Dying with Dignity: Reaching a Consensus in the Council of Europe

by Saadat Tursunkulova

LL.M. SHORT THESIS
COURSE: Introduction to EU Constitutional Law
PROFESSOR: Petra Dóra Bárd
Central European University
1051 Budapest, Nador utca 9.
Hungary

Abstract

The paper concerns the issue of assisted suicide and its development in countries of the Council of Europe. Assisted suicide has always maintained to be a highly debatable issue, thus, states of the Council of Europe were left with a wide margin of appreciation and no general regulation on the matter. Some states have a progressive approach towards the issue, while others treat the issue very strictly. Meanwhile, citizens of these states face certain issues when applying for assisted suicide.

The research attempts to identify whether there is a prognosis of reaching a consensus in regulating assisted suicide in the states of the Council of Europe. It addresses the perception of assisted suicide, how it is dealt with by state regulations, and how it is perceived in courts.

The position of this paper is to state that assisted suicide with time gains more attention and recognition, thus it is advisable that states of the Council of Europe reach a consensus in dealing with assisted suicide in the near future.

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Introduction

End-of-life decisions always remains a controversial topic. For most of the people associated with end-of-life decisions, assisted suicide is an escape from unbearable pain and suffering, which leads to the loss of average standards of life. Assisted suicide to such persons is a question of dignity, privacy, bodily autonomy, and self-determination.

Decisions on ending one's life divide into several forms, each of which states treat with different matters. Some states, which legalize such rights, justify it by the recognition of the derivation of the right to choose how and when to die from rights, provided by the constitution. Other states argue that it is the positive obligation of the state to preserve one's life and, thus, no derogations in this matter are possible. Therefore, it remains a controversial topic with no general regulation on the issue.

Assisted suicide was firstly recognized in states of the Benelux Union – Belgium, Netherlands, and Luxembourg. The regulation of this type of end-of-life decision in these states are advanced and practised quite widely. These states regulate the issue due to the multi-level legal system of the European Union, which gives them the right to individually make decisions on the matter in their states and a wide margin of appreciation in regard to the recognition of "the right to die". At the same time, there are states that strongly oppose to the right to die, such as Italy and Poland, which prohibit assisted suicide by law, leaving their citizens without a dignified end-of-life solution.

Thus, every state holds responsibilities and duties towards its citizens. It is supposed to protect, to help, to provide all the necessary rights and make sure that these rights are being implemented. The duties the government holds divides into positive obligations and negative obligations. The positive obligations mean that the government is supposed to take necessary actions in order to assure that the provided rights will be implemented in accordance with the law. The negative obligations, however, requires the State to not interfere for the sake of the

citizens in implementing their rights. Regarding both types of obligations, it is important to specify when do these obligations start and to what extent does the State either interfere, either not. This paper will address the issue of how assisted suicide is regulated in certain member states of the Council of Europe, how is it justified by their jurisdictions, and what impact does, or will it have on the EU law.

The aim of the given research is to study the regulation of assisted suicide under the jurisdiction of the ECtHR, Italy, and the Netherlands in order to understand the further development of the matter and whether there is a tendency towards reaching a unified solution to the issue of assisted suicide in the Council of Europe.

The thesis will also address the European Convention on Human Rights, how does assisted suicide refer to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, case law of the European Court of Human Rights. The research methods of the given paper will include the observation and analysis of the jurisdictions of the European Court on Human Rights, Italy, and the Netherlands. A case study both from state courts and the European Court of Human Rights is included. Additionally, a qualitative research will be conducted in the matter, including research on scholar works.

Chapter I – The Notion of Assisted Suicide

Chapter I focuses on the core of assisted suicide. The aim is to introduce the reader to the origin of assisted suicide, which historically emerged from euthanasia and the examples of existing assisted suicide regulations that will be covered in the first section, while the current position towards assisted suicide both by scholars and society will be covered in the second section of the chapter.

1.1 Understanding Assisted Suicide

a) General Background

Initially the term "euthanasia" included in itself the notion of assisted suicide. As the distinction of euthanasia and assisted suicide appeared later than the act itself, many practises in history indicate that in different parts of the world, different societies were tolerant towards the practice of assisted suicide, though they referred to it as "euthanasia." The reason for this is that until the 19th century, there was no element describing on who exactly administers the lethal injection or provides the lethal medicine to the ill patient.

Thus, the history of assisted suicide takes its place back in the times of Ancient Greece – physicians, despite the existence of the Hippocratic Oath, which prohibits aiding in suicide, often performed the acts of assisted suicide.[1] Greek and Roman physicians tended to approach this act as a mercy killing, believing that they were helping those patients who suffered. Since then, society, due to its religious views, reinforced their obedience towards the Hippocratic Oath, and thus, strongly opposed against any cases of assisted suicide. [2]

Due to the changing perception towards assisted suicide through time, there is a necessity of giving a descriptive definition of the term and identifying its main points. The

[1] Dowbiggin, Ian, "*A merciful end: The euthanasia movement in modern America",* Oxford University Press, 2003.
[2] Ibid.

