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A Critical Analysis of Euthanasia, Human Rights and the Role of Law in Right to Die

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ABSTRACT

"Euthanasia," also known as "mercy killing" or "good death," raises complex ethical and legal questions regarding the right to life and the freedom to choose the timing and manner of one's own death. This critical analysis examines the European Convention on Human Rights and its interpretation of the right to life, exploring whether the right to die can be included within its framework. The paper focuses on case law from the European Court of Human Rights (ECtHR) to shed light on relevant articles and their interpretation in cases related to assisted suicide and euthanasia. By examining the competing rights and interests under the Convention, the study provides insights into the debates surrounding assisted dying. The research draws on primary legal sources, including case law and legislation, as well as secondary sources such as academic journals and reports from jurisdictions where assisted death is permitted. The findings and analysis contribute to a nuanced understanding of the right to die, considering arguments for and against its recognition, and examining key case law precedents. Ultimately, this paper aims to shed light on the intersection of euthanasia, human rights, and the role of law in the right to die, providing valuable insights for scholars, policymakers, and individuals interested in this important and sensitive topic.

Keywords: Rights to life, Rights to die, Suicide, ECHR, Discrimination, Euthanasia.

I. INTRODUCTION

Despite its fundamental nature, the right to life under Article 2 of the European Convention on Human Rights allows for many exceptions. However, the right to die is not one of them. Article 2 (Right to Life) of the European Convention on Human Rights stipulated that we all have the right to life, and not be killed by another person. The state must protect people's lives by enforcing the law, protecting those in danger, and safeguard against accidental deaths (Fawcett, 1987).

According to Akandji-Kombe (2007), deciding when the right to life ends is a complex problem that raises the issue of the right to die with dignity. Article 2 does not guarantee the freedom to choose whether to live or die: the right to life does not imply, on the other hand, a right to die.

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Article 2 expresses unequivocally that everyone's right to life is safeguarded by law, and that no one's life is knowingly taken away. This places a responsibility on member states to not take lives unnecessarily and to protect individuals. It is maintained that, because the Convention rights are based on liberty and individual choice, Article 2 should respect the universal right to self-determination, and that the right to life under Article 2 thus encompasses an individual's freedom to choose whether or not to live (Foster, 2008).

Article 2 of the European Convention on Human Rights deals with the most basic of personal freedoms; simply put Article 2 protects the right to life. The article does however contain some exceptions; the most prominent of these exceptions is that the Article allows the death penalty to be carried out. This exception should be read alongside the 6th and 13th Protocols, to which the United Kingdom is subscribed, Protocol 6 which was ratified by the UK in January 1999 bans the death penalty in peacetime and Protocol 13 which was signed by the UK in May 2002 bans the death penalty in wartime. The Article also contains further exceptions, "Article 2 itself, however, does still contain exceptions in relation to 'absolutely necessary' force used in self-defence, to effect an arrest, or to quell a 'riot or insurrection'" (Stone, 2010).

The right to life under the European Convention on Human Rights includes both negative and positive obligations on States (Akandji-Kombe, 2007). In terms of the states' negative obligations, whereas a literal interpretation of the article is inconsistent with the purposeful deprivation of life, whether assisted dying is legalized is left to the discretion of each state in reality. This is shown not only by the fact that four states party to the ECHR authorize some kind of assisted dying without violating their ECHR commitments, but also by recent European Court of Human Rights jurisprudence showing that, even under Article 2, a broad discretion is provided in end-of-life circumstances (Lambert and Ors v France [2015] ECHR 545 [148]). *States have complete freedom in determining how to strike a balance between Article 2 and Article 8, if at all. Because of the need to preserve and defend life, governments' positive responsibilities under Article 2 are likely to be raised against the legalisation of assisted dying. When an individual's decision-making capacity is impaired, the obligation under Article 2 is strong* (Renolde v France (2008) 48 EHRR 969), *whereas* states need to respect the self-determination of individuals (Article 8) when the relevant decision-making capacity is present. For states that already permit some form of assisted dying, Article 2 and its positive obligations have been used in favour of safety by highlighting the importance of safeguards already in place in the jurisdiction. In other words, the right to self-determination is not unrestrained, but qualified based on the eligibility criteria, requirements, and safeguards set by each state that chooses legalisation.

