

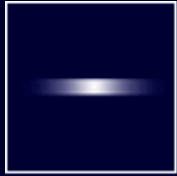
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# Interface between human rights, the law and ethics in end of life decision making

Monica Carss-Frisk QC  
Blackstone Chambers

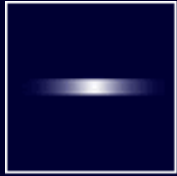




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The Human Rights Act governs the conduct of public authorities by providing that they must not act incompatibly with the Convention rights scheduled to the Act (see section 6(1): “It is unlawful for a public authority to act in a way which is incompatible with a Convention right.”)

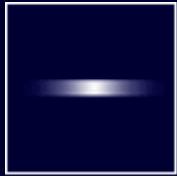


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Article 2 provides, insofar as relevant:

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

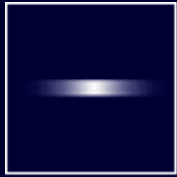


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Article 8 provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.”

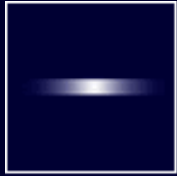


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Article 8 provides:

“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 in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

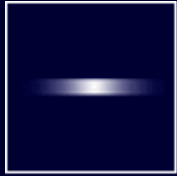


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The State has a positive obligation to compel hospitals, whether private or public, to adopt appropriate measures for the protection of their patients' lives:

*Savage v South Essex Partnership NHS  
Foundation Trust* [2008] UKHL 74

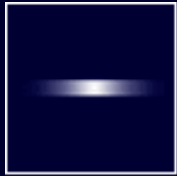


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Decisions to withhold or withdraw treatment from an incompetent patient should be governed by what is in the best interests of the patient:

*Airedale NHS Trust v Bland* [1993] AC 789

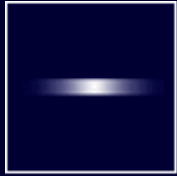


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Personal autonomy or the principle of self-determination may outweigh the principle of the sanctity of life. But, subject to the right of a competent patient to refuse treatment, where clinically assisted nutrition or hydration is necessary to keep a patient alive, the duty of care will normally require the doctors to supply ANH:

*R(Burke) v GMC* [2005] EWCA Civ 1003

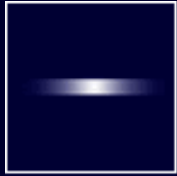


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Neither Article 2 nor Article 8 confers a right to assistance in choosing death:

*R(Pretty) v DPP* [2001] UKHL 61 and (2002) 35  
EHRR 1

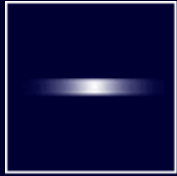


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Nor is the DPP required by the Human Rights Act to publish a policy as to the circumstances in which a prosecution would be brought for aiding and abetting suicide:

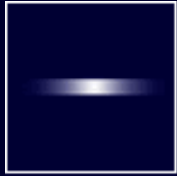
*R(Purdy) v DPP* [2009] EWCA Civ 92



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Article 14 prohibits unjustifiable discrimination in relation to Convention rights. This emphasises the importance of equal treatment and, for example, of not treating the life of a disabled person as being of any less value than the life of a patient without disability (see *Burke*, para 63).



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The Human Rights Act reinforces the importance of well-established ethical principles and good practice.