Home Affairs

UK Parliament Joint Committee on Human Rights

Evidence Session: Human rights and assisted dying

Q1 Chair (Joanna Cherry, SNP): … How can assisted dying be defined and what is the connection between assisted dying and the concept of euthanasia and assisted suicide?

Professor Richard Ekins [Professor of Law and Constitutional Government, University of Oxford]: … I think that the term “assisted dying” is unhelpfully imprecise and somewhat euphemistic … The term obscures effectively what is going on, which is the killing of a person. It is not simply helping them to die, which may arise from other causes. I think it is more precise to speak of assisted suicide, which is obviously an offence under our law and in many other jurisdictions, and euthanasia, distinguishing between voluntary and involuntary euthanasia. … It is helpful to speak more precisely, partly because it is possible that some people may hear “assisted dying” and think it means making people comfortable when they are dying by the provision of palliative care, which is clearly something very different from what we are discussing today. …

Dr Stevie Martin [Lecturer in Public Law, University of Cambridge]: It can be unhelpful if one does not appreciate the nuance, but as an umbrella term it is quite a useful one, especially in legislation, particularly where legislation covers both euthanasia and assisted suicide. … there are different forms of euthanasia, and what we typically deal with in the context of assisted dying is voluntary active euthanasia—that is, euthanasia conducted at the request of an individual, as opposed to passive euthanasia, which covers withdrawal or refusal of life-sustaining treatment. …

James Strachan [Barrister, 39 Essex Chambers]: My view is that the terminology is important. The label “assisted dying” has been used in the courts. The Supreme Court in the Nicklinson case referred to the term “assisted dying”. It has also been used to describe proposed Bills in Parliament … but my understanding is that, generally speaking, when it is used in that way it refers to the concept of assisted suicide rather than euthanasia or the intentional act of killing, which would form the offence of murder under our common law. …

Paul Bowen [KC, Barrister, Brick Court Chambers]: I think it is a useful shorthand to
describe three different things. One is assisted suicide, where the individual takes the final step that ends their life; another is voluntary euthanasia, where a third party, such as a physician, takes the final step; the third is the voluntary withdrawal of life-saving or life-sustaining treatment. In my view, all three of those fall within that umbrella. …

Q2 Baroness Meyer (Conservative): … what is the legal status of assisted dying in the UK?

Paul Bowen: Dealing with those three headings, we start with the voluntary withdrawal of life-sustaining treatment. That is entirely legal; indeed, individuals have a right to insist that life-saving treatment be withdrawn, if they are competent to make that decision. Assisted suicide is a criminal offence contrary to Section 2(1) of the Suicide Act 1961. There are some circumstances in which the CPS will not prosecute an individual who assists another person in their suicide if it falls within one of the criteria in the CPS guidance … in particular if it is established that the individual made a competent decision to end their own life and the individual who assisted them was acting out of compassion. As for voluntary euthanasia, that constitutes the offence of murder. It is irrelevant whether the individual consented and whether the perpetrator was acting out of compassion, although both those factors would be relevant at the sentencing stage.

Dr Stevie Martin: … We have withdrawal of treatment of people who are capacitous. That is driven by a person’s informed decision to cease treatment; to continue to provide it in the face of that would be a tort at the very least. We also have law that governs the withdrawal of treatment from incapacitous people—individuals who are unconscious and otherwise incapable of providing informed consent. That is also permitted. Recent decisions and case law from the UK Supreme Court make clear that there is no requirement to obtain consent from the courts before doing so, as long as there is agreement between family and doctors that continued treatment is no longer in a patient’s best interests. …

Baroness Meyer: For instance, people in a coma.

Dr Stevie Martin: Yes.

Baroness Meyer: Does it apply also for mental illnesses, or not?