(A) Aim of the Research

The aim of this paper is to critically analyse the ethical and legal complexities surrounding euthanasia, with a focus on the right to die, human rights considerations, and the role of law. It also sheds light on the competing rights and interests involved in assisted dying, contributing to a nuanced understanding of the subject. It adds to the ongoing discourse surrounding euthanasia, foster a deeper understanding of the rights and freedoms involved, and inform future discussions and decision-making in this important area of bioethics and human rights.

(B) Importance of the Research

Euthanasia, also known as assisted dying or mercy killing, is a highly contentious and sensitive topic that evokes strong emotions and raises profound ethical and legal questions. This research is of significant importance as it provides a comprehensive examination of the European Convention on Human Rights and its interpretation of the right to life, exploring whether the right to die can be encompassed within its framework. By analyzing relevant case law from the European Court of Human Rights.

(C) Research Questions

the following questions will have to be examined; Do we have the right to die? Should the government legalize euthanasia? What are the competing rights and interests under the European Convention on Human Rights about assisted dying? How have relevant articles of the Convention been interpreted by the European Court of Human Rights in end-of-life cases?

(D) Research Methodology

This paper uses the primary law sources, including case law, legislation as well as Secondary sources, including documents and reports, academic law, research journals, and reports from jurisdictions allowing a form of assisted death.

(E) The Structure of the Paper

The paper "A Critical Analysis of Euthanasia, Human Rights, and the Role of Law in Right to Die" is structured into eight parts. The first part provides a brief introduction to the research topic. The second part examines the exceptions of Article 2 of the European Convention on Human Rights, which deals with the right to life. The third part explores the concept of assisted dying and euthanasia, discussing the debates surrounding the right to die and the legal implications of assisted suicide. The fourth part focuses on the right to life under the European Convention on Human Rights, including both negative and positive obligations on states. The fifth part delves into the competing rights and interests under the Convention regarding assisted

dying and how these have been interpreted by the European Court of Human Rights in end-of-life cases. The sixth part outlines the methodology employed in the research, including primary and secondary law sources used. The seventh part presents the findings and analysis of the research, examining the arguments for and against the right to die and discussing relevant case law. Finally, the eighth part concludes the paper by summarizing the key points and implications of the research.

II. EXCEPTIONS OF ARTICLE (2)

In order to ascertain whether or not Article 2 contains or can be interpreted to contain an exception that allows the right to die it is necessary to look at the exceptions that are laid out within the Article. By ‘a right to die’ it is meant that an individual can choose the method and time at which their life ends and if necessary have assistance to do so.

The first exception contained within Article 2 is a person’s execution as a result of a sentence handed down for a crime they have committed. It is apparent from the wording of Article 2 that the drafters of the Convention did not view the use of the death penalty as a violation of the right to life. In the 1950’s many states still retained the death penalty as statute law even though today there has been a dramatic decline in its use. As a person has no choice as to whether or not they accept the death penalty this exception cannot in any way be deemed as a right to die.

In addition to above, the exception to Article 2 is the permissible use of force against unlawful violence. As a result, one could argue Article 2 quite clearly allows life to be taken in exceptional circumstances for the greater benefit of other individuals or in the best interests of the state. The key part of this exception is the term ‘unlawful violence’; this means that it is only acceptable to take the life of another if your own life or that of another individual is at risk. Once again there is no room within this exception to apply an interpretation of a right to die. Furthermore, the next exception to Article 2 is the use of force to effect a lawful arrest or to prevent the escape of a lawfully detained person. In such situations the use of force must be deemed as absolutely necessary and all other methods must have been exhausted. This means that the use of arms to effect an arrest must not arise from an intent to kill and death should be an unintended outcome (Renucci, 2005). As this exception relates only to the arrest or capture of criminals it cannot be interpreted as a right to die. Furthermore, the final exception to Article 2 is death resulting from the use of force in order to prevent a riot or quell insurrection. Once again this exception is only applicable in very specific situations and therefore no alternative interpretation can be made.

