Guidelines on euthanasia in england law public essay

Law

INTRODUCTION:

Advanced progress of human rights together with medical science conveys continuously discussible question of euthanasia. There are various opinions how euthanasia should be practised. Each of those opinions is supported by considerable arguments but right now it's hard to say if there are more followers or opponents and to choose which way is the right one.

Each country possesses distinct legal approach to euthanasia which is revealed on its own laws. This article will analyse the decision of R (Purdy) v DPP and examine DPP guidelines and its implications on euthanasia in England. In order to simplify we need to focus on the tropical and controversial notions of euthanasia law in England and its development by analysing the decision of R (Purdy) v DPP and DPP guidelines on euthanasia.

EUTHANASIA IN UK:

Euthanasia or assisted suicide is the act of intentionally intervening to consciously end the life of an individual with the aim of relieving that individual's pain and suffering. While euthanasia is not permitted in the England, there is nothing to stop an individual refusing to accept medical treatment; essentially individuals are entitled to consent to being allowed to die peacefully without further treatment but not to consent to being killed.

The offence of euthanasia is a statutory offence, generated by the Suicide Act (1961) s. 2 and substantively revised by the Coroners and Justice Act 2009. The s. 2(1) offence theoretically covers a very extensive series of

conduct of variable stages of culpability and is now concerned with acts capable of assisting or encouraging the suicide or attempted suicide of another person but the DPP's permission is necessary for a prosecution to be instituted, and the DPP has published his written Policy in respect of charging individuals with the s. 2(1) offence. Prosecutorial decision-making has therefore presumed a dominant part in relation to this offence, as it may lead to a decision being taken not to prosecute, even though in strict terms the elements of the s. 2 (1) offence are made out.

The law in relation to euthanasia is appreciated as being controversial. In recent period there have been a series of high profile cases taken before the UK courts and the European Court of Human Rights in which individuals with terminal illnesses and/or severe disabilities have challenged the law and the DPP's policy in relation to the s. 2(1) offence.

JURISDICTION AND PURDY DECISION:

Questions have arisen as to whether s. 2(1) as originally enacted applied to cases where an individual committed acts of assistance within the jurisdiction, which led to a person committing suicide outside the jurisdiction. The House of Lords did not resolve this issue in R. (on the application of Purdy) v DPP [2009] UKHL 45.

Under the new s. 2, as amended by the Coroners and Justice Act 2009, it appears clear that the s. 2(1) offence applies to acts capable of assisting or encouraging and individual to commit or attempt to commit suicide even if the suicide or attempted suicide takes place outside the jurisdiction.

The key question in Purdy was whether refusal of DPP to provide policy statement on prosecution of those who assisted suicide violated the right to respect for private life under Article 8 ECHR of terminally ill persons who wished to travel abroad to commit suicide?

The appellant, P, suffered from multiple sclerosis. She wished her husband to be able to take her abroad to a jurisdiction such as Switzerland or Belgium which allowed assisted suicide. Such action would render P's husband liable to prosecution under section 2(1) of the Suicide Act 1961 for aiding and abetting the suicide of another, an offence punishable with up to 14 years imprisonment. Section 2(1) does not provide for any exceptions. Such a prosecution would, under section 2(4) of the 1961 Act, require the consent of the DPP. The test to be applied was that contained in the Crown Prosecution Service Code ie whether there was enough evidence to sustain a prosecution and whether it was in the public interest to prosecute. P applied for judicial review of the DPP's refusal to disclose his policy not to prosecute, if such a policy existed, or, alternatively, his failure to promulgate a policy setting out the criteria for the exercise of his discretion in deciding whether to prosecute under section 2(4), in particular in cases where a relative or friend assisted a person to travel abroad for the purposes of assisted suicide. P argued that, in the absence of such a policy statement, she was unable to make an informed decision about whether to seek such assistance from her husband. She argued that the DPP's refusal violated her right to a private life under Article 8(1) of the European Convention on Human Rights 1950 and that the restriction on her right was not " in accordance with the law" under Article 8(2) of the Convention in the absence of a public statement of policy identifying the criteria to be taken into account by the DPP in exercising his discretion to prosecute. P argued that, in the absence of such a policy, the law lacked sufficient clarity. The Divisional Court (Scott