Oxford Dictionary defines assisted suicide as "Suicide effected with the assistance of another person, especially the taking of lethal drugs provided by a doctor for the purpose by a patient suffering from a terminal illness or incurable condition."[3] Therefore, assisted suicide contains in itself several main points, such as: the act of assisting a suicide of another person, the person must be suffering from an incurable illness, the assisting person provides the lethal need, but the terminally ill takes it him/herself. Scholars in the Article "Care of the hopelessly ill" gives a detailed definition of assisted suicide and underline that the burden is shifted from the physician to the patient, as he alone makes the ultimate decision to bring his life to an ending:

> [i]n assisted suicide, the final act is solely the patient's, and the risk of subtle coercion from doctors, family members, institutions, or other social forces is greatly reduced. The balance of power between doctor and patient is more nearly equal in physician - assisted suicide than in euthanasia. The physician is counsellor and witness and makes the means available, but ultimately the patient must be the one to act or not act..[4]

Here, it is clarified that in assisted suicide, the final decision to administrate the lethal mean is made by the patient himself, unlike in euthanasia. It may be understood that the criteria mentioned above are the core reasons of why assisted suicide is generally more accepted than euthanasia, not only in society, but also in state legislatures.

States differ in the approach towards end-of-life issues, and thus, apply different regulations on the matter. As some states legalized both euthanasia and assisted suicide, others regulate only the last, therefore, for the purpose of the paper, it is necessary to review the legislature of these states. As in physician - assisted suicide, the act of suicide is made by the patient, thus meaning that the burden lays on the patient and the physician does not make the act of ending life, so physician - assisted suicide is decriminalized in such states.

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[3] *"Assisted suicide",* Oxford Dictionaries. https://en.oxforddictionaries.com/definition/assisted_suicide. Last accessed November 28, 2018.

[4] Quill, Timothy E., *"Care of the Hopelessly Ill. Proposed clinical criteria for physician – assisted suicide."* The New England Journal of Medicine, 327, no. 19 (1992)*:* 401.

Assisted suicide is regulated in a number of states, thought the path to its legalization differs. Therefore, it would be beneficial for the purposes of identifying the current status of assisted suicide by familiarizing with the existing regulations on the matter. It first became legalized in the State of Oregon in 1994, though the Netherlands were the first to address assisted suicide, where the issue has been brought up in the Postma case, which led to the legalization of euthanasia and assisted suicide. Later it became regulated in Belgium, Luxembourg, Canada, and practised in Switzerland. As the Netherlands will be detailly covered in Chapter 3, a brief description of state regulations on assisted suicide of the State of Oregon, Belgium, Luxembourg, and Canada will be made .

United States

In the United States, Oregon was the first state to adopt a legal act which addressed the issue of assisted suicide. Oregon's Death with Dignity Act was accepted on November 8, 1994. The Death with Dignity Act provides that residents of Oregon, who suffer from terminal illnesses may obtain and use certain medications from their physicians for self-administered, lethal medications. Under the Act, ending one's life in accordance with the law does not constitute suicide. However, we use 'physician - assisted suicide' because that terminology is used in medical literature to describe ending life through the voluntary self-administration of lethal medications prescribed by a physician for that purpose. The Death with Dignity Act legalizes PAS [physician - assisted suicide], but specifically prohibits euthanasia, where a physician or other person directly administers a medication to end another's life.[5]

[5] "Death with Dignity Act," Oregon Health Authority, accessed February 16, 2018, https://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/requirements.pdf.

> To request a prescription for lethal medications, the Death with Dignity Act requires that a patient must be:
> An adult (18 years of age or older),
> A resident of Oregon,
> Capable to make and communicate health care decisions,
> Diagnosed with a terminal illness that will lead to death within six months.[6]

As it may be seen, the requirements set in the Death with Dignity Act are straight and clear, which helps to minimize the eligible people for the suicide act.

The next states of the United States that legalized physician - assisted suicide were Washington and California. In 1994 a case was filed in the District Court, where a physician named Harold Glucksberg, along with three patients with terminal illnesses and Compassion in Dying, a non-profit organization, which supports the choice of individuals in making end-of life decisions.[7] Historically, the state of Washington criminalized attempts of suicide and its promotion by aiding in suicide attempts.[8] They challenged the prohibition of physician - assisted suicide in the state of Washington.[9] Initially, the District Court ruled in favour of Glucksberg and other plaintiffs:

> While some people refer to the liberty interest implicated in right-to-die cases as a liberty interest in committing suicide, we do not describe it that way. We use the broader and more accurate terms, 'the right to die,' 'determining the time and manner of one's death,' and 'hastening one's death' for an important reason. The liberty interest we examine encompasses a whole range of acts that are generally not considered to constitute 'suicide.' Included within the liberty interest we examine, is for example, the act of refusing or terminating unwanted medical treatment...