III. ASSISTED DYING/EUTHANASIA

Article 2 of the Convention states that everyone's right to life should be protected by law, and that there are only a few circumstances in which a person's right to life can be taken away, none of which include assisted suicide or euthanasia. However, the question here is whether persons protected by the Convention have the right not only to life, but also to die whenever they desire, even if this requires the assistance of others (Korff, 2006).

There is much debate over whether there should be a right to die, in effect there is, suicide is not illegal and therefore gives every individual the right to choose how and when they die. Issues arise however when the individual is unable to commit suicide, which is exactly the point at which Article 2 prohibits the right to die, as assisting someone to end their life goes against the Article and would therefore leave the person assisting open to criminal charges. In the majority of member states aiding and abetting suicide has not yet been made legal. As a result of this, if a relative of a person incapacitated and unable to commit suicide were to help that person to end their life and avoid pain and suffering then they would risk prosecution for manslaughter or murder (Fenwick, 2007).

Euthanasia is often divided in two categories: voluntary and non-voluntary. Voluntary euthanasia is euthanasia that is the result of the individual's request. Non-voluntary euthanasia is carried out without the individual's request, whether because consent is not sought after, or because the individual is unable to give consent (Downie and Oliver, 2016). Euthanasia can also be divided in two further categories: active and passive. Active euthanasia refers to a "physician's purposeful act, generally the administration of fatal medications, to end the life of an incurably or terminally sick patient" (Annadurai, and others 2014). Passive euthanasia often refers to the withdrawal or withholding of life-sustaining treatment and, under certain circumstances, is considered lawful (Danis and others, 2008).

The Voluntary Euthanasia Society, which was founded in 1935 and is a leading research organization in the United Kingdom on issues related to assisted dying, argued that people should have the option to die with dignity as a general proposition, and that an inflexible legal regime that had the effect of forcing someone who was suffering unbearably from a terminal illness to die a gruesome death was unjustifiable.

IV. PROS AND CONS OF A RIGHT TO DIE

There are many pros and cons applicable to the right to die, assisted suicide, assisted death, and voluntary euthanasia. These pros and cons will now be looked at in more detail.

Every individual has a right to life and with rights come choices, for example having the right to speech therefore implies that an individual has the right to remain silent, and following this logic the right to life should imply that a person has the right to die. It could be argued however that if a person chooses to remain silent they are also able to break that silence at any time, however with a right to die, death is final and therefore a person is unable to change their mind.

A person who has a terminal or degenerative illness faces the gradual decline of their body, with this comes the possibility of pain and loss of dignity. It would therefore be humane to allow people in such situations to choose when and how they die, even if this meant that they had to enlist the help of another person. The opposite side of this argument is that in today's society palliative care is of such a high standard that no one should have to face the possibility of pain and an undignified death.

Committing suicide is not a crime and people that commit suicide are not viewed as criminals or evil. The fact that assisted suicide is illegal in this country is therefore particularly cruel for those who are made disabled by their condition and are unable to die without assistance. This said there is the view that if someone is threatening suicide there is a moral duty to stop them. If someone were standing on a ledge contemplating jumping you would not help them by giving them a shove. However, if assisted dying were legalized then people truly would have the right to choose how and when they die, on the flip side of this there is the possibility that people may be assisted to die against their wishes so in effect not assisted so much as murdered, which quite clearly would be in contradiction to the right to life as laid out in Article 2.

V. THE RIGHT TO ASSISTED SUICIDE IN THE CASE LAW

The application of Article 2 of the European Convention on Human Rights to the treatment of terminally-ill people has been considered in respect of situations in which a mentally-competent person seeks assistance to die. There have been a number of high profile legal cases whereby applicants have sought to be given the right to die. Two of the most prominent cases are that of *Pretty v UK* [2002] and *R (on the application of Purdy) v Director of Public Prosecutions* [2009]. Despite this there is no case law that shows Article 2 to be compatible with the practice of assisted suicide or euthanasia.

