Impact of the European Convention on Human Rights on medical law

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Not only is the right to life protected by law but the state should take steps to safeguard life

In 1999 the government set up the National Institute for Clinical Excellence (NICE) with a view to helping to end the lottery of “postcode prescribing” (see www.nice.org.uk) and to promote a more uniform national standard of care. Such an initiative would assist the government in arguing that it acts reasonably in allocating resources.

NICE is also charged with the task of identifying the most cost effective treatments. Thus it is not difficult to envisage a situation where to continue to prolong a life via artificial means would be considered as inhuman and degrading for the purposes of Article 3. In such circumstances, it is expressed as an unqualified or absolute right, the ECHR must be read as a whole. It is not difficult to envisage a situation where to continue to prolong a life via artificial means would be considered as inhuman and degrading for the purposes of Article 3. In such circumstances, it is expressed as an unqualified or absolute right, the ECHR must be read as a whole. It is not difficult to envisage a situation where to continue to prolong a life via artificial means would be considered as inhuman and degrading for the purposes of Article 3. In such circumstances, it is considered as inhuman and degrading for the purposes of Article 3. In such circumstances, it is considered as inhuman and degrading for the purposes of Article 3. In such circumstances, it is considered as inhuman and degrading for the purposes of Article 3. In such circumstances, it is considered as inhuman and degrading for the purposes of Article 3. In such circumstances, it is considered as inhuman and degrading for the purposes of Article 3. In such circumstances, it is considered as inhuman and degrading for the purposes of Article 3.
(3) The right to refuse treatment was within the ambit of Article 8(1). The failure of the English law to allow Mrs Pretty the assistance of her husband to end her life constituted an interference with her private life and it was necessary to consider whether this interference was in accordance with Article 8(2). It was clear that the interference was prescribed by law and pursued a legitimate aim. A blanket ban on assisted suicide was not disproportionate. The interference complained of was necessary in a democratic society.

(4) Article 9 did not protect all convictions or beliefs. While strongly held, Mrs Pretty’s beliefs about assisted suicide did not fall within the ambit of Article 9.

(5) The state had a reasonable and objective justification for not distinguishing in law between individuals who were and were not capable of committing suicide. There had been no violation of Article 14.

ADVANCE STATEMENTS

Advance statements or living wills are a valuable tool in facilitating self determination. Through an advance statement a mentally competent patient may authorise or decline specific treatments, including blood transfusions, feeding, and hydration. As the case of Ms B demonstrates the mentally competent patient’s right to refuse medical intervention is well established in the domestic common law. In the case of an individual who is mentally incapacitated, an unambiguous advance directive, completed when competent, should be valid. Compliance with an unambiguous request to facilitate an individual’s death should not be considered to be in violation of Articles 2 or 3.

The same applies to “do not resuscitate” directives.

CONCLUSIONS

Practitioners should also bear in mind the impact of the incorporation of the ECHR on the following situations:

First, doctors should be aware of the necessity to secure a patient’s fully informed consent where he wishes to administer treatment which might be considered to be of an experimental character, otherwise a patient may argue that he had been subjected to treatment contrary to Article 3.

Secondly, when responding to a request for disclosure of medical records from a third party, a practitioner must bear in mind a patient’s right to privacy enshrined in Article 8 and any detriment to the patient’s mental or physical health that might result from disclosure.

Finally, some comfort may be drawn from the fact that Article 6 (right to a fair hearing within a reasonable time) applies to proceedings before the General Medical Council (GMC v Rogers, unreported). Practitioners are entitled to a fair and public hearing within a reasonable time when competent, should be valid. Compliance with an unambiguous request to facilitate an individual’s death should not be considered to be in violation of Articles 2 or 3.

REFERENCES

1 Association X v United Kingdom Application 7154/75 14 DR 31 (1978) at p 32.
4 Airedale Trust v Bland [1993] AC 789 at 864
6 Compare the approach of the Constitutional Court of South Africa in Soobramoney v Minister of Health (1997) 4 BHRC 308.
8 Airedale Trust v Bland [1993] AC 789 at 864
10 For an example from pre-incorporation domestic law see North West Lancashire Health Authority v A, D and G (2000) 1 WLR 977.
11 [2002] 2 All ER 449.
12 Airedale Trust v Bland [1993] AC 789 at 864