[6] "Death with Dignity Act," Oregon Health Authority, accessed February 16, 2017, https://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/requirements.pdf.
[7] Washington v. Glucksberg, 521 U.S. 702 (1997).
[8] "Washington v. Glucksberg." Oyez. https://www.oyez.org/cases/1996/96-110 (accessed February 18, 2018).
[9] Ibid.

Casey and Cruzan provide persuasive evidence that the Constitution encompasses a due process liberty interest in controlling the time and manner of one's death -- that there is, in short, a constitutionally recognized 'right to die.[10]

Then the United States Court of Appeals for the Ninth Circuit reversed, and after rehearing the case en banc, affirmed the District Court's decision, by stating: "the Constitution encompasses a due process liberty interest in controlling the time and manner of one's death."[11] Glucksberg billed for certiorari to the Supreme Court, which he was granted.[12] The claim made by the petitioners was that the prohibition on physician - assisted suicide violated the Fourteenth Amendment's Due Process Clause.[13] Though the Court ruled that physician - assisted suicide is not a fundamental right provided by due process, the case gave states individual independence for making decisions on physician - assisted suicide.[14] Martin Gold, JD, stated:

> [P]hysicians, in carrying out their ethical duty to relieve the pain and suffering of their terminally-ill patients, should be legally permitted to accede to the desire of a patient to hasten death when the patient's decision is voluntarily reached, a patient is competent to make the decision, and the patient has been fully informed of the diagnosis and prognosis of an incurable, fatal disease which has progressed to the final stages...
>
> The right to physician-assisted suicide should be recognized by this Court as a fundamental right... Moreover, the amicus group agrees with the Court of Appeals for the Second Circuit in Quill that the denial of physician-assisted suicide is a denial of equal protection to terminally-ill patients who do not have the option of hastening death by requesting the removal of life support systems.[15]

[10] Compassion in Dying v. State of WA, 49 F.3d 586 (9th Cir. 1995).
[11] *Washington v. Glucksberg,* 521 U.S. 702.
[12] "Washington v. Glucksberg." Oyez. https://www.oyez.org/cases/1996/96-110 (accessed February 18, 2018).
[13] *Washington v. Glucksberg*, 521 U.S. 702.
[14] Washington v. Glucksberg, 521 U.S. 702 (1997).
[15] Do Euthanasia and Physician - assisted Suicide Ensure a Good Death? - Euthanasia - ProCon.org Euthanasia.procon.org, http://euthanasia.procon.org/view.answers.php?questionID=000190 (last visited Mar 8, 2018).

In 2008, the electorate of the state of Washington voted in favour of Initiative 1000, which made assisted suicide legal in the state through the Washington Death with Dignity Act. Thus, the state of Washington acknowledge the existence of the right to die, acknowledge its protection by the Constitution.

7 years after, the California legislature passed a bill legalizing physician - assisted suicide in September 2015, and the bill was signed into law by Governor Jerry Brown on October 5, 2015. He states:

> "In the end, I was left to reflect on what I would want in the face of my own death. I do not know what I would do if I were dying in prolonged and excruciating pain. I am certain, however, that it would be a comfort to be able to consider the options afforded by this bill. And I wouldn't deny that right to others".[16]

The bill is named End of Life Option Act. The law went into effect in June 2016. The California law, in similarity with the Oregon Law, allows residents of California with a diagnose of a terminal illness, and who are expected to live six more months or less, to obtain a medication by prescription to hasten imminent death.[17]

The Act 39 "Patient Choice and Control at End of Life" handles the regulation of the issue of physician – assisted suicide in Vermont. The House and the Senate of Vermont passed the bill in 2013, May 13. The "Patient Choice and Control at End of Life" law permits physicians to prescribe lethal amounts of medication to patients with terminal illnesses, wishing to end their lives.[18] The law includes the following provisions: "The patient

[16] Eighmey, George. *Death With Dignity Movement In The United States: Where We Are And Where We Are Going*. Ebook. 1st ed. Portland: Death with Dignity National Center. https://www.nvve.nl/files/1014/6530/4421/George-Eighmey-G105-12-05-2016.pdf.
[17] Eighmey, George. *Death With Dignity Movement In The United States: Where We Are And Where We Are Going*. Ebook. 1st ed. Portland: Death with Dignity National Center. https://www.nvve.nl/files/1014/6530/4421/George-Eighmey-G105-12-05-2016.pdf.
[18] Patient Choice and Control at End of Life Act, ch. 113, 18 V.C.A. (2013).

must express their desire to die three (3) times, including once in writing; and a second doctor must confirm that the patient is terminally ill and of sound mind."[19]

Belgium

Belgium partly covered assisted suicide in the Belgian Act on Euthanasia, which was adopted on May 28, 2002. The Act obliges to follow several requirements, such as that the patient is suffering from heavy pains, and that a certain procedure of consultations with physicians is followed.[20] The regulation on assisted suicide in Belgium also obliges hospitals to provide palliative care for those who suffer from unbearable pains, or terminally ill.[21]

