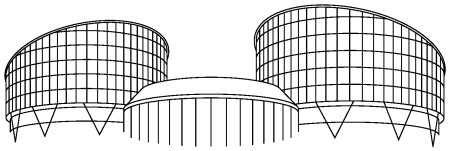

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Applications nos. 2478/15 and 1787/15
Jane NICKLINSON against the United Kingdom
and Paul LAMB against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 23 June 2015 as a Chamber composed of:

Guido Raimondi, *President,*
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Faris Vehabović,
Yonko Grozev, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above applications lodged on 19 December 2014 and 24 December 2014 respectively,

Having deliberated, decides as follows:

THE FACTS

1. The applicant in the first case, Mrs Jane Nicklinson, is a British national who was born in 1955 and lives in Melksham. She is represented before the Court by Bindmans LLP, a firm of solicitors based in London.

2. The applicant in the second case, Mr Paul Lamb, is a British national, who was born in 1955. He is represented before the Court by Patrick Campbell & Co, a firm of solicitors based in Glasgow.

A. The circumstances of the case

3. The facts of the case, as submitted by the applicants, may be summarised as follows.

1. The background facts

(a) The first applicant

4. The first applicant is the widow of Mr Tony Nicklinson, who died in 2012. She lodged an application with the Court on her own behalf and on behalf of her late husband.

5. In June 2004 Mr Nicklinson suffered a catastrophic stroke which left him profoundly disabled. He was almost completely paralysed, was unable to speak and was unable to carry out any physical functions on his own except limited movement of the eyes and head ("locked-in syndrome"). Following his stroke, he initially communicated by blinking at a board of letters and, subsequently, with the use of an eye-blink computer. He was only able to eat soft, mashed food and was virtually housebound. He was in regular physical and mental pain and discomfort.

6. Mr Nicklinson gradually decided that he did not wish to continue living. He made a living will in November 2007 asking that all treatment, save pain relief, be ended. At that point he stopped taking any medication intended to prolong his life. However, because of his disabilities, he was unable to kill himself without assistance other than by refusing food and water. The first applicant considered this prospect to be "too painful to watch". Mr Nicklinson did not wish to inflict pain and suffering on his family and wanted a more humane and dignified exit from this world. His preference was for a third party to kill him by injecting him with a lethal drug. This would amount to voluntary euthanasia by the person who carried out the injection, which is viewed as murder under English law. At the time, it was doubtful whether, in light of his condition, there was any means by which he could commit suicide with some assistance from a third party. But in any case, even if this were possible, the assistance offered by the third party would amount to an offence under section 2(1) of the Suicide Act 1961 ("the 1961 Act"), namely encouraging and assisting a person to commit suicide (see "Relevant domestic law and practice", below).

(b) The second applicant

7. In 1990 the second applicant was involved in a car accident as a result of which he sustained multiple injuries leaving him paralysed. He is completely immobile with the exception of his right hand which he can move to a limited extent. His condition is irreversible. He requires constant care and spends every day in a wheelchair. He experiences a significant amount of pain, as a consequence of which he has to take morphine. He feels that he is trapped in his body and that he cannot enjoy or endure a life that is so monotonous, painful and lacking in autonomy.

8. The second applicant wishes to end his life. However, as a result of his condition he considers that he is unable to commit suicide, even with assistance. He would require the administration of lethal drugs by a third

party, which would amount to murder under English law (see "Relevant domestic law and practice", below).

2. The domestic proceedings

(a) Mr Nicklinson's application to the High Court for declarations

9. On 28 November 2011 Mr Nicklinson issued a claim in the High Court seeking a declaration either that the provision of medical assistance to end his life would not be unlawful because it could be justified under the common law defence of necessity; or that the law on murder and assisted suicide was in breach of his rights under Articles 2 and 8 of the Convention. The first applicant was listed as an interested party.

10. On 12 March 2012 the claim was given permission to proceed as a judicial review claim in so far as it concerned the arguments based on the common law defence of necessity and the compatibility of the law with Article 8. The part of the claim concerning the compatibility of the law with Article 2 was refused permission to proceed and accordingly struck out.

11. In April 2012 Mr Nicklinson's lawyers obtained a statement from a Dr Nitschke, who had invented a machine which, after being loaded with a lethal drug, could be digitally activated by Mr Nicklinson, using a pass phrase, via an eye-blink computer. Although Mr Nicklinson's preference was to end his life by an act of voluntary euthanasia, he was prepared to consider assisted suicide through use of Dr Nitschke's machine. His claim proceeded on that basis.

12. On 16 August 2012 the Divisional Court dismissed the claim. Lord Justice Toulson (as he then was) summarised the essential issues as (1) was voluntary euthanasia a possible defence to murder; and (2) alternatively, was section 2(1) incompatible with Article 8 in obstructing Mr Nicklinson from exercising a right to receive assistance to commit suicide?

13. On the first issue, Toulson LJ examined the judgment of the House of Lords in *R (Pretty)* (see "Relevant domestic law and practice", below) and this Court's judgment in *Pretty v. the United Kingdom*, no. 2346/02, ECHR 2002-III. He concluded that it would be wrong for the court to hold that Article 8 required voluntary euthanasia to afford a possible defence to murder on the basis that this went far beyond anything which this Court had said, would be inconsistent with previous domestic and Strasbourg judgments and would be to usurp the proper role of Parliament.

14. On the second issue, namely whether section 2(1) of the 1961 Act was incompatible with Article 8, Toulson LJ considered that the matter had already been determined "at the highest level". Even if it were open to the court to consider it afresh, he would reject the claim on the ground that the area of assisted suicide was one where member States enjoyed a wide margin of appreciation and that, in the United Kingdom, this was a matter for determination by Parliament.

15. Following receipt of the judgment, Mr Nicklinson refused nutrition, fluids and medical treatment. He died of pneumonia on 22 August 2012.

(b) The appeal to the Court of Appeal

16. On 31 December 2012 the first applicant was granted permission by the Court of Appeal to appeal on behalf of Mr Nicklinson in respect of his Article 8 challenge to section 2(1) of the 1961 Act.

17. Mr Nicklinson's death had rendered his arguments as to whether the common law defence of necessity should provide a defence to a charge of assisted suicide academic. For that reason, the second applicant sought permission to be joined as a claimant and a party to the appeal. By order dated 13 March 2013 the second applicant was granted permission to pursue the same declarations as those sought by Mr Nicklinson.