In the case of *Pretty v UK* [2002] the applicant, Mrs Diane Pretty, suffered from motor neurone disease; a degenerative and incurable disease, she was paralysed from the neck down; she had difficulty with speech and was fed via a tube. Mrs Pretty was concerned with having to live with suffering and indignity as her disease progressed and wished to be able to decide when and how she died. As we have already seen to take your own life is not a crime under English law;

however, suicide was not an option for Mrs Pretty as her condition prevented her from doing anything for herself. In order to end her life, she would need assistance from her husband and assisting someone to commit suicide is a criminal offence. Mrs Pretty took her case to court in the hope that the Director of Public Prosecution (DPP) would agree not to prosecute her husband in the event that he helped her to commit suicide. The DPP declined to grant indemnity against the prosecution of Mr Pretty.

Mr Pretty was willing to help his wife commit suicide but only if he would not be prosecuted under section 2(1) of the Suicide Act 1961 for aiding and abetting her suicide. Mrs Pretty claimed that it was her right to have her husband assist her to commit suicide and that section 2 of the Suicide Act 1961, if it stopped the DPP from undertaking not to prosecute her husband, is incompatible with the ECHR.

Section 2(1) of the Suicide Act 1961 states that:

“a person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years.”

Taking this into account it would seem that if Mr Pretty assisted his wife's suicide he should be prosecuted, convicted and sentenced to a term of imprisonment of up to fourteen years. Mrs Pretty claimed that as a result of the DPP's refusal to grant indemnity her rights under the European Convention on Human Rights; in particular Articles 2, 3, 8, 9 and 14 had been infringed. I will now look at each of these Articles, explain what each one covers and look at how they relate to the case of *Pretty v the United Kingdom*.

(A) Right to Life

The main of the right to life is an Article 2 of the European Convention on Human Rights in which states that:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

In the landmark case of *Mrs. Pretty v UK*, it was argued that Article 2 protects the right to life rather than life itself. The article's goal is to safeguard persons from third parties (the State and public authorities). However, the Article recognizes that it is up to the individual to decide whether or not to live, and thereby safeguards the right to self-determination in matters of life and death. As a result, a person may legitimately refuse life-saving or life-prolonging medical treatment and commit suicide. The Article recognizes that while the majority of individuals wish to live, some wish to die, and it protects both rights. The right to die is not the polar opposite of the right to life; rather, it is a corollary of it, and the state has a positive obligation to safeguard both.

(B) Prohibition of Torture

Furthermore, no one shall be subjected to torture or cruel or degrading treatment or punishment, according to Article 3 of the European Convention on Human Rights. Mrs Pretty will be subjected to the prescribed treatment since the United Kingdom (via the Director) has denied her the option to terminate her misery. Mrs Pretty will be spared considerable pain if the Director agrees not to consent to prosecution. If the Director agrees not to consent to prosecution, Mr Pretty will assist his wife in committing suicide, sparing her much misery. Section 2 of the 1961 Suicide Act is incompatible with the Convention if the Director is unable to offer the undertaking.

(C) Right to Respect for Private and Family Life

In regards of private and family life Article 8 of the European Convention on Human Rights clearly states that: Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. Mrs. Pretty's case is one of the most well-known. Counsel argued that the right to self-determination was provided by this Article. This right includes the ability to choose when and how to die in order to avoid suffering and indignity. Because Section 2(1) of the 1961 Suicide Act infringes on this right to self-determination, the United Kingdom must demonstrate that the interference complies with the Convention's validity, necessity, responsiveness to pressing social needs, and proportionality requirements. When it comes to an intimate area of a person's private life, there must be very compelling reasons to justify the intrusion. In this case, the court must determine whether the Director's refusal to provide the

requested undertaking is disproportionate, and whether the Secretary of State's interference with Mrs Pretty's right to self-determination is proportionate to whatever legitimate goal the prohibition on assisted suicide pursues. Mrs Pretty's mental competence, the terrifying situation she faced, her readiness to attempt suicide if she were able, the imminence of death, the absence of harm to anybody else, and the absence of far-reaching repercussions if her application were granted were all highlighted by counsel. Counsel argued that the blanket restriction in section 2(1), which is imposed without regard for individual instances, is utterly inappropriate, and that the materials cited do not justify it.