Dr Stevie Martin: If they are incapacitous and continued life-sustaining treatment would no longer be in their best interests. However, there is obviously a clear distinction between a person who is receiving life-sustaining treatment and an individual who is mentally unwell and receiving treatment for that mental illness. …

Professor Richard Ekins: … It is true and important that assisted suicide is still a serious offence under our law. It is also true that prosecutors have a discretion as to whether to prosecute, as they do for all offences. … I think it is a mistake to discuss withdrawal of treatment as though it is similar in kind to what is otherwise murder and assisted suicide. Withdrawal of treatment does not involve, on the part of the physician’s withdrawal of treatment, an intention to bring about death. If it did, it would constitute the offence of assisted suicide or murder. …

Lord Henley (Conservative): Mr Bowen, you mentioned that compassion and consent were irrelevant in a charge of murder at that stage but might be relevant at the sentencing stage. However, at that stage there is, in the end, only one sentence that the court can impose if an individual is convicted of murder. Is that not right?

Paul Bowen: Yes, but the court has a power to decide the minimum term that a person should serve. … The sentence is a life sentence but the minimum term might be a very short period indeed. … They would be on licence for the rest of their lives.

Dr Stevie Martin: When you look at the prosecution statistics, you see that there have been just over 180 referrals under Section 2. I believe that the CPS did not proceed in
about 160 of those or the police withdrew. Of those that remained, there have been several prosecutions, in particular under Section 2, but others have been dealt with by way of common-law murder and other offences. It is not uncommon to see diminished responsibility in cases of loved ones who have been prosecuted for murder offences in the context of what might otherwise be deemed euthanasia.

Chair: Are you able to give us an indication of what the conviction rate is …

Dr Stevie Martin: … Four have been successfully prosecuted under Section 2 since the collection of statistics was commenced in the early 2000s. …

Baroness Meyer: If one gives consent in writing to, say, one’s husband, that does not change anything.

Baroness Lawrence of Clarendon (Labour): … If a person has already given consent before they get to the stage of being incapacitated and no longer able to make a decision, what would the charge be if the patient’s family or whoever carried out their wishes?

Dr Stevie Martin: … If a patient has deteriorated and is now receiving medical treatment that is sustaining their existence, that evidence would be very weighty in deciding whether continued treatment is in their best interests. … But if we are talking about a scenario in which a loved one has carried out the wishes of the patient, who perhaps has entered into an advanced stage of Alzheimer’s or Parkinson’s, that would still be murder under our law. …

Q3 Lord Alton of Liverpool (Crossbench): … There are 7.6 billion people in the world who live in jurisdictions where there are prohibitions or protections; 100 million live in jurisdictions where the law has changed incrementally. In over half of those, this does not involve just assisted dying; it involves euthanasia in the terms that you have just described.

Can you tell us what protections and safeguards are in place? … one of the significant concerns raised in Parliament has been how we protect the vulnerable, not least disabled people and the groups who are so strongly opposed to any changes in the law?

Dr Stevie Martin: … There are different models of protection. One way in which there is an offer of protection is through the eligibility criteria. What you will often see in the predominant number of permissive jurisdictions is that eligibility is limited to individuals with terminal illnesses and those with a life expectancy of six months or less. …

The other important protective mechanism is our existing medical system … We have a system that permits the withdrawal of treatment from both capacitous and incapacitous patients. Central to that process is doctors being able to distil whether patients are acting as a result of undue pressure. …

In the main, all systems, bar Switzerland, have involvement by doctors. …

James Strachan: … Of relevance to that—at least in the context of human rights, for example—is that the protection under Article 2 of the convention, which is the right to life, has been construed as not giving a right to die, but that article can be engaged when a system allows for assisted suicide or euthanasia if the protections to its implementation are not sufficient. There was a recent case in Belgium where the mechanisms were found procedurally not to have the requisite protection because of the involvement of a particular medical professional on one panel assisting in the decision.

Lord Alton of Liverpool: … Is my understanding correct that we have not been found in breach of ECHR, and that there are exemptions in Article 2—for instance, for capital punishment or self-defence—but no exemption for euthanasia or assisted dying or assisted suicide?