18. The grounds of appeal were, *inter alia*, that the Divisional Court had erred in failing to consider whether the current law violated Mr Nicklinson's rights under Article 8 of the Convention, both in concluding that the question of proportionality was one for Parliament and in considering itself bound by decisions of the House of Lords and this Court in *Pretty*; and in its conclusion that the defence of necessity could not be available to a charge of assisted suicide or murder either to give effect to common law or to Article 8 rights of autonomy and dignity.

19. On 31 July 2013 the Court of Appeal unanimously dismissed the appeal. In their joint opinion, the Master of the Rolls (Lord Dyson) and Lord Justice Elias considered whether the common law should provide a defence to murder when it took the form of euthanasia in the circumstances which the second applicant faced (and which Mr Nicklinson had faced). The court found this submission to be wholly unsustainable. First, there was no self-evident reason why the right to life should give way to values of autonomy and dignity. Second, it was wrong to say that there was a right to commit suicide; rather there was an immunity for those who succeeded. Third, this was a matter for Parliament. Fourth, any defence would have to apply not merely to euthanasia but also to assisted suicide, but since the criminalisation of assisted suicide was laid out in statute it was not clear how the courts could develop a defence under the common law.

20. The judges further held that the blanket prohibition in section 2(1) of the 1961 Act was compatible with Article 8. As to the argument that even if the blanket prohibition was compatible with Article 8, this did not liberate the Divisional Court from its obligation to carry out a balancing exercise (citing *Koch v. Germany*, no. 497/09, 19 July 2012), the judges said:

> "108. This case does not assist [the claimants] because the proportionality issue has already been considered on its merits by a court. The Divisional Court would be bound by the decision of the House of Lords in *Pretty* where the court – and not Parliament – found section 2 of the 1961 Act ... to be a proportionate interference with the Article 8 right ... *Koch* was different because the German courts had not made a

ruling on the relationship between Article 8 and the German law regulating the accessibility of drugs capable of terminating life. It was incumbent on them to do so as part of the necessary procedural protection for Article 8 rights. That obligation has already been satisfied in the UK."

21. However, the judges disagreed with Toulson LJ in so far as he could be interpreted as having said that even if he had not been bound by authority it would have been inappropriate to consider whether the existing law was proportionate since that was a task for Parliament. They considered that even where the margin of appreciation applied, the court had to satisfy itself that any interference was proportionate as a matter of domestic law. However, a very wide margin of judgment had to be conceded to Parliament in a controversial area raising difficult moral and ethical issues such as assisted suicide, and the current law could not conceivably be said to stray beyond it.

22. Agreeing with the disposal of the appeal, the Lord Chief Justice (Lord Judge) explained:

"154. Much of the argument before us carried with it expressly, or by implication, and certainly by undertone, the suggestion that a way should somehow be found to alleviate some of the more harrowing consequences of these statutory provisions as they impact on the lives of these appellants and the late Mr Nicklinson. The short answer must be, and always has been, that the law relating to assisting suicide cannot be changed by judicial decision. The repeated mantra that, if the law is to be changed, it must be changed by Parliament, does not demonstrate judicial abnegation of our responsibilities, but rather highlights fundamental constitutional principles.

...

156. The issues with which these appeals are concerned have been addressed in Parliament on a regular basis over many years without producing the result sought by those who advocate change. The legislation which criminalises assisting suicide is recent and unequivocal. Even if (which it is not) it were constitutionally permissible for judges to intervene on the basis that Parliament had failed to address a desperately urgent social need, it cannot be said that Parliament has ignored these issues. Therefore whatever the personal views of any individual judge on these delicate and sensitive subjects, and I suspect that the personal views of individual judges would be as contradictory as those held by any other group of people, the constitutional imperative is that, however subtle and impressive the arguments to the contrary may be, we cannot effect the changes or disapply the present statutory provisions, not because we are abdicating our responsibility, but precisely because we are fulfilling our proper constitutional role ..."

23. The applicants were granted permission to appeal to the Supreme Court.

(c) The appeal to the Supreme Court

24. The applicants chose not to pursue before the Supreme Court their arguments that the offence of murder was incompatible with Article 8 rights and that there was a common law defence of necessity to murder in the case of voluntary euthanasia or assisted suicide in order to vindicate purely

common law rights of autonomy and dignity. The appeal focused exclusively on the compatibility of section 2(1) of the 1961 Act with Article 8 of the Convention. The second applicant accepted that, as a consequence, his only option to end his life if the appeal was successful would be through the use of a technological solution such as that proposed by Dr Nitschke, which would amount to assisted suicide under section 2(1). The relevant questions were whether section 2(1) was incompatible with Article 8 and, if so, whether it was possible to read into the 1961 Act a defence of necessity to a charge of assisted suicide or whether a declaration of incompatibility under the Human Rights Act 1998 ought to be made. The Secretary of State argued that under the constitutional settlement of the United Kingdom, the determination of the criminal law on a difficult, sensitive and controversial issue such as assisted suicide was one which was very much for Parliament.

25. On 25 June 2014 the Supreme Court, sitting as a nine-judge panel, handed down its judgment and dismissed the appeal by a majority of seven Justices to two.

26. It held, unanimously, that the question whether the current law on assisted suicide was incompatible with Article 8 lay within the United Kingdom's margin of appreciation and was therefore a question for the United Kingdom to decide.

27. Five Justices (Lord Neuberger, Lady Hale, Lord Mance, Lord Kerr and Lord Wilson) held that the Supreme Court had the constitutional authority to make a declaration that the general prohibition on assisted suicide in Section 2 was incompatible with Article 8.

28. Of those five, Lord Neuberger, Lord Mance and Lord Wilson declined to grant a declaration of incompatibility in these proceedings but Lady Hale and Lord Kerr would have done so.

29. Four Justices (Lord Clarke, Lord Sumption, Lord Reed and Lord Hughes) concluded that the question whether the current law on assisting suicide was compatible with Article 8 involved a consideration of issues which Parliament was inherently better qualified than the courts to assess, and that under present circumstances the courts should respect Parliament's assessment.

30. Each of the nine Justices delivered a judgment. The individual judgments are discussed in more detail below.

(i) Lord Neuberger

31. Lord Neuberger did not accept that a "blanket ban" on assisted suicide fell outside the State's margin of appreciation. In any event, he considered that this Court's judgment in *Pretty* had made it clear that the section 2(1) ban coupled with the prosecutorial discretion of the Director of Public Prosecutions ("DPP") as to whether to bring criminal proceedings ensured that the law of the United Kingdom complied with Article 8.