Luxembourg

The Parliament of Luxembourg passed the law on euthanasia and physician - assisted suicide in February 2008. The Ministry of Health of Luxembourg issued a handbook in 2009 concerning the law of 16 March 2009 on euthanasia and assisted suicide. In the handbook the purpose of the law is described as:

> By simultaneously passing the Law relating to palliative care and the Law on euthanasia and assisted suicide, the legislator wanted on the one hand to emphasise his wish to do everything possible to continue developing palliative care. On the other hand, he wanted to permit patients to have freedom of choice regarding the conditions of the end of their life, whilst protecting doctors who agree to accede to their request for euthanasia or assisted suicide in respecting the provisions of the Law, whilst removing the risk of criminal action against doctors. The Law of 16 March 2009 on euthanasia and assisted suicide thus opens up a possibility of dying in the case where suffering is deemed unbearable by the patient. That possibility constitutes an answer to the wish expressed by a portion of public opinion, as well as by a number of health and legal professionals. Strict legal conditions guarantee transparency and the supervision of medical acts associated with the voluntary interruption of life within the context of euthanasia or assisted suicide.[22]

[19] Patient Choice and Control at End of Life Act, ch. 113, 18 V.C.A. (2013).
[20] Belgian Act on Euthanasia, May 28, 2002.
[21] Ibid.
[22] *Euthanasia And Assisted Suicide*, 1st ed., (Luxembourg: Sources Mixtes, 2010) Ebook, http://www.sante.public.lu/fr/publications/e/euthanasie-assistance-suicide-questions-reponses-fr-de-pt-en/euthanasie-assistance-suicide-questions-en.pdf.

The handbook also noted that non-residents may also apply for physician-assisted suicide under the given law, only if they have proved to have strong ties with the physician in the health institution of Luxembourg.

Switzerland

In Switzerland, assisted suicide is being committed through a certain loophole. The Swiss penal code under article 115 considers "assisting suicide a crime if and only if the motive is selfish".[23] Therefore, assistance in suicide of another without selfish motives will not be considered illegal. Moreover, Switzerland is known for its organizations that provide assisted-suicide services to both residents and foreigners. One of the most famous associations that offer such services is named "DIGNITAS – *to live with dignity - to die with dignity*", which was created in 1998 near Zurich. With the pursuit of ensuring life with dignity and death with dignity, it offers not only counselling, suicide prevention, cooperation with the patients physicians, but also assistance of dying patients with a self – determined end of life.[24]

Canada

Canada legalized assisted suicide on June 17, 2016, by passing a law in the Parliament by both houses.[25] The law provides that citizens of Canada, who are over-age, subject to an incurable illness the stage of which makes the biological death of the patient "reasonably foreseeable", and who have a health insurance on Canada eligible for assisted suicide. However, some activists as the British Columbia Civil Liberties Association raise certain challenges towards the law's constitutionality, by questioning the requirements of

[23] Samia A Hurst and Alex Mauron, Assisted Suicide and Euthanasia in Switzerland: Allowing a Role for Non-Physicians, 326, no. 7383 (February 1, 2003), accessed February 16, 2018, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1125125.

[24] Dignitas, last accessed February 27, 2018, http://www.dignitas.ch/index.php?option=com_content&view=article&id=22&lang=en.

[25] "JULIA LAMB and BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION AND: ATTORNEY GENERAL OF CANADA", accessed April 30, 2017, https://bccla.org/wp-content/uploads/2016/08/2016-06-27-Notice-of-Civil-Claim.pdf.

eligibility, as it gives the right to assisted suicide only to those whose death is "reasonably foreseeable", which means that patients with "long term disabilities, and those with "curable" medical conditions whose only treatment options people may find unacceptable"[26] are left without the possibility of dying with dignity.

The first case, which raised awareness to the issue of assisted suicide on the territory of Canada is the case of Sue Rodriguez v. British Columbia of 1993. The applicant, Sue Rodriguez, was subject to a disease called amyotrophic lateral sclerosis. The aftermaths of the illness would result in a loss of speaking, walking, eating abilities, and breathing without certain equipment.[27] In addition, the applicant had been left with no more than 14 months to live.[28] Thus, a case has been filed to the Supreme Court of British Columbia with the legal issue that the prohibition of assisted suicide violates the rights provided under the Canadian Charter of Rights and Freedoms of The Constitution Act of 1982.[29] It had been claimed that the rights to life, liberty and security of the person, equality rights, and freedom from cruel and unusual punishment were violated.[30]

The claim was dismissed by the court, stating that prohibiting assisted suicide is not "contrary to the principles of fundamental justice".[31]

However, Judge Peter de Carteret Cory stated in his dissenting opinion the following:

> Section 7 of the Canadian Charter of Rights and Freedoms has granted the constitutional right to Canadians to life, liberty and the security of the person. It is a provision, which emphasizes the innate dignity of human existence. This Court in considering s. 7 of the Charter has frequently recognized the importance of human dignity in our society… **The life of an individual must include dying**. Dying is the final act in the drama of life. If, as I believe, dying is an integral part of living, then **as a part of life it is entitled to the constitutional protection** provided by s. 7. **It follows that the right to die with dignity**

[26] "JULIA LAMB and BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION AND: ATTORNEY GENERAL OF CANADA", accessed April 30, 2017, https://bccla.org/wp-content/uploads/2016/08/2016-06-27-Notice-of-Civil-Claim.pdf.
[27] Rodriguez V. British Columbia (attorney General), [1993] 3 SCR 519, 520 (Can.).
[28] *Id.* at 520.
[29] *Id.* at 519.
[30] *Id.* at 519.
[31] *Id.* at 519.