James Strachan: You are absolutely right. …

Paul Bowen: … the House of Lords in the Debbie Purdy case did find that the law was incompatible with Article 8 at the time, in so far as there was no guidance as to the circumstances in which the CPS would bring a prosecution for assisted suicide.
As far as concerns the Article 2 issue, it is quite right that in the Pretty case the Strasbourg court said that the Article 2 right did not bring with it a corollary. There was a right to life but no right to choose not to live. Since then, the courts have recognised—indeed, Lord Neuberger’s speech in the Nicklinson case explicitly says this—that where a system of law is prohibitive, such as here, it has the effect that some people will take their lives earlier than they would otherwise do because of the prohibition. They have to travel abroad, to Switzerland, at a time when they can still take their own lives …

Dr Stevie Martin: … an argument has not been made before or taken up by a domestic court, or before Strasbourg, that squarely confronts this issue, which is that our system pits two positive obligations: the positive obligation to put in place a system that does not compel people to suicide prematurely, which our system does, and a system that protects the right to life of vulnerable individuals. …

Lord Alton of Liverpool: Dr Martin … you say that autonomy basically trumps other considerations. Therefore, terminal illness is only the beginning; it is not the end of the argument. You would want to see it much wider and further extended.

You also attack the idea that there is a slippery slope. I put it to you that last year, in Holland, there was a 13% increase in the number of euthanasias, which totalled some 8,720. It began with just recognising terminal illness as a reason for these laws to be passed, and this is where we have ended. Does that not imply at least a slippery slope …

Dr Stevie Martin: I do not necessarily suggest that autonomy must always trump other considerations. It is a vital consideration, but sanctity of life is also important. One of those factors is the reality that people are being compelled to take their lives prematurely. As for the slippery slope, it depends on how one defines it. The Dutch process has evolved out of a democratic evolution that has had contributions from the citizenry. …

Professor Richard Ekins: … the eligibility criteria introduced at a certain point in time do not remain static. One sees that very clearly in Canada. Initial legislation was quite narrowly targeted … and was further expanded—partly under judicial pressure and partly by political choice—quite rapidly …

The limitation to reasonable foreseeability of death was held, I believe, to be discriminatory against those who were in a long-term condition of suffering and disability but not within reasonable foresight of death, however so defined. …

For my part, I think there is a slippery slope. … If one’s concern is that we are crossing a major moral and legal threshold by allowing intentional killing and assistance of intentional killing, the fact that people get quite keen on this and expand the range of it, as they have in the Netherlands and Belgium, is not a reason to think there is no problem because people are perfectly happy. It might be there is a problem precisely because they are getting used to this more expansive jurisdiction or practice. …

It seems to me that there is a very strong argument that the state should be making provision to protect people from being killed. …

Dr Martin referred to Canadian jurisprudence that takes up the argument that, if we do not make provision for assisted suicide, the state is forcing people to kill themselves prematurely. … it is an unpersuasive argument. The state is not forcing people to commit suicide by proscribing the assistance of suicide. On the contrary, it is discouraging the act in question and attempting to avoid further instances of suicide. …

Chair: What right are the courts that you have listed drawing on? You mentioned self-determination. Is that an Article 8-style right?

Dr Stevie Martin: It would be equivalent to Article 8, the right to liberty …

Chair: … Under Article 2 the state of the law is that it is possible to have a system of assisted dying that is Article 2-compliant.

Dr Stevie Martin: Yes.

Chair: Strong safeguards have to be built into it.
Dr Stevie Martin: Yes.
Chair: But the state of the law, as it applies to those of us who are signatories to the Council of Europe and therefore bound by the convention, is that it is possible to have an Article 2-compliant system of assisted dying but that would be very fact-specific to the type of safeguards, which I am sure we will come on to later in this session. The Supreme Court of the United Kingdom has said that whether we should draw up a system like that is a matter for Parliament to decide; it is not for the courts. ... Theoretically, it would be possible for this Parliament to pass an assisted dying law and for someone to challenge it as not being Article 2-compliant.

James Strachan: Absolutely. ...

Q4 Baroness Lawrence of Clarendon: ... Could you say a little more about what has happened within our domestic laws on Article 2 and assisted dying? ...

Paul Bowen: ... it was included as a full frontal assault in the Pretty case, where it was argued that in Article 2 there was a corollary to the right to life, in that there was a right to end life or end one’s own life as well. That was rejected. ... ... the more subtle Article 2 argument: that the state has a duty to protect people from the consequences of a system that forces them to kill themselves earlier than they otherwise would, which can raise Article 2 considerations. That was the point that Lord Neuberger accepted in principle in the Nicklinson case. ... they were unsuccessful, but it is fair to say that all the post-Nicklinson challenges have failed, in my view primarily because the courts considered that this is essentially an issue for elected representatives rather than for the courts to decide. ...