32. Lord Neuberger said that it was necessary to examine, first, whether the courts had the "constitutional competence" to consider whether the ban on assisted suicide was compatible with Article 8; and, second, whether it would be "institutionally appropriate" to make a declaration of incompatibility in a case such as the present one. On the question of constitutional competence, he said that where a legislative provision was both rational and within the margin of appreciation, a court in the United Kingdom would normally be very cautious before deciding that it infringed a Convention right. The extent to which a court should be prepared to entertain holding that such legislation was incompatible had to depend on all the circumstances, including the nature of the subject-matter and the extent to which the legislature or judiciary could claim particular expertise or competence. Subject to these considerations, he held that it was in principle open to the court to examine the question of compatibility.

33. Turning to examine whether it was institutionally appropriate for the court to make a declaration in this case, Lord Neuberger commented:

> "107. The Secretary of State's reliance on the need for detailed provisions and regulatory safeguards has some force, but the court is not being asked to set up a specific scheme under which Applicants could be assisted to commit suicide such that it would be disproportionate for the law to forbid them from doing so. ... [I]t is a matter for Parliament to determine the precise details of any scheme ...
>
> 108. ... A 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 ...
>
> 109. Furthermore, it is clear ... that those people who, out of compassion, assist relations and friends who wish to commit suicide, by taking or accompanying them to Dignitas, are routinely not prosecuted ..."

34. He concluded that the arguments raised by the Secretary of State did not justify ruling out the possibility that the court could make a declaration of incompatibility in relation to section 2(1). He noted that the interference with the applicants' Article 8 rights was grave, the arguments in favour of the current law were "by no means overwhelming", the present official attitude to assisted suicide came close to tolerating it in certain situations, the rational connection between the aim and effect of section 2(1) of the 1961 Act was fairly weak and no compelling reason had been made out for the court simply ceding any jurisdiction to Parliament. He therefore held that, provided that the arguments and evidence justified such a conclusion, the court could properly hold that section 2(1) infringed Article 8.

35. However, he then said:

> "113. ... I consider that, even if it would otherwise be right to do so on the evidence and arguments which have been raised on the first appeal, it would not be appropriate

> to grant a declaration of incompatibility at this time. In my opinion, before making such a declaration, we should accord Parliament the opportunity of considering whether to amend section 2 so as to enable Applicants, and, quite possibly others, to be assisted in ending their lives, subject of course to such regulations and other protective features as Parliament thinks appropriate, in the light of what may be said to be the provisional views of this Court, as set out in our judgments in these appeals.

36. While he accepted that it would be unusual for a court to hold that a statutory provision infringed a Convention right and could not be construed compatibly with it, and yet to refuse to make a declaration, there could be no doubt that there was such a power: section 4(2) of the Human Rights Act stated that the court "may" make a declaration of incompatibility (see "Relevant domestic law and practice", below), and the power to grant declaratory relief was anyway inherently discretionary. He explained the reasons why it would be institutionally inappropriate "at this juncture" for the court to make a declaration as follows:

> "116. ...First, the question whether the provisions of section 2 should be modified raises a difficult, controversial and sensitive issue, with moral and religious dimensions, which undoubtedly justifies a relatively cautious approach from the courts. Secondly, this is not a case ... where the incompatibility is simple to identify and simple to cure: whether, and if so how, to amend section 2 would require much anxious consideration from the legislature; this also suggests that the courts should, as it were, take matters relatively slowly. Thirdly, section 2 has, as mentioned above, been considered on a number of occasions in Parliament, and it is currently due to be debated in the House of Lords in the near future; so this is a case where the legislature is and has been actively considering the issue. Fourthly, less than thirteen years ago, the House of Lords in *Pretty v DPP* gave Parliament to understand that a declaration of incompatibility in relation to section 2 would be inappropriate, a view reinforced by the conclusions reached by the Divisional Court and the Court of Appeal in this case: a declaration of incompatibility on this appeal would represent an unheralded volte-face."

37. He said that Parliament now had the opportunity to address the issue of whether section 2(1) of the 1961 Act should be relaxed or modified, and if so how, in the knowledge that, if it was not satisfactorily addressed, there was a "real prospect that a further, and successful, application for a declaration of incompatibility may be made". One would expect, he said, to see the issue explicitly debated in the "near future". The question whether the outcome would constitute "satisfactory addressing of the issue" was one to be decided if and when another application for a declaration of incompatibility was brought.

38. In light of his conclusion, there was no need for Lord Neuberger to decide whether the ban on assisted suicide was incompatible with Article 8. However, he nonetheless indicated that he would not have made a declaration of incompatibility on the basis of the evidence and arguments before the court. Before making such a declaration, he was of the view that the court would have to be satisfied that there was a physically and administratively feasible and robust system whereby individuals could be

assisted to kill themselves and that the reasonable concerns of the Secretary of State, in particular as to the protection of the weak and vulnerable, were sufficiently met so as to render the absolute ban on assisted suicide disproportionate. He considered that there were "too many uncertainties to justify our making a declaration of incompatibility".

(ii) Lord Mance

39. Lord Mance agreed with the conclusions of Lord Neuberger. He noted that the case had "acquired a different focus" from that examined by the courts below, where the discussion had centred on voluntary euthanasia and whether necessity should be recognised as a defence at common law or in light of Article 8. He observed that it followed from the margin of appreciation which existed at the international level that it was for domestic courts to examine the merits of any claim to receive assistance to commit suicide. In the United Kingdom, the fact that Parliament had legislated a blanket ban was not the end of the matter as far as domestic courts were concerned since the latter had a role under the Human Rights Act to consider legislation in the light of Convention rights. However, he considered that at this point, questions of institutional competence arose. He explained:

> "164. ... The interpretation and ambit of s.2 are on their face clear and general, and whether they should be read down or declared incompatible in the light of article 8 raises difficult and sensitive issues. Context is all, and these may well be issues with which a court is less well equipped and Parliament is better equipped to address than is the case with other, more familiar issues ... Whether a statutory prohibition is proportionate is, in my view, a question in the answering of which it may well be appropriate to give very significant weight to the judgments and choices arrived at by the legislator, particularly when dealing with primary legislation."

