3 and 8 of the Convention.

B. The Court's assessment

78. The Court has found above that the applicant's rights under Article 8 of the Convention were engaged (see paragraphs 61-67). It must therefore consider the applicant's complaints that she has been discriminated against in the enjoyment of the rights guaranteed under that provision in that domestic law permits able-bodied persons to commit suicide yet prevents an incapacitated person from receiving assistance in committing suicide.

79. For the purposes of Article 14 a difference in treatment between persons in analogous or relevantly similar positions is discriminatory if it has no objective and reasonable justification, that is if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover, the Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see *Camp and Bourimi v. the Netherlands*, no. 28369/95, § 37, ECHR 2000-X). Discrimination may also arise where States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV).

80. Even if the principle derived from *Thlimmenos* was applied to the applicant's situation however, there is, in the Court's view, objective and reasonable justification for not distinguishing in law between those who are and those who are not physically capable of committing suicide. Under Article 8 of the Convention, the Court has found that there are sound reasons for not introducing into the law exceptions to cater for those who are deemed not to be vulnerable (see paragraph 74 above). Similar cogent reasons exist under Article 14 for not seeking to distinguish between those who are able and those who are unable to commit suicide unaided. 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 1961 Act was intended to safeguard and greatly increase the risk of abuse.

81. Consequently, there has been no violation of Article 14 of the Convention in the present case.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 2 of the Convention;

3. *Holds* that there has been no violation of Article 3 of the Convention;

4. *Holds* that there has been no violation of Article 8 of the Convention;

5. *Holds* that there has been no violation of Article 9 of the Convention;

6. *Holds* that there has been no violation of Article 14 of the Convention.

Done in English, and notified in writing on 29 April 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President