Dr Stevie Martin: ... The debate thus far has pitted an Article 8 right, which we very much characterise as a private right, such as the right to a private life, the right to autonomy and self-determination of individuals ... against the sanctity of life in Article 2, which invariably is an impossible balance; it has typically resulted in Article 2 being favoured. ...

Baroness Lawrence of Clarendon: A while ago there was a case involving a child ... The parents said they would go to whatever court it is to insist that treatment is not withdrawn, but the medical team said, “That's it. We've gone as far as we can go”. How does that balance out between the parents who want to keep their child alive and the medical decision?

Dr Stevie Martin: The best interests of the child are paramount. ...

Q5 David Simmonds (Conservative): ... Article 3 contains a prohibition on torture and degrading treatment. ... what is your view on the extent to which assisted dying and the legal framework around it engage Article 3 of the European Convention on Human Rights?

Professor Richard Ekins: ... It does not engage it because the state is not forcing a person to undergo torture or inhuman or degrading treatment. For some people the position can be terrible, but it is not as a result of state action. ... ... the structured litigation we have had in our courts has of course been an attempt to persuade the courts to declare the legislation in question incompatible with Article 2. Our courts have not, at least directly, had to confront the question of whether a law authorising assisted suicide or euthanasia would be compatible with Article 2. ... I do not anticipate that the Strasbourg court would any time soon declare the practices of the Netherlands and Belgium—or ours, if we follow—to be incompatible with Article 2, but there is a good argument around the shape of the detailed text of the article and the interests it protects that such a regime would be incompatible. ...

David Simmonds MP: ... Relevant ... is the balance between where, as you described, the state is not forcing someone to undergo torture or inhuman or degrading treatment versus a situation where the state is failing to protect someone from inhuman or degrading treatment. ...
Professor Richard Ekins: … The position taken by the court—the House of Lords and the European Court of Human Rights in Pretty—is that the terrible state of affairs in which some persons find themselves because of disease and illness does not involve them being subjected to inhuman or degrading treatment. In particular, there is a problem of compatibility between Article 3 and Article 2 if you prescribe that in order to comply with Article 2 one must facilitate or carry out intentional killing, which is prohibited by Article 2, and the law requires the right to life to be protected by law. …

Dr Stevie Martin: … On Article 3, absolutely the narrative in both Pretty and subsequently has concentrated on the positive obligation. I think there is scope for an argument that a system that prohibits and criminalises a form of conduct is direct treatment by the state. …

Paul Bowen: … We are probably all agreed about what the law is. The differences between us perhaps are the directions in which the law will develop. It is helpful to look at other parallel situations to see how the courts have developed their attitude towards an issue over which, at the first bite of the cherry they have considered it is not appropriate to change the law, but subsequently, as society has changed, and as the consensus and the calculus has changed, they have reached different conclusions.

There are two good examples. One is in relation to corporal punishment. When the Strasbourg court first looked at that question, it refused to find that a law that permitted corporal punishment amounted to a breach of Article 3. … When it came back to the case in 1999, it reached a different conclusion and decided that it was a breach, because societies had changed and the consensus about whether that was acceptable behaviour had changed.

The other good example is in relation to gender recognition. The Strasbourg court in Goodwin in 2002 accepted that a refusal to recognise a change of gender in official documentation was a breach of Article 8 … Our own courts have recognised that the laws need to be brought up to date to reflect the change in societal attitudes. …

James Strachan: In contrast to all those other areas, this is an area where the courts have made it clear that they think it is the function of Parliament rather than the development of the law to shift the legal picture. …

Chair: In a sense, our Supreme Court is waiting for Parliament to devise a law, and I have no doubt it will be asked to rule on it at some point.