40. Lord Mance noted the judgments of the House of Lords and this Court in *Pretty* and accepted that it was in principle open to claimants in the position of the applicants to invite a court to revisit proportionality. However, he expressed serious doubts about the suitability of the applicants' case for any such exercise, noting that at no stage did the litigation appear to have been approached on the basis that the court should hear primary evidence on the issue. He considered it impossible for the Supreme Court to arrive at any reliable conclusion about the validity of any risks involved in relaxing the absolute prohibition on assisting suicide, or the nature or reliability of any safeguards, without detailed examination of first-hand evidence, accompanied by cross-examination. That had not occurred in this case and in its absence, Lord Mance was unable to see how the applicants' submission that the circumstances had so changed that *Pretty* should now no longer be followed could be accepted. For these reasons, he refused to make a declaration of incompatibility. He also considered that in the light of the way in which the case had been presented and pursued,

remission to the Divisional Court would not be appropriate since this would, in reality, amount to ordering the case to begin over again with a fresh first-instance investigation involving a full examination of expert evidence. He continued:

> "190. ... I am also influenced in the view that this is not an appropriate time to contemplate such an investigation by, firstly, the very frequent consideration that Parliament has given to the subject over recent years ... and by, secondly, the knowledge that Parliament currently has before it the Assisted Dying Bill and the hope that this may also give Parliament an opportunity to consider the plight of individuals in the position of Mr Nicklinson and Mr Lamb. Parliament has to date taken a clear stance, but this will give Parliament the opportunity to confirm, alter or develop its position ... While I would, like [Lord Neuberger], not rule out the future possibility of a further application, I would, as matters presently stand, adapt to the present context a thought which Renquist CJ expressed in a slightly different context in *Washington v Glucksberg*, p 735: that there is currently 'an earnest and profound debate about the morality, legality, and practicality of ... assisted suicide' and '[o]ur holding permits this debate to continue, as it should in a democratic society'. Parliament is certainly the preferable forum in which any decision should be made, after full investigation and consideration, in a manner which will command popular acceptance."

41. He clarified that he did not agree with Lord Sumption's view (see further below) that it would be unconstitutional for the courts to consider in the present context whether Parliament's ultimate decision was compatible with Article 8. He said that it might be incumbent on a court to weigh social risks to the wider public and the moral convictions of a body of members of the public together with values of human autonomy and of human dignity in life and death advocated by other members, and in doing so it would attach great significance to the judgment of the democratically elected legislature.

(iii) Lord Wilson

42. Lord Wilson also agreed with Lord Neuberger. He summarised the crucial conclusions as follows:

> "197 ... (a) The evidence before the court is not such as to enable it to declare that section 2(1) of the 1961 Act either was incompatible with the rights of Mr Nicklinson or is incompatible with the rights of Mr Lamb ...
>
> (b) For the evidence does not enable the court to be satisfied either that there is a feasible and robust system whereby those in their position can be assisted to commit suicide or that the reasonable concerns of the Secretary of State, particularly to protect the weak and vulnerable, can be sufficiently met so as to render the absolute ban in the subsection disproportionate ...
>
> (c) Even were the evidence such as to have enabled the court to make it, a declaration of incompatibility would at this stage have been inappropriate ...
>
> (d) It would have been inappropriate because, even prior to the making of any declaration, Parliament should have the opportunity to consider whether, and if so how, to amend the subsection to permit assistance to commit suicide to be given to those in the position of Mr Nicklinson and Mr Lamb ...

(e) In particular because the Assisted Dying Bill is presently before it, it would be reasonable to expect Parliament in the near future to enlarge its consideration so as to encompass the impact of the subsection on those in their position ...

(f) Were Parliament not satisfactorily to address that issue, there is a real prospect that a further, and successful, application for a declaration of incompatibility might be made ...

(g) The risks to the weak and vulnerable might well be eliminated, or reduced to an acceptable level, were Parliament to provide that assistance might be given to those in their position only after a judge of the High Court had been satisfied that their wish to commit suicide was voluntary, clear, settled and informed ..."

43. Lord Wilson was of the view that unless the court could be satisfied that any exception to the prohibition on assisted dying could be operated in such a way as to generate an acceptably small risk that assistance would be afforded to those vulnerable to pressure to seek to commit suicide, it could not conclude that the absolute prohibition was disproportionate to its legitimate aim. He explained:

"201. ... In this respect the court may already be confident; but it cannot be satisfied. In an area in which the community would expect its unelected judiciary to tread with the utmost caution, it has to be said that, in appeals which the Court of Appeal understood to be presented to it on the basis that Mr Lamb could not commit, and that the late Mr Nicklinson could not have committed, suicide even with assistance, with the result that the issue which it addressed was their alleged right to euthanasia, the evidence and argument available to this court fall short of enabling it to be satisfied of what, like Lord Neuberger, I regard as a pre-requisite of its making a declaration of incompatibility."

44. He considered that were Parliament to fail satisfactorily to address the issue whether to permit assistance to be given to persons in the situation of Mr Nicklinson and Mr Lamb, the issue of a fresh claim for a declaration could be anticipated. While the conclusion of the proceedings could in no way be prejudged, he indicated that there was a real prospect of their success. He identified, with some hesitation given the absence of any submissions on the matter, a list of factors which might be relevant were courts to be given the power, under any new scheme devised by Parliament, to authorise assisted suicide in a particular case. He added:

"205. ... [I]n that a majority of the [Supreme Court] expects that even now, prior to the making of any declaration, Parliament will at least consider reform of the law, I put forward the factors with a view only to enabling Parliament to appreciate the scrupulous nature of any factual inquiry which it might see fit to entrust to the judges of the Division."

(iv) Lord Sumption

45. Lord Sumption considered that it was for the United Kingdom to decide whether, in the light of its own values and conditions, section 2 of the 1961 Act was justifiable under Article 8 in the interest of the protection of health. Two issues of principle arose: (1) the nature of the decision, and

in particular the extent to which the evidence required the conformity of section 2(1) with Article 8 to be reassessed; and (2) whether in a case with these particular features such a reassessment was a proper constitutional function of the courts as opposed to Parliament.

46. As to the first issue, Lord Sumption did not accept that the issue had been overtaken by more recent knowledge because he considered the untested, incomplete and second-hand material before the court, even if taken at face value, to be inconclusive both factually and legally.