> **should be as well protected as is any other aspect of the right to life**. State prohibitions that would force a dreadful, painful death on a rational but incapacitated terminally ill patient are an affront to human dignity**. I can see no difference between permitting a patient of sound mind to choose death with dignity by refusing treatment and permitting a patient of sound mind who is terminally ill to choose death with dignity by terminating life preserving treatment, even if, because of incapacity, that step has to be physically taken by another on her instructions**. Nor can I see any reason for failing to extend that same permission so that a terminally ill patient facing death may put an end to her life through the intermediary of another, as suggested by Sue Rodriguez. I would therefore dispose of the appeal in the manner suggested by the Chief Justice.[32]

Judge Cory in his statement points out that the act of death is a part of life that is protected by law, thus, dying with dignity must also be protected. Moreover, Judges L'Heureux-Dubé and McLachlin provided in their dissenting opinion the following:

> This right has an element of personal autonomy, which protects the dignity and privacy of individuals with respect to decisions concerning their own body. A legislative scheme which limits the right of a person to deal with her body as she chooses may **violate the principles of fundamental justice under s. 7** if the limit is arbitrary. A particular limit will be arbitrary if it bears no relation to, or is inconsistent with, the objective that lies behind the legislation. Here, Parliament has put into force a legislative scheme which makes suicide lawful but assisted suicide unlawful. The effect of this distinction is to deny to some people the choice of ending their lives solely because they are physically unable to do so, preventing them from exercising the autonomy over their bodies available to other people. The denial of the ability to end their life is arbitrary and hence amounts to **a limit on the right to security of the person which does not comport with the principles of fundamental justice.**[33]

Judges L'Heureux-Dube and McLachlin state that believe that the criminal liability of assistance in the suicide act "infringes the right in s. 7 of the *Charter* to security of the person, a concept which encompasses the notions of dignity and the right to privacy".[34] Moreover, they believe that the fact that the right to die through the act of physician – assisted suicide has not yet been accepted widely should not affect the claim of Sue Rodriguez.[35]

Despite the fact that the majority of judges (five to four) dismissed the appeal, this ruling had been later overruled in the case of Rodriguez v. British Columbia. As the ruling

[32] *Id.* at 630-31.
[33] *Rodriguez V. British Columbia (attorney General),* [1993] 3 SCR 519.
[34] *Rodriguez V. British Columbia (attorney General),* [1993] 3 SCR 617.
[35] *Rodriguez V. British Columbia (attorney General),* [1993] 3 SCR 617.

of the Court in Rodriguez v. British Columbia was not unanimous, in fact, only one vote made the difference, the given decision shows how the perception of assisted suicide changed, and how judges began to perceive differently thee argumentations for legalizing assisted suicide. In addition to that, the perception changed not only in the comprehension of the society, but changes started to take place in the understanding of judges of the Supreme Court. These adjustments suggested that in the near future the tendency of the development of the right to die would evolve and eventually lead to the recognition of the right to die, which is exactly what happened in the case of Carter v. Canada (Attorney General).

In the 2015 case of Carter v. Canada (Attorney General), which was heard in the Supreme Court of Canada, one of the plaintiffs – Gloria Taylor - suffered from the same disease as Sue Rodriguez 22 years before.[36] She, along with a group of appellants, which included Lee Carter and Hollis Johnson, whose mother used the physician – assisted suicide services in the DIGNITAS in Switzerland, challenged the constitutionality of the prohibition of violation of assisted suicide concerning the Right to life, liberty and security of the person, protected under s.7 of Canadian Charter of Rights and Freedoms.[37] Specifically, the issue was "Whether Criminal Code provisions prohibiting physician - assisted dying infringe s. 7 of Canadian Charter of Rights and Freedoms — If so, whether infringement justifiable under s. 1 of Charter"[38]. Judge Beverley McLachlin, the same judge who was present during Sue Rodriguez's case and dissented from the judgement, was the Chief Justice in Carter v. Canada (Attorney General).

[36] Carter V. Canada (attorney General), [2015] 1 SCR 346 (Can.).
[37] *Carter V. Canada (attorney General),* [2015] 1 SCR 347 (Can.).
[38] *Carter V. Canada (attorney General),* [2015] 1 SCR 332 (Can.).