Paul Bowen: It is fair to say that if this question came back before the Supreme Court now it would give the same answer: it is for Parliament. …

Q6 Chair: … Could you give us your understanding of the extent to which Article 8 is engaged by assisted dying and the way that is dealt with in our domestic law so far? …

Professor Richard Ekins: Our House of Lords position in Pretty was that Article 8 is not engaged. … When the Pretty case went to the Strasbourg court, although the Strasbourg court upheld the compatibility of our Suicide Act with the convention, including with Article 8, it took the view that Article 8 was engaged. Then the question turned under Article 8(2) to whether the interference was justified. It concluded that it was, and it accepted the UK’s arguments that there were good reasons for the interference. …

Dr Stevie Martin: It is important not to segment out assisted dying, however we define it, from the wider end-of-life context and medical treatment sphere. In Pretty, the court characterised the issue as a right to avoid an undignified death, and they looked at it through the prism of Article 8. In a number of cases following Pretty, not just in terms of assisted suicide but withdrawal of treatment, the court has reiterated that questions of quality of life come under Article 8. …

Lord Alton of Liverpool: I have seen data that suggests that in countries that have changed the law the palliative care movement starts to collapse and that hospices close, so people do not then get the kind of dignified death that all of us would want people to have the opportunity to get. Does that engage these articles? What about children? We have seen the extension of the law now in Holland, and there are attempts in Canada to
extend the law to children. What are the rights of children? There is one other thing, and that is the position of disabled people. ... You will have seen the widespread concerns, not least those voiced in the House of Lords by people like Baroness Campbell of Surbiton and Baroness Tanni Grey-Thompson, who speak with great passion on this subject because of what they see as the discriminatory provisions against disabled people that make them more vulnerable. ...

Dr Stevie Martin: ... about hospices, I would highlight the fact that the data from those permissive jurisdictions consistently demonstrates that the overwhelming majority—we are talking 85% or above—of people who access assistance in dying are terminally unwell with cancer and receiving palliative and hospice-based care, and that includes in Canada. A very recent study conducted by a professor at Galway University looking at all the data concerning palliative treatment in permissive jurisdictions actually found the inverse, which is that palliative care systems are bolstered in jurisdictions that have permissive regimes because there is an impetus and a push towards ensuring that the system functions appropriately.

As to children, the Netherlands is considering whether to permit assistance in dying for those under 12. Belgium does, but it is very narrowly constrained. Whereas the Dutch and Belgian systems are open to adults who do not have terminal conditions, that is not the case for children. ...

Parents in Belgium have an increasing role with respect to young children when it comes to euthanasia. I would point out that the rates are extraordinarily low. No minor in Belgium in the last reporting year had a certificate with respect to assisted dying. ...

Finally, this is obviously an extraordinarily important issue for disabled people and one dealt with primarily through eligibility criteria. In very few jurisdictions ... would disability alone enable you to access assistance in dying. In those where it is open to those who are suffering intolerably, you have the same protection mechanisms that concern undue influence and the distilling of why a person is accessing assistance in dying in the first place. ...

Lord Alton of Liverpool: ... the evidence is that suicide increases in countries where there is a promotion of legalised assisted suicide. ...

Dr Stevie Martin: I do not know that there is actually a correlation. There is often greater reporting in jurisdictions that permit assistance in dying. ...

Q7 Dr Caroline Johnson (Conservative): ... Doctors are not generally very good at deciding how long people’s life expectancy is. We heard evidence on the Health and Social Care Committee that the Americans have defined terminal illness as part of their dying policy. They have defined it in such a way that were someone to be diabetic, for example, and say that they were going to stop treatment, they would of course be terminally ill because you cannot survive without your treatment, particularly if you have type 1 diabetes. ...

James Strachan: ... that issue was considered in the Conway case. One of the measures proposed by the applicant in that case was a form of legislation that depended on having six months to live. There was evidence produced by other doctors as to the difficulty in deciding precisely that point ...

I do not have an answer to how one addresses it. ... if you were to come up with an assisted dying Bill and you were to put in a six months’ criterion, how would one then ascertain when that criterion is met and what level of consensus is required in order for it to be met for the mechanisms to be in play?

Dr Caroline Johnson: And whether treatment that would prevent that death is relevant.

James Strachan: Indeed. It could then make it more than six months ...