47. On the second issue, Lord Sumption commented:

> "230. ... In a matter which lies within the margin of appreciation of the United Kingdom, the Convention is not concerned with the constitutional distribution of the relevant decision-making powers. The United Kingdom may make choices within the margin of appreciation allowed to it by the Convention through whichever is its appropriate constitutional organ ..."

48. He explained that where there was only one rational choice the courts had to make it, but where there was more than one rational choice the question might or might not be for Parliament, depending on the nature of the issue. He considered the question whether relaxing or qualifying the current absolute prohibition on assisted suicide would involve unacceptable risks to vulnerable people to be a classic example of the kind of issue which should be decided by Parliament, for three reasons. First, the issue involved a choice between two fundamental but mutually inconsistent moral values (namely, sanctity of life and personal autonomy), upon which there was no consensus in society. Second, Parliament had made the relevant choice in passing the 1961 Act and in amending it in 2009 without altering the principle. Third, the Parliamentary process was a better way of resolving issues involving controversial and complex questions of fact arising out of moral and social dilemmas. He therefore concluded:

> "233. ... In my view, if we were to hold that the pain and degradation likely to be suffered by Mr Lamb and actually suffered by Mr Nicklinson made section 2 of the Suicide Act incompatible with the Convention, then we would have to accept the real possibility that that might give insufficient protection to the generality of vulnerable people approaching the end of their lives. I conclude that those propositions should be rejected, and the question left to the legislature. In my opinion, the legislature could rationally conclude that a blanket ban on assisted suicide was 'necessary' in Convention terms ... I express no final view of my own. I merely say that the social and moral dimensions of the issue, its inherent difficulty, and the fact that there is much to be said on both sides make Parliament the proper organ for deciding it. If it were possible to say that Parliament had abdicated the task of addressing the question at all, so that none of the constitutional organs of the state had determined where the United Kingdom stood on the question, other considerations might at least arguably arise. As matters stand, I think it clear that Parliament has determined that for the time being the law should remain as it is.
>
> 234. For this reason I would not wish to encourage the notion that if the case ... had been differently presented and procedures for scrutinising cases in which patients expressed a desire for assistance in killing themselves had been examined

on this appeal, the decision of this court might have been different. In my opinion, the issue is an inherently legislative issue for Parliament, as the representative body in our constitution, to decide. The question what procedures might be available for mitigating the indirect consequences of legalising assisted suicide, what risks such procedures would entail, and whether those risks are acceptable, are not matters which under our constitution a court should decide."

(v) Lord Hughes

49. Lord Hughes said that he had "little to add" to the reasoning of Lord Sumption. He stated:

"267. ... [I]n this country, with our constitutional division of responsibility between Parliament and the courts, this is very clearly a decision which falls to be made by Parliament. For the moment, the balance between the public interest in the protection of the vulnerable and the preservation of life on the one hand and the private interests of those minded to commit suicide on the other has been struck by the 1961 Act, re-enacted in 2009. A change, whether desirable or not, must be for Parliament to make. That is especially so since a change would be likely to call for an infrastructure of safeguards which a court decision could not create."

(vi) Lord Clarke

50. Lord Clarke agreed with Lords Sumption, Hughes and Reed. As to what might happen in the future, he referred in particular to Lord Neuberger's comments (see paragraph 37 above), with whom he agreed, subject to the following remarks:

"293. ... If Parliament chooses not to debate these issues, I would expect the court to intervene. If, on the other hand, it does debate them and, after mature consideration, concludes that there should be no change in the law as it stands, as at present advised and save perhaps in exceptional circumstances, I would hold that no declaration of incompatibility should be made. In this regard I agree with the views expressed by Lord Mance ... that Parliament is certainly the preferable forum in which any decision should be made, after full investigation and consideration, in a manner which will command popular acceptance. In these circumstances I would conclude that the courts should leave the matter to Parliament to decide..."

(vii) Lord Reed

51. Lord Reed agreed generally with Lords Sumption, Hughes and Clarke. He explained:

"296 ... [T]he Human Rights Act introduces a new element into our constitutional law, and entails some adjustment of the respective constitutional roles of the courts, the executive and the legislature. It does not however eliminate the differences between them: differences, for example, in relation to their composition, their expertise, their procedures, their accountability and their legitimacy. Accordingly, it does not alter the fact that certain issues are by their nature more suitable for determination by Government or Parliament than by the courts. In so far as issues of that character are relevant to an assessment of the compatibility of executive action or legislation with Convention rights, that is something which the courts can and do properly take into account. They do so by giving weight to the determination of those issues by the primary decision-maker ..."

52. In his view the question whether section 2 of the Suicide Act 1961 was incompatible with the Convention turned on whether the interference with Article 8 rights raised highly controversial questions of social policy, as well as moral and religious questions on which there was no consensus. The nature of the issue required Parliament to be allowed a wide margin of judgment, since the considered assessment of an issue of that nature, by an institution which was representative of the citizens of the country and democratically accountable to them, should normally be respected. Lord Reed made it clear that he did not consider the courts to lack jurisdiction to determine the question; however, he emphasised that the courts should attach very considerable weight to Parliament's assessment. In the present case, he was "far from persuaded" that the assessment made by Parliament was unjustifiable under the Convention at the present time.

(viii) Baroness Hale

53. Baroness Hale considered the present law to be incompatible with Article 8 not because it contained a general prohibition on assisted suicide but because it failed to admit of any exceptions. In these circumstances, she saw little to be gained, and much to be lost, by refraining from making a declaration of incompatibility. She accepted that a general ban on assisted suicide could be justified by the need to protect the vulnerable but did not consider that a universal ban could be justified on that basis. She considered that it would not be beyond the wit of a legal system to devise a process for identifying those people who should be allowed help to end their own lives and outlined the essential requirements of such a process. This, she said, would be more than sufficient to protect those vulnerable people whom the present universal prohibition was designed to protect. She concluded that to the extent that the current universal prohibition prevented those who would qualify under such a procedure from securing the help they needed was a disproportionate interference with their right to choose the time and manner of their deaths. It went much further than was necessary to fulfil its stated aim of protecting the vulnerable and failed to strike a fair balance between the rights of those who had freely chosen to commit suicide but were unable to do so without some assistance and the interests of the community as a whole.

