

Right-to-die case: Legal analysis

By Joshua Rozenberg
Legal analyst

Assisting a person to commit suicide is still a criminal offence, the Law Lords insisted when they granted Debbie Purdy's appeal.

As Lord Hope explained, it was not their job to change the law.

"Our function as judges is to say what the law is and, if it is uncertain, to do what we can to clarify it."

And that is just what they did.

Under article 8 of the European Human Rights Convention, everyone has the right to respect for his or her private life.

Life includes the last moments of life - effectively how a person dies.

Debbie Purdy's dilemma is when to end her life.

Not enough information

If she waits until what she regards as the last possible moment, she will have to rely on the help of her husband, Omar Puente.

But if she thinks there is a high risk that the Director of Public Prosecutions (DPP) will bring criminal charges against Mr Puente for assisting in her suicide, then she will have to travel to Switzerland by herself before she is ready to do so.

The problem her lawyers identified is that she does not have enough information to make up her mind.

She does not know what factors the DPP will take into account in deciding whether to prosecute her husband.

Under the Human Rights Act, the DPP must act lawfully. That requires the law to be clear enough for people to understand its scope and foresee the consequences of what they do.

But, said the Law Lords, the circumstances in which the DPP would bring charges was not clear.

What was needed was a "custom-built policy statement including the various factors for and against prosecution".

As Lord Brown explained, this would help distinguish between two types of case.

The first was where someone was tempted to assist in suicide but should refrain from doing so.

" A sensible and clear policy document would be of great legal and practical value

"

Lord Neuberger

And the second was where someone giving assistance "may fairly hope to be, if not commended, at the very least forgiven".

Lord Neuberger added that the DPP, Keir Starmer QC, should set out what he regarded as the aggravating and mitigating factors in assisted suicide.

Each case would have to be decided on its merits. But, said Lord Neuberger: "A sensible and clear policy document would be of great legal and practical value".

It would also, he thought, be of some moral and emotional comfort to Ms Purdy and others in a similar tragic situation.

Moral maze

Though this was an unexpected defeat for the DPP, he immediately accepted the decision, touring the television studios to outline his plans.

A team would work through the summer to produce an interim policy by the end of September.

[HAVE YOUR SAY](#) As one who suffers from a chronic and progressive illness, I am glad this matter is to be clarified Terry, Colchester

That would help Debbie Purdy to know where she stood as soon as possible.

But it would not be the last word on the subject. The public would naturally want a say in the policy.

Assuming Parliament had not intervened in the meantime, Mr Starmer promised to publish his final policy next spring.

Parliament could still change the law.

But I suspect that MPs and peers will be relieved that someone else is having to find a way through the moral maze of assisted suicide.

Story from BBC NEWS:
<http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk/8177409.stm>

Published: 2009/07/30 19:35:27 GMT

© BBC MMIX