Paul Bowen: The difficulty with any time limit of six months or 12 months of terminal illness is looking at it through a human rights prism. The human right not to suffer inhuman and degrading treatment or the human right to make choices over how and when we end our
lives are not dependent on whether we have six or 12 months left to live. They are more likely to be determined by how unbearable our situation is …

Dr Stevie Martin: That is why states that permit assisted dying often include suffering criteria that refer to treatment that is unacceptable to the patient. You have that assessment of whether an individual perhaps does not want to be taking insulin on a daily basis, treatment that we may consider perfectly fine, like colostomy bags, and other forms of treatment that patients do not consider acceptable to them. …

Professor Richard Ekins: …The argument for making provision for assisted suicide or euthanasia does not stop at those limits. It spills over quite quickly into the particular person’s assessment of whether their life is still worth living and thus whether the law should facilitate their desire to be dead, whether by enabling others to assist them in suicide or making it lawful for someone to do what would otherwise be murder and kill them. …

Dr Stevie Martin: … For most people, it is not a preference to be dead; it is a preference to live without the conditions they have or the refractory symptoms they are experiencing. That is important from a rights perspective, because it brings us back to Article 3 and inhuman and degrading treatment, and the right to autonomy and self-determination as protected by Article 8, and perhaps out of that mire of whether one has a right to choose not to live. …

Q8 Dr Caroline Johnson: … Do the human rights laws apply differently to children than to adults? …

Dr Stevie Martin: … Are we talking about infants, who are obviously governed by different considerations such as best interests … It is not parents and doctors having the ultimate right. It is parents and doctors hopefully agreeing as to what course is in the best interests of the child, but courts ultimately deciding the rights of the child. There are jurisdictions that allow for assisted dying in various forms with respect to minors of various ages. The rights implications that arise under the convention depend entirely on the age of the child to some extent. …

Dr Caroline Johnson: Does the right to life, for example, and the right to not have inhuman and degrading treatment differ whether you are seven or 17?

Dr Stevie Martin: No. The evidence will definitely be different … It is a more artificial exercise when you are dealing with incapacitous children who are very young and cannot express themselves, because you are asking people to make decisions about what would be in their best interests, including religious factors, which we have seen take quite heavy precedence in some recent cases. …

Dr Caroline Johnson: … Would it be legal under the Human Rights Act to pass a law that provided for euthanasia but restricted it to adults?

James Strachan: Yes.

Dr Stevie Martin: It would be discriminatory, arguably.

Paul Bowen: It would not necessarily be unlawfully discriminatory. …

Professor Richard Ekins: … Children are obviously persons, and so are entitled to protections under human rights law, and under basic morality too, of course. To the extent that their position is different, the relevant differences should be taken into account. In relation to Article 2, there is no difference because the right is absolute. In relation to Article 8 where the argument stresses autonomy, it may be that young children do not have an autonomy right that could be levered into a permission for someone to kill them. … It is not just autonomy but relief of suffering believed to be intolerable, and that is certainly an argument that will be deployed in order to wedge open the law and to make permission for killing children lawful. …

Q9 Dr Caroline Johnson MP: I have to say that the statement “to make … killing children lawful”, sounds absolutely horrific. …
We also had some discussions in the Health and Social Care Committee about the fact that in America you have to be able to drink a liquid to kill yourself; it cannot be done actively by the other person. They can supply the liquid to you, and you have to syringe it into yourself through your nose or take it orally, effectively. Is that discriminatory? Does that infringe Article 14?

James Strachan: It certainly could, yes. …

… if one were to introduce assisted suicide and to impose restrictive criteria as to when it can be invoked, be it terminal illness of six months, some definition of unbearable suffering, age restrictions, or anything of that kind, there is the potential for an Article 14 argument to say that that is a discriminatory application of the right to assisted suicide, and that is where what is described as the slippery slope argument …

Once you cross the Rubicon or introduce a system, you have to have a system that is applied in a non-discriminatory fashion, and you have to think about what the basis is for restricting it to people who have six months to live versus seven, or people who do not have a terminal illness but are subject to unbearable suffering, or children …

Dr Stevie Martin: … It is perfectly possible to put in place a system that delineates between conditions, and that clearly discriminates in the technical sense, because you are separating individuals on the basis of health but which could nevertheless be justified by reference to arguments under Article 8 and otherwise by the need to protect vulnerable individuals, however paternalistic that may seem. …

Dr Caroline Johnson: The terms “assisted suicide” and “euthanasia” have been interchangeably used during this session. This is quite important. The American state that we spoke to took the view that because it had assisted suicide, which was where people have to consume a liquid via their mouth or a nasogastric tube themselves, it was effectively keeping the numbers down, as it put it, of people who were using it, whereas the Canadians had many more people take this route because that was an act of euthanasia, some with injection, which is potentially more effective in some respects as well and more tolerable. Would it be discriminatory to bring in a law like the American one, because people who did not have the capacity to take it would be discriminated against?