54. She added:

> "318. I understand that Lord Neuberger and Lord Wilson are receptive to that view in principle, but consider that this is not the right occasion or the right time to make a declaration of incompatibility. That is an entirely understandable view, given in particular the original focus of the cases of Mr Nicklinson and Mr Lamb on voluntary euthanasia rather than assisted suicide ... The sort of process which I have suggested above was scarcely touched upon, let alone explored, in evidence or argument. However, the question for us is one of principle rather than fact: once the principle is established, the question for the judge or other tribunal which is asked to authorise the assistance would be one of fact... It is at that point that the evidence

relating, for example, to Dr Nitschke's machine, would become relevant and important.

319. I also understand that Lord Mance would not rule out such a solution, but he considers that we lack the evidence, in particular about the risks to people who need the protection of this law, to justify departing from the view taken by the House of Lords in *Pretty*. It is worth remembering that the House took the view that article 8 was not engaged at all, and so the observations made about the justification for any interference were strictly *obiter dicta*. Furthermore, the assertions made about the need to protect vulnerable people were just that: they were no more based on solid evidence than were the assertions to the contrary ..."

(ix) Lord Kerr

55. Lord Kerr emphasised the duty of the court under the Human Rights Act to say if section 2(1) was incompatible with Article 8. He considered that in making a declaration of incompatibility the court would not be usurping the role of Parliament but, on the contrary, would be doing no more than what Parliament had required it to do. He explained:

"342. This court is ... free (and, I would suggest, required) to give a principled and rational interpretation of section 2(1) of the 1961 Act and to determine whether its potential application goes beyond what is required in order to achieve what has been identified by the Strasbourg court in *Pretty v United Kingdom*, as its aim: 'to safeguard life by protecting the weak and vulnerable and especially those who are not in a condition to take informed decisions against acts intended to end life or to assist in ending life' (para 74)."

56. As to the scope of the Court's review, Lord Kerr said that in the realm of social policy, where the choice between fiercely competing and apparently equally tenable opinions may be difficult to make, a more nuanced approach was warranted to the question of whether the interference is proportional. He continued:

"348. ... This should not be confused, however, with deference to the so-called institutional competence of the legislature. The court's approach in these difficult areas may call for a less exacting examination of the proffered justification. But this more generous attitude is not based on the view that Parliament is better placed to make a judgment on the need for the measure than is the court or that the court should therefore regard itself as inept to conduct an assessment of the incompatibility of the measure. Rather, it reflects the reality that choices in these areas are difficult to make and that it may not be easy to prove that the right choice has been made."

57. Lord Kerr did not accept that the necessary rational connection between the aim of section 2(1) and the interference with Article 8 rights had been demonstrated. In his view, the justification for an interference with a Convention right had to be evidence-based. In so far as the evidence went in the present case, it conspicuously failed to support the proposition that permitting assisted suicide would increase pressure on the vulnerable and the elderly. As to whether section 2(1) was "no more than necessary" to achieve its aim of protecting the vulnerable, Lord Kerr considered it to be

beyond dispute that section 2(1) applied to many people who were not in need of its protection and who were prejudiced by its application to them. He was of the view that unless it could be shown that the protection of the vulnerable group could only be achieved by drawing the provision as widely as it had been drawn, it was disproportionate to apply it to a category of persons whose Convention rights were violated in consequence. He said that in the absence of evidence – or at least a tenable basis on which it might be asserted – that this was required, it was impossible to conclude that the interference was proportionate. He further held that section 2(1) did not strike a fair balance between the rights of those who wished to bring their lives to an end, but were physically incapable of doing so, and the interests of the community as a whole. For these reasons, he would have made a declaration of incompatibility.

B. Relevant domestic law and practice

1. The law on assisted dying

(a) Suicide and assisted suicide

58. Suicide ceased to be an offence under English law by virtue of the Suicide Act 1961.

59. Section 2(1) of the 1961 Act (as amended by the Coroners and Justice Act 2009) provides that a person commits an offence if he does an act capable of encouraging or assisting the suicide or attempted suicide of another person. Pursuant to section 2(1C), a person convicted of such an offence is liable to imprisonment for a term not exceeding fourteen years.

60. Section 2(4) provides that no proceedings shall be instituted for an offence under section 2 except by or with the consent of the Director of Public Prosecution.

61. In *(R) Pretty v. Director of Public Prosecutions* [2001] UKHL 61, the House of Lords examined the compatibility of the prohibition on assisted suicide with, *inter alia*, Article 8 of the Convention. It unanimously held that the prohibition did not breach the Convention. Lord Bingham of Cornhill delivered the leading judgment of the Court. He was of the view that Article 8 was not engaged at all on the facts of the case. If, however, that conclusion was wrong, he was satisfied that the section 2(1) prohibition on assisted suicide was justified under Article 8 § 2. He pointed to the very broad international consensus in support of the approach taken in the United Kingdom and to the need to protect vulnerable persons. He concluded that the Secretary of State had shown ample grounds to justify the existing law and the current application of it.

(b) Voluntary euthanasia

62. There is no specific offence of voluntary euthanasia in English law. The intentional killing of another person, including with their consent, would constitute the common law offence of murder.

2. The Director of Public Prosecutions' policy on assisted suicide

63. The DPP issued a final policy statement on assisted suicide in February 2010. In that policy, the fact that the victim had a terminal illness, a severe and incurable physical disability or a severe degenerative physical condition from which there was no possibility of recovery was not included as a factor tending against prosecution.

64. In his evidence to the Supreme Court in the applicants' case, the DPP confirmed that to date there had been only one prosecution under section 2(1) of the 1961 Act. He also informed the court that, according to the website of Dignitas (a Swiss organisation with the objective of ensuring a life and a death with dignity for its members), between 1998 and 2011 a total of 215 people from the United Kingdom had used its services, and that nobody providing assistance in that connection had been prosecuted.

3. Developments in Parliament since Pretty

(a) House of Commons

65. On 11 November 2008 a debate took place in the House of Commons on the question of assisted dying. The debate provided an opportunity for members of the House to air their views.

66. The Coroners and Justice Act was enacted in 2009 and amended the language of section 2 of the 1961 Act without altering the principle.

67. On 27 March 2012 there was a debate in the House of Commons on the subject of assisted dying. Widely differing views were expressed on the desirability of legislative change. The House passed a motion welcoming the DPP's 2010 policy statement and encouraging further development of specialist palliative care and hospice provision. It rejected a proposed amendment to the motion calling on the Government to carry out a consultation about whether to put the DPP's guidance on a statutory basis.

