R. (on the application of Nicklinson) v. Ministry of Justice

[2014] HRLR 17

Country: United Kingdom
Region: Europe
Year: 2014
Court: The Supreme Court of the United Kingdom
Health Topics: Disabilities, Informed consent, Mental health
Human Rights: Right to bodily integrity, Right to liberty and security of person

Facts

The appellants, all individuals suffering from severe medical conditions, wished to die but were physically incapable of doing so themselves, due to their respective medical limitations. They could not find anyone to assist them in ending their lives; UK law criminalized assisting suicide.

At issue was whether s. 2(1) of the Suicide Act 1961 (â€œs. 2â€•), which criminalizes assisted suicide in order to protect vulnerable parties from being coerced into suicide, was a disproportionate and unjustifiable infringement of the European Convention on Human Rights (the â€œConventionâ€•) article 8 right to a private life of persons who have made a voluntary, clear, settled, and informed decision to commit suicide but were unable to do so without assistance. A further issue was whether the Director of Public Prosecutionâ€™s (the â€œDPPâ€•) published 2010 policy (the â€œPolicyâ€•), which laid out the factors the DPP considered before laying assisted suicide charges, was sufficiently clear.

Decision and Reasoning

The Court held that it was constitutionally permissible and potentially institutionally appropriate for the courts to declare s. 2 of the Suicide Act incompatible with article 8 of the Convention, however, the Court declined to issue this declaration. The Court further held that the Policy was lawful.

The Court held that English courts are constitutionally permitted to make the requested declaration. The Human Rights Act authorizes English courts to determine if legislation is compatible with the Convention. The Court previously held that this authority extended to legislation which attempted to balance competing rights under the Convention, even where the ECHR affords member states a margin of appreciation on certain issues, including assisted suicide.

Further, the majority held that it could be institutionally appropriate for the courts to review s. 2 of the Suicide Act, as it gravely interfered with the appellantsâ€™ rights and was not supported by any overwhelming argument. Additionally, the state effectively tolerated assisted suicide in certain situations, the connection between the lawâ€™s aim and effect was tenuous, no compelling argument undermined institutional appropriateness, and the courts have judged analogous issues.

The majority declined to issue an incompatibility declaration. Four justices held that the court did not have the required institutional competence. Three Justices held that it was not appropriate in this case; a declaration of incompatibility required that a party propose a feasible, alternative assisted dying scheme. The evidence before the court did not support such a proposal nor had the lower courts and secretary of state reviewed one. Further, the majority advised caution when considering assisted dying, as the issue has moral and religious elements, a declaration would require legislative action, Parliamentary debate was ongoing, and recent jurisprudence led Parliament to believe it would not declare s. 2 incompatible with article 8.

The Court unanimously held that the Policy was lawful. Any law that restricts a Convention right must be accessible and foreseeable, and English law on assisted suicide was accessible and foreseeable: assisted suicide was illegal. The majority encouraged the DPP to clarify the Policyâ€™s interpretation, because the Policyâ€™ wording was inconsistent with an interpretation accepted by the DPP.

Decision Excerpts

â€œIn these circumstances, given that the Strasbourg Court has held that it is for each state to consider how to

reconcile, or to balance, the art.8(1) rights of a person who wants assistance in dying with â€œthe protection of â€¦ moralsâ€• and â€œthe protection of the rights and freedoms of othersâ€•, I conclude that, even under our constitutio settlement, which acknowledges parliamentary supremacy and has no written constitution, it is, in principle, open to a domestic court to consider whether s.2 infringes art.8.â€• (Para 76)

â€œA system whereby a judge or other independent assessor is satisfied in advance that someone has a voluntary, clear, settled, and informed wish to die and for his suicide then to be organised in an open and professional way, would, at least in my current view, provide greater and more satisfactory protection for the weak and vulnerable, than a system which involves a lawyer from the DPP's office inquiring, after the event, whether the person who had killed himself had such a wish, and also to investigate the actions and motives of any assister, who would, by definition, be emotionally involved and scarcely able to take, or even to have taken, an objective view.â€• (Para 108)

â€œThe point discussed in [92]â€“[95] above, relating to the moral difference between a doctor administering a letha injection to an applicant, and a doctor setting up a lethal injection system which an applicant can activate himself, is also of significance in relation to institutional competence. It could be said to be a radical step for a court to declare a statutory provision incompatible, if such a declaration involved effectively stating that the law should be changed so as to decriminalise an act which would unquestionably be characterised as murder or (if there were appropriately mitigating circumstances) manslaughter. If, on the other hand, Dr Nitschke's machine, described in para 4 above, could be used, then a declaration of incompatibility would be a less radical proposition for a court to contemplate.â€• (Para 110)