Dr Stevie Martin: That was the argument in Nicklinson and Conway, especially for people … who are incapable of doing the final act. …

James Strachan: It goes a little further than that. Yes, there would be an argument about discrimination, but as discussed in Nicklinson there is a further point about potential discrimination. If you are suffering from a terminal illness with six months or less to live, assuming one can adjudicate on that, clearly you may well be suffering and you have been diagnosed.

For those who are in the situation of a disease that does not necessarily give them a diagnosis of six months less to live but they have a longer period of enduring their suffering, if they are excluded from the terms of an Act that otherwise permitted assisted suicide, they might have a stronger argument to say, “That is a form of discrimination merely because I don’t have a terminal illness. I have unbearable suffering”. …

Q10 Lord Henley: … are there any other human rights issues, other than those particular … articles, that we should take into account when considering assisted dying and whether the law ought to be changed on that front? …

James Strachan: Article 9 was raised in the Pretty case and rejected. … Article 10 has been raised in terms of freedom of expression because, among other things, the restriction under Section 2(1) of the Suicide Act also covers prohibition of encouraging suicide. …

Dr Stevie Martin: Strasbourg has found that compatible, though …

James Strachan: … I think it also found an element of the law that restricted dissemination of such information to be compatible. …
Paul Bowen: As to the hierarchy of rights as they apply in this field, Article 8 has been seen as the primary right. Article 2 can be engaged, Article 3 possibly, Article 14 maybe, but it is really about Article 8 and about balancing. …

Professor Richard Ekins: … I will just reverse the order of priority that you have just been given. I think Article 2 is the most important consideration here. Article 8 is by all means where a lot of the action is in terms of the cases, but the primary question here is first and foremost one of morality and responsible legislating … First and foremost, it is a question about what our law should be, how we treat people justly and what they should be entitled to expect and to be free from …

Dr Stevie Martin: … Professor Ekins is correct that the primary focus, even if Article 8 has been the right through which we examine these issues, has been on the concept of the sanctity of life. … we do not absolutely protect life at all costs when it comes to medical treatment generally; we recognise that people have a right to decide what a life worth living looks like for them, and that is pertinent when you look at Article 2 in the context of assisted dying as well.

Paul Bowen: Yes, and Article 2 does not impose a duty on the state to protect everybody from all risks to life. It does impose a duty to prevent an individual from taking his or her own life if their decision has not been taken freely and with full understanding of what is involved. …

Q11 Lord Dholakia (Liberal Democrat): … what are the constitutional roles of Parliament, UK courts and the European Court of Human Rights when dealing with matters of legislation on assisted dying?

Professor Richard Ekins: First and foremost, it is the responsibility of the United Kingdom Parliament to decide freely for itself what our law should be on this question. … Under the Human Rights Act, our domestic courts have the jurisdiction to consider the compatibility of legislation and other government action with convention rights. … The courts have not been willing to reach that conclusion per se. Whether other law should change is a question first and foremost for Parliament to undertake. Our courts under the Human Rights Act have an important role to play in signalling to Parliament, government and the public if our legislation is likely to be found to be incompatible with the convention on the part of the European Court of Human Rights. … For the time being, it is clear that the Strasbourg court thinks that the UK’s ban of assisted suicide, as with other member states, is compatible with the convention. …

Paul Bowen: … Both the Strasbourg court and the domestic courts will apply a wide margin of appreciation—the term that is used—which recognises that there is a space in all governmental decision-making, Executive or legislative, within which the courts will not interfere. …

If the Strasbourg court says, “That falls within the margin of appreciation. We’re not going to intervene”, the domestic courts will do the same. The width of that margin of appreciation will be determined by a number of things: the importance of the right concerned, the degree of interference with the rights that it involves, the extent to which it involves the distribution of scarce community resources, and the extent to which there is a consensus among other Council of Europe states.