(b) House of Lords

68. Lord Joffe introduced Bills on assisted suicide and voluntary euthanasia in the House of Lords unsuccessfully in 2003, 2004 and 2005.

69. The 2004 Assisted Dying for the Terminally Ill Bill was considered by a Select Committee which reported on 4 April 2005. The report summarised the evidence received and recommended that consideration of the Bill should be adjourned until after the 2005 general election. It also suggested that a clear distinction should be drawn in any future Bill between

assisted suicide and voluntary euthanasia in order to provide Parliament with an opportunity to examine carefully these two courses of action, and the different considerations which applied to them.

70. After the 2005 general election Lord Joffe introduced a new Bill of the same name on 9 November 2005. The debate on the second reading of the Bill took place on 12 May 2006. The House voted to adjourn it for six months. It is the convention of the House of Lords not to vote against the principle of a Bill on its second reading, but the decision to adjourn the Bill was in substance a decision that it should not proceed.

71. During the passage of the Coroners and Justice Act 2009 Lord Falconer of Thoroton moved an amendment in the House of Lords which would have created an exception to section 2 of the Suicide Act in the case of acts done for the purpose of enabling or assisting a person to travel to a country in which assisted dying is lawful, subject to certain conditions. The amendment was defeated.

72. On 6 June 2014 the Assisted Dying Bill was introduced to the House of Lords by Lord Falconer. Clause 1 of the Bill would have allowed a person who was terminally ill to request and lawfully be provided with assistance to end his own life, subject to certain conditions. The Bill was debated for two days in committee in November 2014 and January 2015 respectively. Parliament was dissolved on 30 March 2015 in light of the May 2015 general election. The Bill will therefore not progress any further.

(c) Lord Falconer's 2012 Commission on Assisted Dying

73. Meanwhile, the Commission on Assisted Dying, launched in November 2010, was set up to consider the legal and policy approach to assisted dying in England and Wales. It was funded by two private individuals and chaired by Lord Falconer.

74. In January 2012 the Commission published its report. The report summarised evidence from a wide variety of sources. In its reflections on the evidence which it received, the Commission commented:

> "As chapter 2 of this report demonstrated, the evidence the Commission received presented a huge range of extremely powerful and nuanced arguments representing the many ethical dimensions encompassed by the assisted dying debate. These ethical principles included the value of individual autonomy, the 'intrinsic' or 'self-determined' value of human life, the importance of a compassionate response to suffering, the need to protect vulnerable people, the importance of fighting societal discrimination towards disabled people and doctors' (in some people's view) conflicting responsibilities to relieve suffering and preserve life. As the evidence presented in chapter 2 demonstrated, we found on inspection of the evidence that every single ethical principle that was put forward has its equally vociferous opposite."

4. The Human Rights Act 1998

75. The Human Rights Act 1998 ("the 1998 Act") incorporates the Convention into United Kingdom law. Under section 4(2) of the Act, if a court is satisfied that a provision of primary legislation is incompatible with a Convention right, it may make a declaration of that incompatibility. Section 4(6) clarifies that a declaration of incompatibility does not affect the validity, continuing operation or enforcement of the legislative provision in question and is not binding on the parties to the proceedings in which it is made.

COMPLAINTS

76. The first applicant contended that the domestic courts violated her Article 8 rights and the Article 8 rights of Mr Nicklinson by refusing to determine the compatibility of section 2(1) of the Suicide Act 1961 with their right to respect for private life.

77. The second applicant complained that his rights under Articles 6, 8, 13 and 14 were infringed by the failure to confer on him, and others in a similar situation, the opportunity of seeking the authority of the court to permit a volunteer to administer lethal drugs to him, with his consent.

THE LAW

A. Joinder

78. Given their similar factual and legal background, the Court decides that the two applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

B. The first applicant

79. The first applicant complained that the domestic courts had failed to determine the compatibility of the law on assisted suicide with her Article 8 rights and those of her late husband, Mr Nicklinson. She alleged a breach of their procedural rights under Article 8, citing *Koch v. Germany*, no. 497/09, §§ 65-68, 19 July 2012. She expressly stated that she did not wish this Court to consider, of its own motion, whether to depart from *Pretty v. the United Kingdom*, no. 2346/02, ECHR 2002-III, and find that the prohibition on assisted suicide was incompatible with Article 8.

80. Article 8 provides, in so far as relevant:

"1. Everyone has the right to respect for his private ... life ...

2. 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 ... for the protection of health or morals, or for the protection of the rights and freedoms of others."

81. In order for the right to respect for private life under Article 8 of the Convention to be properly secured at domestic level, individuals must be able to seek to rely on arguments derived from Article 8 in domestic proceedings and to have those arguments considered and, where appropriate, taken into account in the rulings of the domestic courts. While the procedural guarantees available in domestic proceedings might be considered to form part of the general Article 13 guarantee of an effective remedy for arguable Convention complaints, the Court's more recent case-law has often tended to view this ancillary aspect of private-life protection as arising under the so-called procedural aspect of Article 8 itself (see, for example, *Koch*, cited above, §§ 65-68; and *McCann v. the United Kingdom*, no. 19009/04, §§ 53-55, ECHR 2008).

82. It is well established in the Court's case-law that Article 13 does not go so far as to guarantee a remedy allowing primary legislation to be challenged before a national authority on the ground of being contrary to the Convention (see, for example, *James and Others v. the United Kingdom*, 21 February 1986, § 85, Series A no. 98; and *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 94, ECHR 2013 (extracts)). Where, as here, the case concerns a challenge to primary legislation, rather than, as in *Koch* and *McCann*, an individual measure of implementation, it would be anomalous if the procedural aspect of Article 8 extended further than Article 13 so as to require the possibility of challenging primary legislation in cases giving rise to private-life concerns.

83. However, the Convention is now part of the domestic law of the United Kingdom and a procedure exists, pursuant to section 4(2) of the Human Rights Act, permitting primary legislation to be challenged on the basis of its alleged incompatibility with Article 8 of the Convention. It could be argued that where the State has chosen to provide a remedy in respect of primary legislation, such remedy is subject to the procedural requirements which generally arise under Article 8, and in particular to the requirement set out in *Koch* as to the need for an examination of the merits of the claim.