Gloria Taylor, finding her condition extremely stressful and painful, stated:

> I do not want my life to end violently. I do not want my mode of death to be traumatic for my family members. **I want the legal right to die peacefully, at the time of my own choosing, in the embrace of my family and friends.** I know that I am dying, but I am far from depressed. I will not waste any of my remaining time being depressed. I intend to get every bit of happiness I can wring from what is left of my life so long as it remains a life of quality; **but I do not want to live a life without quality**. There will come a point when I will know that enough is enough. I cannot say precisely when that time will be. It is not a question of "when I can't walk" or "when I can't talk." There is no pre-set trigger moment. I just know that, globally, there will be some point in time when I will be able to say – "this is it, this is the point where life is just not worthwhile." **When that time comes, I want to be able to call my family together, tell them of my decision, say a dignified good-bye and obtain final closure – for me and for them**. My present quality of life is impaired by the fact that I am unable to say for certain that I will have the right to ask for physician-assisted dying when that "enough is enough" moment arrives. I live in apprehension that my death will be slow, difficult, unpleasant, painful, undignified and inconsistent with the values and principles I have tried to live by. . . . . What I fear is a death that negates, as opposed to concludes, my life. **I do not want to die slowly, piece by piece. I do not want to waste away unconscious in a hospital bed. I do not want to die wracked with pain**.[39]

Therefore, Ms. Taylor, as she states, was left with the only "cruel choice"[40], which was to either to kill herself while she was able to do so, or to give up the belief that she could have "any control over the manner and the timing of her death".[41] This choice resulted because of the prohibition of physician – assisted suicide in Canada and her lack of financial support to go to Switzerland and use their services of physician – assisted suicide.[42] It is evident hear that if Ms. Taylor would not be able to exercise her right to die in a proper manner with safeguards, she would have to end her life secretly, earlier than it could have been done through assisted suicide, and thus, her right to life would come to an end beforetime.

Madam Justice Smith found that the prohibition of physician - assisted death is in violation of the s. 7 rights "of competent adults who are suffering intolerably as a result

[39] *Carter V. Canada (attorney General),* [2015] 1 SCR 347-48 (Can.).
[40] *Carter V. Canada (attorney General),* [2015] 1 SCR 349 (Can.).
[41] *Carter V. Canada (attorney General),* [2015] 1 SCR 349 (Can.).
[42] *Carter V. Canada (attorney General),* [2015] 1 SCR 349 (Can.).

of a grievous and irremediable medical condition and concluded that this infringement is not justified under s. 1 of the *Charter*".[43] Considering the previous ruling of the case Rodriguez v. British Columbia, she noted:

1. That there had been **no direct consideration of the limitation of the right to life** in the Rodriguez decision. She accepted the plaintiff's argument that Gloria Taylor would be forced to commit suicide earlier if s. 241(b) were to remain in effect. In essence, if Ms. Taylor were free to access physician assisted death she could afford to live longer, knowing that she would continue to have that option after she ceased being physically capable of performing the act herself. Therefore, **her right to life was being curtailed** by the effect of s. 241(b). (para. 1322)
2. She utilized Supreme Court decisions subsequent to Rodriguez which had dealt with the requirements of natural law in consideration of cases related to s.7 to find that the solution of maintaining s. 241(b) as a protection of the vulnerable from coercion was too broad (paras. 1361-1371). She held that the state must find the least restrictive way of achieving its aims; and that a blanket prohibition on PAD was **over reaching and disproportionate**.[44]

As it may be seen, the Court acknowledges that the complete prohibition will not only put the right to life of the applicant under risk, but also that there was no proportionality in the prohibition of assisted suicide.

Thus, while state cover assisted suicide in different ways, it may be seen that the regulations are based on the recognition of human rights, while certain safeguards are being followed by the means of specific criteria

b) Current Debate

As the issue of end-of-life decisions through assisted suicide receives more attention with time, it continues to be a highly debatable topic. Scholars and activists refer to assisted suicide from various viewpoints, therefore, this section will address the current pro and con

[43] *Carter V. Canada (attorney General),* [2015] 1 SCR 333 (Can.).
[44] Ibid.

arguments, which include the importance of assisted suicide from the perspective of human rights and the possible risks in case of its legalization.

In the never-ending debate concerning end-of-life issues, supporters believe that the right to die (which in itself includes the means of dying from assisted suicide) emerges from several human rights, such as the right to privacy, right to dignity, right to liberty and personal autonomy, as it has been noted in cases described above. For the purposes of identifying and understanding the importance of assisted suicide, it is necessary to review the matter from the human rights perspective.

When referring to the right to privacy, pro-activists believe that the stage of ending one's life is so important, that no other can decide for another person on when and how to die. In the case of Pretty v. UK, the Court acknowledged that deciding on ending life is "an element of private life"[45] under Article 8 of the European Convention on Human Rights As it had been stated in the case of Pretty v United Kingdom (which will be covered further in the paper), Lord Hope in the judgement states that the choice of how to die is an inevitable part of life, which means that a person must enjoy the right of making an end-of-life decision by himself/herself. Moreover, the Court in the given case underlines the importance of personal autonomy, as it was states in the Court's decision:

> the concept of "private life" is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can sometimes embrace aspects of an individual's physical and social identity. Although no previous case has established as such any right to self-determination as being contained in Article 8 of the Convention, the Court considers that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees.