(D) Freedom of Thought Conscience and Expression

The European Convention on Human Rights in Article 9 states that:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. Besides above mentioned articles, Article 9 protects freedom of thought, conscience and religion and the manifestation of religion or belief in worship, teaching, practice or observance. Mrs Pretty could be said to believe in the benefits of assisted suicide. She has the right to believe what she wants and to express it. However, her faith cannot justify her husband's immunity from the consequences of behaviour that, while consistent with her beliefs, is prohibited by law. Even if she could prove a breach of her right, the State's reasoning in connection to Article 8 would still be insufficient.

(E) Prohibition of Discrimination

The prohibition of discrimination in Article 14 the European Convention on Human Rights in Article 14 states that:

Enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Mrs Pretty alleges that section 2(1) of the 1961 Suicide Act discriminates against people who, like herself, are unable to end their life without assistance due to incapacity. The Voluntary Euthanasia Society, which was founded in 1935 and is a leading research organization in the United Kingdom on issues related to assisted dying, argued that people should have the option to die with dignity as a general proposition, and that an inflexible legal regime that had the effect of forcing someone who was suffering unbearably from a terminal illness to die a gruesome death was unjustifiable. They were referring to the reasons why people wanted to die with assistance (for example unrelieved and severe pain, weariness of the dying process, loss of autonomy). Palliative care was unable to meet the needs of all patients, and it did not address concerns about loss of autonomy and bodily function control. Therefore, the European Court of Human Rights unanimously found that there had been no violation of Articles 2, 3, 8, 9 or 14 of the ECHR. Mrs Pretty lost her court challenge in the European Court of Human Rights on 29th April 2002; three days later she began experiencing breathing difficulties and passed away in a hospice on 11th May 2002.

In this case the Court concluded that Article 2 could not in any way be interpreted as conferring the right to die. The Court did however recognise that the questions raised within the case could give rise to issues within the scope of Article 8's respect to private life (Murdoch and others, 2008). The case of *R (on the application of Purdy) v Director of Public Prosecutions* [2009] follows on from the case of *Pretty*. In this case Ms Purdy suffered from progressive multiple sclerosis and her condition was deteriorating to a point where she believed that there would come a time when she would find her existence unbearable. The applicant wanted to travel to a country, probably Switzerland where assisted suicide was lawful, with the assistance of her husband so that she may be allowed to die. The Court found that by committing the acts Ms Purdy requested her husband to perform by facilitating her travel would give rise to substantial risk of prosecution (Judgements – *R (on the application of Purdy) (Appellant) v Director of Public Prosecutions* [2009] UKHL 45 [2009] EWCA Civ 92).

This case resulted in the Director of Public Prosecutions being required to publish the facts and circumstances that would be taken into account when deciding whether or not to consent to prosecution. However, this does not mean that anyone assisting someone to die would automatically be immune from prosecution and every case would still be liable to investigation (*Lawcards*, 2012). In addition to the abovementioned, Hoffman and Rowe QC (2013) argue that the state's duty to protect life extends beyond circumstances when life or death is really at stake; the scope of Article 2 is broader than that, and the right to life should be interpreted as ensuring a minimum standard of living. This is more applicable in scenarios such as planning

decisions or pollution incidents. If a person's quality of life is also safeguarded, it stands to reason that if their quality of life deteriorates to the point that life becomes unbearable, they should be given the option to die.

VI. STATES' POSITIVE OBLIGATIONS FOR STATES THAT ALREADY PERMIT A FORM OF ASSISTED DYING

The conventional interpretation of Article 2 of the ECHR is likely to be used as evidence against the legalization of assisted suicide because it violates the governments' positive obligations to uphold and safeguard human life. Yet, for states that already authorise a form of assisted dying, Article 2 of the ECHR and its positive obligations have been invoked in favour of safety, for instance, safeguards. Such was the case in *Haas v Switzerland (2011) 53 EHRR 33*.