84. For the Court, there is a fundamental problem with extending the procedural protections of Article 8 in this way. The problem arises from the application of the margin of appreciation available to member States in cases concerning challenges to primary legislation under Article 8. The Contracting States are generally free to determine which of the three branches of government should be responsible for taking policy and legislative decisions which fall within their margin of appreciation and it is not for this Court to involve itself in their internal constitutional

arrangements. However, when this Court concludes in any given case that an impugned legislative provision falls within the margin of appreciation, it will often be the case that the Court is, essentially, referring to Parliament's discretion to legislate as it sees fit in that particular area. Thus, in *Pretty* this Court held that it was for States to assess the risk and likely incidence of abuse if the general prohibition on assisted suicide were to be relaxed or exceptions created (at § 74 of its judgment). In the context of the United Kingdom, that assessment had been made by Parliament in enacting section 2(1) of the 1961 Act, a provision that has been reconsidered several times by Parliament in recent years, having been re-enacted in 2009, with slightly different language, in the Coroners and Justice Act (see paragraphs 58-59 and 65-72 above). If the domestic courts were to be required to give a judgment on the merits of such a complaint this could have the effect of forcing upon them an institutional role not envisaged by the domestic constitutional order. Further, it would be odd to deny domestic courts charged with examining the compatibility of primary legislation with the Convention the possibility of concluding, like this Court, that Parliament is best placed to take a decision on the issue in question in light of the sensitive issues, notably ethical, philosophical and social, which arise. For these reasons, the Court does not consider it appropriate to extend Article 8 so as to impose on the Contracting States a procedural obligation to make available a remedy requiring the courts to decide on the merits of a claim such as the one made in the present case.

85. In any event, the Court is satisfied that the majority of the Supreme Court judges did deal with the substance of the first applicant's claim. With the exception of Baroness Hale and Lord Kerr, they concluded that she had failed to show that developments since *Pretty* meant that the ban could no longer be considered a proportionate interference with Article 8 rights (see Lord Neuberger at paragraph 38 above; Lord Mance at paragraph 40 above; Lord Wilson at paragraph 43 above; and Lord Reed at paragraph 52 above). The fact that in making their assessment they attached great significance (see paragraph 41 above) or "very considerable weight" (see paragraph 52 above) to the views of Parliament does not mean that they failed to carry out any balancing exercise. Rather, they chose – as they were entitled to do in light of the sensitive issue at stake and the absence of any consensus among Contracting States – to conclude that the views of Parliament weighed heavily in the balance.

86. In conclusion, the first applicant's application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must accordingly be declared inadmissible in accordance with Article 35 § 4.

C. The second applicant

87. The second applicant complained under Articles 6, 8, 13 and 14 about the absence of a judicial procedure to authorise voluntary euthanasia in a case such as his and about alleged unfairness by the Supreme Court in its judgment dismissing his claim for such a procedure.

88. Article 35 § 1 provides:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ..."

89. While in the context of machinery for the protection of human rights the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of remedies designed to challenge impugned decisions which allegedly violate a Convention right. It normally requires also that the complaints intended to be made subsequently at the international level should have been aired before those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among many other authorities, *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I; and *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III).

90. The object of the rule on exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address the allegation made of violation of a Convention right and, where appropriate, to afford redress before that allegation is submitted to the Court. In so far as there exists at national level a remedy enabling the national courts to address, at least in substance, the argument of violation of the Convention right, it is that remedy which should be used. If the complaint presented before the Court has not been put, either explicitly or in substance, to the national courts when it could have been raised in the exercise of a remedy available to the applicant, the national legal order has been denied the opportunity to address the Convention issue which the rule on exhaustion of domestic remedies is intended to give it. It is not sufficient that the applicant may have, unsuccessfully, exercised another remedy which could have overturned the impugned measure on other grounds not connected with the complaint of a violation of a Convention right. It is the Convention complaint which must have been aired at national level for there to have been exhaustion of "effective remedies". It would be contrary to the subsidiary character of the Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument (see *Azinas*, cited above, § 38).

91. In his application to this Court, the second applicant's position was that he would be unable to commit suicide even with assistance. As a consequence, his complaints in the present proceedings were directed at the absence of a judicial procedure authorising voluntary euthanasia in certain circumstances and the alleged inadequacies of the Supreme Court's judgment which he contended imposed on him the evidential burden of showing why the lack of such a procedure was not justified. The Court must determine whether the second applicant has properly raised his complaints before the domestic courts.

92. Before the Court of Appeal, the applicants' case was that assisted suicide might be possible with the use of an "eye-blink" computer connected to a machine preloaded with lethal drugs. In the alternative, in the event that use of an eye-blink computer was not feasible in their cases, they wanted a person to administer a lethal injection (which would amount to voluntary euthanasia and not merely assisted suicide). Accordingly, before the Court of Appeal, challenges were made to both the prohibition on assisted suicide and law on murder, which made no exception for voluntary euthanasia (see paragraph 18 above).

93. However, it is clear that before the Supreme Court the applicants pursued grounds of appeal concerning the prohibition on assisted suicide only. The agreed statement of facts and issues before the Supreme Court records their decision not to pursue the argument that the offence of murder was incompatible with their Article 8 rights and to argue exclusively the points arising in respect of section 2(1) of the 1961 Act (see paragraph 24 above). The second applicant has not explained why he did not pursue before the Supreme Court his argument that there should be a judicial procedure to authorise voluntary euthanasia in certain circumstances.

94. In these circumstances, the Court concludes that the second applicant did not provide the Supreme Court with the opportunity which is in principle intended to be afforded to a Contracting State by Article 35 § 1 of the Convention, namely the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it. In this regard the Court emphatically rejects any suggestion that the Supreme Court's conclusions concerning the ban on assisted suicide should be read so as to include references to voluntary euthanasia and the judicial procedure now called for by the second applicant. That the two matters are distinct can be seen from the fact that both were argued before the Divisional Court and the Court of Appeal and from the decision to abandon the complaint concerning voluntary euthanasia in the proceedings before the Supreme Court. Further, given in particular their different legal bases, it cannot be assumed that the Supreme Court would have disposed of the argument that the second applicant now advances in the same way as it disposed of the claim in respect of the prohibition of assisted suicide. It follows that the second applicant's Article 6 complaints about the evidential

burden as regards his claim for a judicial procedure authorising voluntary euthanasia are misconstrued, since such a claim was never before the Supreme Court.

95. In light of the foregoing, the second applicant's application must be rejected as inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 16 July 2015.

Fatoş Aracı	Guido Raimondi
Deputy Registrar	President