‘DPP acts unlawfully on assisted suicide’

by Francis Bennion

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Introductory Note

On 1 June *The Times* published a letter from Roger K. Daw, (Director of Policy, Crown Prosecution Service, 2007-10) saying that my letter, below, was ‘wrong’. He said: ‘It was the law lords in the *Purdy* case (2009, UKHL45) who directed the DPP to “clarify what his position [was] as to the factors that he regards as relevant for and against prosecution” in cases of what is now defined as encouraging and assisting suicide. This is what the DPP did in his interim and then final guidelines issued last year. It is difficult to conclude that by complying with the highest court in the land, the DPP acted “unlawfully”.’ For my response to this see my next letter published in *The Times* on 3 June 2011, http://www.francisbennion.com/2011/013.htm.

DPP acts unlawfully on assisted suicide

The Times leading article (Love and the end, 30 May 2011) says that the guidelines on assisted suicide issued by the Director of Public Prosecutions Mr Keir Starmer QC in February 2010 should be followed. These you say ‘made it plain that those who assist the suicide of people with terminal illnesses should not be prosecuted, provided they were motivated by compassion’. But[, as I told the DPP at the time,] these guidelines are unlawful.

Assisting suicide (with whatever motive) was made a criminal offence by section 2(1) of the Suicide Act 1961 as part of the arrangements under which committing suicide ceased to be a crime. Section 2(1) runs ‘A person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years’.

In the 2009 *Purdy* case ([2009] EWCA Civ 92) the Court of Appeal said of s. 2(1):

> ‘We cannot suspend or dispense with the law. That would contradict an elementary constitutional principle, the Bill of Rights itself. Parliament alone has the authority to amend this law and identify the circumstances, if any, in which the conduct of the individual who assists or attempts to assist another to commit suicide should be de-criminalized . . . Like this court the DPP cannot dispense with or suspend the operation of s.2(l) of the 1961 Act, and he cannot promulgate a case-specific policy . . . which would, in effect, recognize exceptional defences to this offence which Parliament has not chosen to enact.’

Moreover if in a proper case a prosecution is not brought under s. 2(1) this infringes the right to life provisions of the European Convention on Human Rights (Article 2) and the Human Rights Act 1998.

For the DPP by his prosecution policy to exclude from the operative effect of s. 2(1) the normal case where the accessory has no improper motive is for him in effect to legislate by reducing the range of s. 2 (1) in a major way. This action by a mere salaried official is an improper interference with the anti-euthanasia policy of the 1961 Act.

There have been many attempts since 1961 to persuade Parliament to authorize euthanasia, but all have failed. It is not for the DPP to step in and carry into effect what Parliament itself has consistently declined to do.

Francis Bennion, (Retired Parliamentary Counsel).[1]

References

None

[1] Published in *The Times* 31 May 2011 (words in square brackets omitted). On 1 June *The Times* published a letter from Roger K. Daw, (Director of Policy, Crown Prosecution Service, 2007-10) saying that my letter was 'wrong'. He said: 'It was the law lords in the *Purdy* case (2009, UKHL45) who directed the DPP to "clarify what his position [was] as to the factors that he regards as relevant for and against prosecution" in cases of what is now defined as encouraging and assisting suicide. This is what the DPP did in his interim and then final guidelines issued last year. It is difficult to conclude that by complying with the highest court in the land, the DPP acted "unlawfully".' For my response to this see the next letter.