Mr. Ernst Haas, a Swiss national, suffered 20 years of severe bipolar affective disorder. He failed to get a prescription for a fatal drug (sodium pentobarbital) to end his life peacefully, and he used Article 8 of the ECHR to claim that as a result, his freedom to choose how and when to die had been violated. The European Court of Human Rights (ECtHR) agreed with domestic courts that the state had no positive obligation under Article 8 to provide an environment in which suicide might be attempted without fear of failure or suffering. In other words, Mr. Haas could not have access to sodium pentobarbital without a prescription. In fact, the ECtHR emphasised that Article 2 imposed a positive obligation on the Swiss government to establish a method to guarantee that the decision to seek assisted suicide reflected the person's free will. In other words, it was required to prevent assisted suicide if the choice did not reflect the person's free will. The prescription requirement was required by domestic laws and ethical guidelines to protect the lives of the vulnerable, maintain public health and safety, and stop crime and abuse. The Swiss Federal Court indeed noted the conflict between Article 2 and Article 8 of the ECHR in the sense that the interference with the right to self-determination could be justified for the protection of life and the prevention of crime.

The case emphasizes the difference between the right to self-determination and the right to request for and accept aid from the state or a third party. The case also emphasizes the significance of Article 2 in protecting life, particularly in states that currently allow some form of assisted suicide. The decisions of the Swiss domestic courts were reasonable and did not unreasonably set a precedent (Harmon and Sethi, 2011).

The right to self-determination guaranteed by Article 8 is qualified according to the standards established by each state that chooses for legalization to support the rights to self-determination of its citizens. Indeed, the applicant's refusal to undertake a complete psychiatric assessment as

required by domestic regulations and guidelines further strengthens the decision by the courts in the case. Following the decision of the Swiss Federal Court, Mr. Haas wrote to 170 psychiatrists in the region requesting a physical examination but rejecting any therapy beforehand or any other solutions. A psychiatrist might have eventually given him sodium pentobarbital, giving him access to an assisted death, if his letter had requested an evaluation that allowed all choices to be taken into account (safeguards). As a result, Article 2 mandates that any framework for assisted suicide include protections to guarantee the existence of certain conditions, such as the individual's free will in Switzerland's case.

Overall, the case did not violate the person's right to self-determination since Swiss law struck a reasonable balance between that right and the government's duty to ensure his safety (Smet, 2011). Regarding the balancing act the ECHR performed in end-of-life questions, the *Lambert v. France* case, for example, can be compared to Haas (*Lambert and Others v France* [2015] ECHR 545). In the latter case, the ECtHR highlighted the need to protect the right to life under Article 2 when the state already permits a form of assisted dying; in the former case, it highlighted the need to respect the right to self-determination, autonomy, and physical integrity under Article 8, even when the individual lacked decision-making capacity. Both cases highlight the importance of both Article 2 and Article 8, as well as the wide discretion states have when balancing these in an end-of-life context.

VII. STATES' POSITIVE OBLIGATIONS IN PROTECTING THE ARTICLE 2 RIGHTS OF INDIVIDUALS WHO CHOOSE DEATH OVER LIFE

In the instance of *Nicklinson*, which occurred in 2012, the usage of Article 2 and its positive obligations for assisted dying was first seen. The claimant, who had locked-in syndrome and desired an assisted death, made the following argument in the Divisional Court: (1) covert, unregulated euthanasia is already practiced in England and Wales; and (2) the director of public prosecutions (DPP) 's Policy, by excluding professional healthcare involvement, similarly encourages covert, amateur assisted suicides risking the lives of vulnerable people. Because of all the risks and possible abuse involved, the claimant claimed that the prohibition on euthanasia and assisted suicide infringes on the right to life of people who receive unregulated and uncontrolled assistance (*Tony Nicklinson v Ministry of Justice* [2012] EWHC 304 (QB) [47]). For instance, a recent media article in the UK described the usage of "a euthanasia kit" that was ordered online and utilized by an 81-year-old woman without the help of a medical expert. The woman eventually succeeded in ending her life in her own cottage (Morris and Agencies, 2016). In these kinds of suicides which are carried out without any professional oversight and without

any legal safeguards, there are enormous hazards involved, as Mr. Nicklinson argued in his case. The claim was not pursued in the higher courts, however, because the Divisional Court rejected Mr. Nicklinson's argument under Article 2 (*Tony Nicklinson v Ministry of Justice [2012] EWHC 304 (QB) [5]*). The Court said that this was a 'general challenge' of the law that is a matter for Parliament and hence did not directly concern the claimant in the case (*Tony Nicklinson v Ministry of Justice [2012] EWHC 304 (QB) [49]*).