[45] Pretty v. United Kingdom, 35 Eur. Ct. H.R. 2, para.67, (2002).

Thus, this notion of the importance of personal autonomy now acts as a support for the proponents of assisted suicide, for deciding on how and when to end one's life is a decision that can be made only by the person himself.

Another example that supports assisted suicide in regard to the right to life is the case of Carter v Canada, where Madam Justice Smith, as it has previously been mentioned, stated that the prohibition on assisted suicide will force the applicant to end her life earlier, than it would have been possible with assisted suicide, thus her right to life would be shortened.

Arguments for the support of assisted suicide were also mentioned in the case of Vacco v. Quill in the United States in 1997. The respondents argued that the prescription of lethal medication for terminally ill patients who are mentally competent and suffer from grave pain is consistent with the standards of medical practises.[46] At the same time it is impossible for doctors to prescribe lethal medication due to the New York assisted – suicide ban, which violates the Fourteenth Amendment's Equal Protection Clause.[47] The Court in its judgement needed to identify whether the right is under the Due Process Clause, and for this they turned to two features of the right: if the right is "deeply rooted in the Nation's history and tradition"[48], and if the right is "implicit in the concept of ordered liberty"[49]. Though the Court found no violation of the Equal Protection Clause, the American Civil Liberties Union wrote an amicus brief for the support of recognizing assisted suicide as a right:

> The right of a competent, terminally ill person to avoid excruciating pain and embrace a timely and dignified death bears the sanction of history and is implicit in the concept of ordered liberty. The exercise of this right is as central to personal autonomy and bodily integrity as rights safeguarded by this Court's decisions relating to marriage, family relationships, procreation, contraception, child rearing and the refusal or termination of life-saving medical treatment.[50] In particular, this Court's recent decisions concerning the right to refuse medical treatment and the right to abortion instruct that a mentally

[46] *Id.* at 797.
[47] *Id.* at 793.
[48] "ACLU Amicus Brief In Vacco V. Quill," *euthanasia.procon.org,* last accessed April 1, 2017, http://euthanasia.procon.org/sourcefiles/VaccovQuillAmicus.pdf.
[49] Ibid.
[50] Ibid.

> competent, terminally ill person has a protected liberty interest in choosing to end intolerable suffering by bringing about his or her own death. A state's categorical ban on physician assistance to suicide -- as applied to competent, terminally ill patients who wish to avoid unendurable pain and hasten inevitable death -- substantially interferes with this protected liberty interest and cannot be sustained.[51]

Here, the proponents of assisted suicide state that a person has a "protected liberty interest in having a choice on when and how to end one's own life and claim that by recognizing the right to refuse medical assistance, or in other words passive euthanasia, "New York had denied patients equal protection of the laws".[52]

For the support of assisted suicide, the applicants rose the historical roots of the issue, by stating that Greek and Roman philosophers believed in respecting one's decision to end his own life. They provide, that: "Plato's Republic sanctioned a choice to die under such circumstances: "If any man labour of an incurable disease, he may dispatch himself, if it be to his good.".[53] Another argument that was mentioned is the use of alcohol, opiates and other drugs in order to decrease the amount of agony and pain, for the purposes of a painless and dignified death.[54] The petitioners also declare that the right to die is implicit in the concept of ordered liberty. Various cases have been raised to show the liberty as a notion exists in times when there is a right to make crucial decisions by the person himself, such decisions that are tied to the personal dignity and autonomy of the individual, regarding his / her life without the interference of the state.[55] In the amicus brief it is emphasized that the right to end one's life without unnecessary pain is so intimate, that the state should not interfere in the decision – making process of the individual.[56] Thus, the petitioner and amicus curiae believe that the right to die meets both of the necessary features to be recognized under the Due Process Clause.

[51] "ACLU Amicus Brief In Vacco V. Quill," *euthanasia.procon.org,* last accessed April 1, 2017, http://euthanasia.procon.org/sourcefiles/VaccovQuillAmicus.pdf.
[52] *Vacco v. Quill*, 521 U.S. 793.
[53] "ACLU Amicus Brief In Vacco V. Quill," *euthanasia.procon.org,* last accessed April, 1, 2017, http://euthanasia.procon.org/sourcefiles/VaccovQuillAmicus.pdf.
[54] Ibid.
[55] Ibid.
[56] Ibid.

As described, the right to choose to die is of same importance as the rights to personal autonomy, bodily integrity, private life, the right to refuse medical treatment, or in other words, passive euthanasia. The concept of the right to die touches both active, passive euthanasia, and physician - assisted suicide. In this term, privacy, autonomy and body integrity play a great role. For many who challenged their right for euthanasia or physician - assisted suicide, these were the major arguments.

Another argument that is used by proponents of assisted suicide is the right to liberty. They argue that by practising the right to liberty, patients should be able to make their own decisions concerning their own stages of life. In almost all cases, challenging the prohibition of assisted suicide, applicants made certain statements, underlining their right to liberty.

