

## The UK and ECHR

**MISHAL HUSAIN:**The case of Diane Pretty was the first time the English courts had been asked to consider the Human Rights Act in relation to a person's right to die with the assistance of another.

**NEWSREADER:**Good evening. Lawyers for a terminally ill woman have won permission to test Britain's suicide law in a case which will be a landmark in the perennial debate over euthanasia. She just won the first round in her legal battle to have the right to end her own life with Brian's help. It may only be a first step but it was a vital one.

**MONA ARSHI:**What we are saying is that the people that might be able to benefit from this decision are rational, competent adults who are terminally ill and who are physically unable to take their own lives. So it is only a limited number of people that will be, actually able to benefit from this case.

**NIALL DICKSON:**Diane Pretty's case may not make voluntary euthanasia legal for anyone who wants it, but if she wins it could set a precedent for others with sane minds and paralysed bodies. Neil Dixon, BBC News.

**NEWSREADER:**And Neil Dixon joins us now from outside the High Court. Neil, will there be any disquiet if the judge in this case rewrites Britain's suicide laws without parliament having had a say in the matter?

**NIALL DICKSON:**Well in a sense that's exactly what the Human Rights Act is all about. It's a law which contains principles which tests out other laws. And that's what the judge will be doing in this case. But I think it's highly unlikely he's going to rip up the current suicide law. What he may do is tweak it a bit. And of course, under UK law, parliament is still sovereign so eventually parliament will decide. It's also got to be said that the judges have also expressed in the past some reluctance to enter into areas of ethical policy. They may decide individual cases but they're rather worried about the idea that the courts should decide this as are the politicians. The trouble is that in the past the politicians too have been rather reluctant to go into this area.

**MISHAL HUSAIN:**Diane Pretty finally took her case to the European Court of Human Rights. In its defence the government argued that the 1961 Suicide Act fell within what's called the margin of appreciation. What follows is part of the argument they put to the court.

**LAWYER:**This is obviously an urgent case. It is obviously an important case and it obviously arises from tragic circumstances. The issue before this court is obviously one of pure law. She insists that the Convention enshrines a right for one person to participate intentionally in bringing about another person's death. In other words, her argument is that the Convention itself answers the fundamental question of policy in relation to assisted suicide. The government's answer is simply this, the Convention does not require assisted suicide to be either legalised or criminalised. It is a matter within the state's margin of appreciation how to respond to this most fundamental question of life and death. In support of her claim the applicant relies on articles 2, 3, 8, 9 and 14. We propose to deal with each in turn but before we do so

we'd like to deal with one crucial theme that runs through the whole of her case. It's clear that the direct cause of her suffering is a disease. There is no question of state agents inflicting inhuman or degrading treatment on her. As a result it is common ground that her entire complaint is necessarily based on the state's positive obligations. In its previous case law the court has repeatedly said that the scope of a state's positive obligations is not clear cut. It involves striking a balance between the interests of the community as a whole and the fundamental rights of the individual. As a result the court allows to each state a margin of appreciation in searching for that balance.

**MISHAL HUSAIN:**One argument that Diane's lawyers made was that she'd been discriminated against because there was a difference in treatment for people in similar positions. While she waited for the court's decision, a similar case came up before a British court.

**MICHAEL BUERK:**Good evening. An unprecedented high court hearing has begun to decide whether a severely paralysed woman should be allowed to die. The woman, identified only as Miss B, is paralysed from the neck down and unable to breathe without a ventilator.

**REPORTER:**The dramatic scenes at the bedside of the patient were relayed back to court. The judge and eleven lawyers crowded round as she told how a ruptured blood vessel had left her paralysed from the neck down. Now she wants doctors to turn off the ventilator that's keeping her alive. The lawyers then returned to the high court to continue the debate. Her solicitor said though she can't move, her mind and power of speech are fully intact.

**SOLICITOR:**She's had over a year now of being quadriplegic and only able to breathe on a ventilator and she's come to a conclusion that being aware of all the possibilities of sort of technology helping her and so forth that frankly the quality of life that she will have just isn't worth living.

**REPORTER:**The judge said this was an agonising case. She had doctors argue that if the patient agreed to go to a rehab unit and then into her own home she might change her mind and want to live. This case is very different from that of Diane Pretty where others would actively have to intervene to help her die. It's different to that of Tony Bland who went into a permanent vegetative state after the Hillsborough disaster and was incapable of giving his opinion. Legal experts say this case rests on the common law right to refuse life sustaining treatment if you're of sound mind.

**LEGAL EXPERT:**The issue in this case is really a factual one in my view, is she able to understand what she's trying to do? If the judge decides that she is able to understand then the law will lead the judge to the conclusion that she has the right to refuse the treatment.

**MISHAL HUSAIN:**In the end the judge upheld Miss B's common law right to have her ventilator switched off. So part of the government's argument to the European Court of Human Rights was that there was already flexibility in the interpretation of the law.

**LAWYER:**Furthermore, although section 2 of the Suicide Act is uniform in its application, there plainly are discretionary elements built into the regime. First the consent of the Director of Public Prosecutions is required before any prosecution can be brought. And secondly the trial judge naturally has a discretion in sentencing anyone who has been found guilty of the offence. For these reasons the applicant is wrong to suggest that the act is inflexible in its effect and therefore disproportionate. In truth the act is plainly

capable of allowing for different consequences depending on the circumstances of each case.

**MISHAL HUSAIN:**The court agreed that when it came to individual cases of assisted suicide there was some flexibility when applying British law. Early in 2005 another case emerged which brought into focus the difficult balance between the law's role as a deterrent and individual justice.

**ALISON HOLT:**For Brian Blackburn the relief was clear. He spent three months in prison awaiting trial saying he would pay the price for helping his desperately sick wife die. But today the retired policeman stood outside the Old Bailey a free man.

**REBECCA SHORTT:**My client is delighted with the outcome of today's hearing. The circumstances in which he found himself in court today were a tragic episode and his actions those of a man who showed deep love and compassion for his very sick wife.

**ALISON HOLT:**Margaret Blackburn, a retired nurse, worked at a hospice with cancer patients. When she discovered that she too had the illness she knew what would follow. She begged her husband to help her die. In the end he agreed. At their home in Ash in Surrey, he cut first her wrists then his own. But when he didn't die, he called the police, telling them what he'd done. Today, Judge Richard Hawkins told Blackburn he had acted as a loving husband when his wife begged him to cut her wrists as the last loving thing you could do for her. Diane Pretty tried to get the law changed so her husband wouldn't be prosecuted if he assisted her suicide but she failed. She died naturally soon after. Pro life campaigners maintain today's sentence is allowing euthanasia by the back door.

**JULIA MILLINGTON:**It sends out a very loud message to society and in no way acts as a deterrent to people in similar circumstances who might be, might be compelled to imitate the actions of Mr Blackburn.

**ALISON HOLT:**But legal experts say each of these cases is judged on its own merits.

**MICHAEL CAPLAN QC:**It's most important that a judge when he comes to sentence looks at the evidence before him. And looks at the particular facts of a particular case.

**ALISON HOLT:**But the sad story played out in the court here today will fuel demands for a much wider debate on what rights and what safeguards there should be when a life is ending. Alison Holt, BBC News, The Old Bailey.

**MISHAL HUSAIN:**These cases show some of the difficult decisions that have to be made in the courtroom and the reluctance of parliament to legislate in areas of great public debate. But three months later a House of Lords select committee did call for a parliamentary debate on voluntary euthanasia and assisted suicide.