A similar argument is used in the case of *Omid T*. The claimant might decide to travel abroad to obtain assistance in dying, which would shorten his life, according to the reasoning, because assisted suicide is illegal in England and Wales. In contrast, if assisted suicide was made lawful in the UK, the claimant would have the option of choosing to live longer by seeking assistance later, at home, regardless of his health. The claimant asserts that this situation is incompatible with the UK's positive obligations under Article 2 (*R (on the application of) Omid T v The Ministry of Justice [2018] (High Court of Justice, Administrative Court - Claimant's Detailed Statement of Facts and Grounds) [2]*). Similar to other qualified rights, his lawyers argue, the UK needs to show that this is necessary and proportionate, and serves a legitimate right.

Mr Omid's argument relies on Lord Neuberger's speech in the Supreme Court who noted that the value of life is not an argument that can only be used against the legalisation of assisted dying (*R (on the application of Nicklinson and another) v Ministry of Justice; R (on the application of AM) (AP) v DPP [2014] UKSC 38 [96]*). Therefore, Mr. Omid T's attorneys contend that the UK needs to find a middle ground between safeguarding their client's life and safeguarding the lives of those weaker people whose lives could be in jeopardy due to the availability of assisted dying (*R (on the application of) Omid T v The Ministry of Justice [2018] (High Court of Justice, Administrative Court - Claimant's Detailed Statement of Facts and Grounds) [24]*). His attorneys go on to say that an outright ban on assisted suicide violates both Articles 2 and 8 if sufficient protections can be put in place.

Overall, it can be argued that the conventional, strict interpretation of Article 2 and its positive obligations by the Courts highlights the judicial perceptions on what the proper role of the provision should be in this type of cases, and more generally that Courts consider that such interpretations may be for Parliament to make.

VIII. CONCLUSION

Having looked at Article 2 of the European Convention on Human Rights; what the Article means and how it is interpreted, the exceptions contained within the Article; whether or not the right to die can or should be included within this Article; and the varying arguments for and

against the right to die, it is clear to see that there are some very convincing arguments that a right to die should be afforded to individuals. However, it is also easy to accept the valid comments put forward by those who oppose a right to die.

When looking at euthanasia and assisted suicide there are two points that come into play; the individual's right to self-determination and the prohibition on killing. There is a distinct difference between someone expressing their personal freedoms and refusing life saving treatments and the perceived right to have their life ended. Bertrand Mathieu (2006) said in a publication for the Council of Europe that "no legal system gives individuals a general right to have themselves killed. While Suicide falls within the sphere of personal autonomy and freedom, it cannot be regarded as a right". Thus, whichever name is used; assisted dying, assisted suicide, euthanasia or exercising a right to die, it remains to be seen whether the United Kingdom will ever make its own exception for this. There are many organisations that campaign for terminally ill individuals to be given the choice of how and when to end their lives, Dignity in Dying have stated that they campaign for a change to be made to the law to allow assisted dying for terminally ill, mentally competent adults, they say that their campaign is one which benefits from overwhelming public support.

It is quite obvious that in no way can Article 2 of the ECHR be interpreted in such a way that would provide a valid right to die. Even if Article 2 is taken in conjunction with other Articles of the ECHR it has been shown through case law that the UK will not allow a definitive right to die. The interpretation of the ECHR and laws in other European countries, when taken together, has led to assisted suicide being made legal. The fact remains that despite its fundamental nature, the right to life under Article 2 of the ECHR allows for many exceptions. However, the right to die is not one of them.

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