Baker and Aikens LJJ) concluded [2008] EWHC 2565 (Admin) that it was bound by the decision of the House of Lords in R (on the application of Pretty) v DPP (2001) UKHL 61 where the House had concluded that Diane Pretty's rights under Article 8(1) were not engaged because the right to a private life related to the manner in which a person conducted her/his life and not the manner in which s/he departed from it. The Divisional Court was of the view that the European Court of Human Rights in Pretty v UK (2002) 35 EHRR 1 had not definitively concluded that Article 8(1) was engaged and so there was no clear conflict on that point between the European Court and the House of Lords. P's appeal to the Court of Appeal [2009] EWCA Civ 92 was dismissed. The Court of Appeal held that the European Court of Human Rights in Pretty v UK had, in fact, held that Article 8(1) was engaged. There was, therefore, a conflict on this point between the European Court of Human Rights and the House of Lords in R (on the application of Pretty) v DPP. The Court of Appeal considered itself bound, however, by the decision of the House of Lords in preference to the later ruling of the European Court. In any case, the absence of a crime-specific policy relating to assisted suicide did not make the operation and effect of section 2(1) of the 1961 Act unlawful nor mean that it was not " in accordance with the law" under Article 8(2). P could take legal advice on the likelihood of her husband being prosecuted and that legal advice would be informed by general guidance and examples of previous decisions by the DPP. Hence the legal position was sufficiently certain. On appeal to the House of Lords:

Held, allowing the appeal, that the DPP should be required to promulgate an offence-specific policy identifying the facts and circumstances which he would take into account in deciding, in a case such as that which the appellant's exemplified, whether or not to consent to a prosecution under section 2(1) of the 1961 Act. The House of Lords held that Article 8(1) of the European Convention on Human Rights was engaged. The House chose to depart from its previous decision in R (on the application of Pretty) v DPP in favour of the decision of the European Court of Human Rights in Pretty v U. K. Further, the restriction on the right protected by Article 8(1) was not " in accordance with the law" as required by Article 8(2) because the law was not sufficiently clear. The Crown Prosecution Service Code would normally provide sufficient guidance as to how decisions should or were likely to be taken whether or not, in a given case, it would be in the public interest to prosecute. But this could not be said of cases where the offence was aiding and abetting the suicide of a person who was terminally ill or severely and incurably disabled, who wished to be helped to travel to a country where assisted suicide was lawful. In such cases, the Code offered almost no guidance at all. This was demonstrated by the decision of the DPP not to prosecute the parents and family friend of Daniel James (whose suicide abroad had been assisted after he was seriously injured in rugby practice) which demonstrated that factors not listed in the Code had to be introduced to cater for these difficult decisions. A jurisdictional argument considered by the House of Lords was whether acts taken in the UK to assist a suicide which took place outside the UK were, in fact, a violation of section 2(1) of the 1961 Act or

whether that section only applied where the act of suicide itself was completed in the UK. The House left this particular question open, basing its decision on the premise that there was a substantial risk that acts to assist the appellant to travel to Switzerland would give rise to prosecution in the UK.

CRITICAL ANALYSIS OF PURDY:

The legal effect of the decision of the House of Lords in Purdy is narrow. The decision does not in any way effect a modification in the law to legalise assisted suicide. The House made it vibrant that such a modification was to be outstretched by the Parliament. The decision does not affect the fundamental argument in the Pretty case either. Ms Pretty did not advance an argument that the intervention with her Article 8(1) rights was not " in accordance with the law" under Article 8(2). Her fundamental argument was that the extensive prohibition on assisted suicide was unbalanced to the appropriate objective of shielding vulnerable people and she had sought an advance undertaking from the DPP that wherever, whenever and in whatever manner she chose to end her life her husband would not be prosecuted if he assisted her suicide. The legal impact of the Purdy decision is no more than to require the DPP to issue a policy statement recognizing the factors that will be taken into consideration in determining whether a person who has assisted the suicide of another by facilitating them to travel abroad to commit suicide should be prosecuted. To achieve this rather limited victory, Ms Purdy had to go all the way to the House of Lords as the Court of Appeal considered itself bound by the previous decision of the House of Lords in R (on the application of Pretty) v DPP that the applicant's Article 8(1) rights were not violated in preference to the later ruling of the European Court of Human Rights in Pretty v UK that Article 8(1) rights had been violated. The doctrine of precedent and the certainty which it secured was paramount and only the House of Lords could choose not to follow one of its own decisions under the authority of the 1966 Practice Statement ([1966] 1

WLR 1234). Whilst one can fully appreciate the advantages of precedent in securing a level of certainty in decision-making, one might question whether such a doctrine should prevail over human rights being protected at the earliest opportunity and ask whether a lower court should be allowed not to follow an otherwise binding precedent when it is clear and unambiguous that the earlier national decision has been contradicted by a later decision of the European Court of Human Rights. This might seem to be form prevailing over matter. One might also question whether a lower court which refuses to prefer a later (clear and unambiguous) decision of the European Court is failing to comply with its duty as a public body under section 6 of the Human Rights Act 1998 to act in a Convention compatible way.