



## The Queen v. Ministry of Justice

[2013] EWCA Civ 961

**Country:** United Kingdom

**Region:** Europe

**Year:** 2013

**Court:** Court of Appeal, Queen's Bench Division

**Health Topics:** Disabilities, Health care and health services

**Human Rights:** Right to bodily integrity, Right to life, Right to privacy

### Facts

Martin suffered a stroke in 2008 leaving him unable to move or speak. He was completely dependent on his family and spent almost all of his time in bed. The effects of his stroke were permanent. Because of his disabilities, he was not able to take his own life. He had attempted to end his own life by dehydration and starvation but his attempts had failed. He brought this case to request that a stranger assist him to die without facing criminal charges.

Tony Nicklinson suffered a stroke in 2005 resulting in "locked in syndrome." This left him completely paralysed. He made a decision to end his own life in 2007, but his doctor was unable to assist him without being charged with murder. After being unsuccessful in his earlier case, he refused to eat, drink, or take medication and died in 2012. His wife was also a party to the case.

Paul Lamb was involved in a car accident in 1990 which left him paralysed and requiring constant care. His condition was irreversible. He was unable to take his own life, and wishes that a doctor do so.

Under UK law, euthanasia constituted the offence of murder. The case previously brought by Tony Nicklinson and now by Paul Lamb was that there should be a defence of necessity to this murder charge.

In Martin's case, it was not an offence to commit suicide. However, it was an offence for anyone to encourage or assist the suicide or attempted suicide of another person, with a maximum sentence of 14 years imprisonment. The decision on whether or not to prosecute was left solely in the hands of the Director of Public Prosecutions (DPP).

The appeals alleged that the right to die engages the right to private life protected by Article 8 of the European Convention on Human Rights ("Convention"). Mrs. Nicklinson claimed that her right to a private life were also infringed as a result of denying a remedy to her husband as there was an exceptionally close relationship between Mr. and Mrs. Nicklinson and she had been actively involved in Mr Nicklinson's decision to end his own life.

The three arguments put forward were as follows:

That the common law should be developed to allow a defence to murder in these circumstances;

That a blanket ban on assisted suicide was a disproportionate interference with Article 8 of the Convention; and

In Martin's case, that the DPP's policy for deciding whether or not to prosecute was not in accordance with law.

### Decision and Reasoning

The appeals of Mrs Nicklinson and Paul Lamb were dismissed on the following grounds:

Firstly, the court held that it is not appropriate for the court to develop the common law to recognise a defence to murder where a doctor or other person gives effect to a person's wish to end their own life. The Court reasoned that there is no reason that the Article 2 right to life should give way to the values of autonomy or dignity. Secondly, the Court noted that there is no right to commit suicide. It is merely an immunity from criminal charges for those that commit suicide. There should therefore be no right to require

the state to allow others to assist you to die. Finally, it is not appropriate for the courts to develop the law in this respect. This is such a fundamental issue that Parliament is the most appropriate forum for such a decision. Parliament has previously stated that it should remain unlawful even to assist suicide, let alone to permit euthanasia.

Secondly, it was argued by the appellants that a blanket prohibition on euthanasia and assisted suicide is incompatible with Article 8 of the Convention. The court held that the blanket ban is not disproportionate as consent is needed from the DPP to bring a prosecution, and therefore flexibility is provided. The DPP's discretion to prosecute must be exercised in a way that safeguards the individual's Article 8 right. Therefore, the blanket prohibition was a proportionate interference and fully compatible with Article 8(2). In addition, the DPP did not have to identify a category of cases where prosecution would not be initiated, because such a list would infringe Article 8 rights.

Thirdly, Martin argued that the DPP's policy in deciding whether or not to prosecute was not in accordance with the law, which includes requirements relating to clarity, accessibility and foreseeability.

In relation to Martin, the dismissal of the first two points above meant that he could not ask that the DPP confirm that he would not prosecute any carer or doctor who helped him to die. However, the Court upheld Martin's complaint that the policy of the DPP in deciding whether or not to prosecute failed to provide sufficient clarity on the DPP's policy in relation to class 2 helpers (those with no emotional connection with the victim, e.g. care givers). The parties were therefore invited to agree on a declaration to give effect to the court's decision on the policy.

### **Decision Excerpts**

“In our view, this submission that the common law should recognise a defence of necessity to apply to certain cases of euthanasia is wholly unsustainable for a variety of reasons. First, Mr Bowen accepts that there are circumstances when rights of autonomy and dignity may have to yield to other rights or interests. That is manifestly correct and the question is whether they should do so here. In that context it is important to bear in mind that the argument based on these rights is not simply advancing a claim why the individual should be permitted to take his or her own life; it is seeking to require positive action by the state to protect third parties who are willing to give effect to those rights. As Mr Perry QC, counsel for the Secretary of State, has emphasised, the sanctity of life is if anything an even more fundamental principle of the common law, reflected in the unqualified right to life found in Article 2 of the Convention. In *Pretty* Lord Hobhouse commented that it was “probably the most fundamental of all human values” (para.109). There is no self-evident reason why it should give way to the values of autonomy or dignity and there are cogent reasons why sensible people might properly think that it should not. So the mere fact that there may be rights to autonomy and to be treated with dignity does no more than raise the question whether they should be given priority in circumstances like this; it does not of itself carry the day.” Para. 54.