With this particular example of assisted dying, the Strasbourg court and the domestic courts consider that it falls within the margin of appreciation for Parliament to decide to have laws that allow assisted dying or not to have laws that allow assisted dying, and that will change only in terms of the courts. As happened with the examples I have given you—corporal punishment and gender recognition—if, over a period of time, a vast majority of Council of Europe states have changed the law and the United Kingdom gets left behind, we are the laggards, perhaps at that stage that calculus will change. …

Dr Stevie Martin: … I do not think anybody would suggest that the courts are the appropriate forum and can articulate the system that should be put in place should assisted
dying be found to be required in some form as a result of a human rights instrument. … However, the courts provide an invaluable and, indeed, central mechanism by which individuals can litigate and vindicate their rights. …

James Strachan: … It has been described as an ancient social, moral and ethical issue that is really for Parliament to decide. …

To read the full transcript see https://committees.parliament.uk/oralevidence/13221/html/

Israel

Foreign, Commonwealth and Development Office

Relocation of the illegal outpost in Homesh: FCDO statement
An FCDO spokesperson said: The UK opposes Israel’s decision today to allow the relocation of the illegal outpost in Homesh. Israel must honour recent commitments made in Aqaba and Sharm El-Sheikh and uphold the commitments Israel itself agreed and signed in 2004.


Foreign Affairs

House of Commons Written Answer

Middle East: Drugs
Daniel Kawczynski (Conservative) [186343] To ask the Secretary of State for Defence, what assessment his Department has made of the consequences for his policies of (a) Hezbollah’s alleged involvement in the smuggling of narcotics and (b) the production of Captagon in the Levant.

James Heappey: The UK remains committed to the stability and security of the Levant and broader Middle East, and reducing the threat posed by malign state and non-state activity, including the smuggling of narcotics. The UK announced sanctions on key actors involved in the Captagon trade last month. We engage regularly with partners to support co-operation efforts and to encourage the publication of relevant data on the trade, including successful seizures.

https://questions-statements.parliament.uk/written-questions/detail/2023-05-23/186343

Relevant Legislation

UK Parliament

Bill of Rights Bill
https://bills.parliament.uk/bills/3227
Education (Non-religious Philosophical Convictions) Bill  
https://bills.parliament.uk/bills/3186

Holocaust Memorial Bill  
https://bills.parliament.uk/bills/3421

Marriage Act 1949 (Amendment) Bill  
https://bills.parliament.uk/bills/3325

Online Safety Bill  
https://bills.parliament.uk/bills/3137

Nakba Commemoration Bill  
https://bills.parliament.uk/bills/3461

Palestine Statehood (Recognition) Bill  
https://bills.parliament.uk/bills/3217

Private Burial Grounds and Cemeteries Bill  
https://bills.parliament.uk/bills/3188

Same Sex Marriage (Church of England)  
https://bills.parliament.uk/bills/3438

Schools Bill  
https://bills.parliament.uk/bills/3156

Terrorism (Protection of Premises) Draft Bill  

Universal Credit (Removal of Two Child Limit) Bill  
https://bills.parliament.uk/bills/3163

Universal Jurisdiction (Extension)  
https://bills.parliament.uk/bills/3454

Scottish Parliament

Charities (Regulation and Administration) (Scotland) Bill  

Gender Recognition Reform (Scotland) Bill  
**Consultations**  **new or updated today**

The UK’s international counter-terrorism policy (closing date 12 June 2023)
https://committees.parliament.uk/call-for-evidence/3120/

Supporting earlier resolution of private family law arrangements (closing date 15 June 2023)

Review of the Race Relations (NI) Order 1997 (closing date 18 June 2023)

Terrorism (Protection of Premises) Draft Bill (closing date 23 June 2023)
https://committees.parliament.uk/call-for-evidence/3146/

Charities tax compliance (closing date 20 July 2023)

JPR 2023 Antisemitism in the UK Survey (closing date not stated)
https://www.jpr.org.uk/panel/UKantisemitism2023 (UK except Scotland)
and
https://bit.ly/3Vg7DDH (Scotland)