Moreover, supporters of assisted suicide believe that there should be no difference between allowing patients to withdraw life-sustaining treatment and thus, hasten their biological death, and allowing a dying patient to ease his pain and die with dignity.

Perhaps the strongest argumentation against the legalization of assisted suicide is the State's positive obligation to protect the fundamental right to life. The right to life is the most fundamental human right. It is guaranteed and protected by such legal instruments such as the Universal Declaration of Human Rights[57], the European Convention on Human Rights[58], and the International Covenant on Civil and Political Rights[59].. Opponents of assisted suicide refer to almost any human rights document, that explicitly states the inviolable and fundamental right to life, that is given the highest protection by the State.

The slippery-slope argument is the next major disadvantage of assisted suicide. Many tend to believe that by legalizing assisted suicide, the amount of people wishing to apply for

[57] Universal Declaration of Human Rights, art. 3, 1948.
[58] European Convention on Human Rights, art.2, 1953.
[59] International Covenant on Civil and Political Rights, art.6, 1966.

assisted suicide will rise for numerous reasons. One of these can be that a large group of terminally ill patients will fall at risk due to the fact, that they will not be able to receive sufficient healthcare due to economic reasons, as well the absence of adequate palliative care. Moreover, opponents believe that persons, suffering from such illnesses, will psychologically tend to wish having a peaceful death, rather than continuing the battle for their own lives and imposing a high financial burden on their families. Moreover, the justification of assisted suicide may be understood by some as an encouragement to apply for the procedure. In other cases, there is a risk that once assisted suicide will be legalized for terminally ill persons, other people would wish to also enjoy the right to die, even if they do not comply with the eligibility criteria for assisted suicide.

Opponents of assisted suicide also argue that the legalization of assisted suicide would lead to the decrease of the level of palliative care. The number of hospices would fall, palliative care will not remain the same level of importance and patients in general would feel more of a burden, and thus, would have to require assisted suicide.

Another reason for acting against assisted suicide, is the risk of malpractice of physicians. In case of legalizing assisted suicide, there may be a certain risk that physicians would use the law for their own aims. Or in other cases, even when assisted suicide is allowed by state legislation, some physicians do not want to feel the burden in assisting in ending one's life due to ethical and personal reason, in addition to the Hippocratic Oath which states: "To please no one will I prescribe a deadly drug, nor give advice which may cause his death."

Chapter II - The Role of the European Court of Human Rights

This chapter will review the historical background of the European Court of Human Rights on end-of-life decisions, how the Court influences on the understanding of end-of-life decisions, its position on the matter, and whether the Court is widening or narrowing the margin of States. Here I will attempt to review the existing legal cases on end-of-life decisions and identify whether and how the court decisions influence on the overall perception on the issue and its further development.

2.1 Position of the European Court of Human Rights

The European Court of Human Rights is currently moving towards the acceptance of assisted suicide and recognizing it as a human right, which can be noticed by the history of its case law. The transition of its position on the matter is crucial for deciding assisted suicide issues, therefore the path of the European Court of Human Rights will be reviewed in the given section.

The first case concerning assisted suicide that was in 2002, where Diane Pretty rose her case on the issue of accountability of her husband assisting her in an end-of-life act. She was subject to suffering and pain for a certain period of time due to a motor neurone disease prior to her application to the Court.[60] The illness, which was developing, caused the applicant to full paralysation which led to a life of not being able to eat or speak by herself, and survive from tube feeding.[61] At the same time, she preserved her mental capacities, and thus could clearly state her intention to implement her will to die by the act of assisted suicide.[62] Diane Pretty stated that if not for her full body paralysis, she would take the act of suicide by herself,

[60] Pretty v. United Kingdom, 35 Eur. Ct. H.R. 2 (2002).
[61] *Id.* at 2.
[62] *Id.* at 3.

thus, she was in need of assistance.[63] The husband of the applicant expressed his readiness and willingness to assist in the end-of-life act.[64] However, assisting in a suicide of a person constitutes an illegal act under the Suicide Act of 1961[65], thus, the applicant raises a question concerning the immunity of her husband to not be prosecuted.

The applicant reasoned her right to die by stating that it was not the prohibited by Article 2 of the ECHR."[66] In addition, it was declared:

> The purpose of the Article is to protect individuals from third parties (the State and public authorities). But the Article recognises that it is for the individual to choose whether or not to live and so protects the individual's right to self determination in relation to issues of life and death. Thus a person may refuse lifesaving or life-prolonging medical treatment, and may lawfully choose to commit suicide. The Article acknowledges that right of the individual. While most people want to live, some want to die, and the Article protects both rights. The right to die is not the antithesis of the Right to Life but the corollary of it, and the State has a positive obligation to protect both.[67]

The European Court of Human Rights did not find a violation as they believe that Article 2 of the ECHR does not provide with how to live, therefore, one cannot assume that there is an existence of a negative obligation in not interfering with one's decision to die. The Court also noted that assisted suicide could be reviewed under articles 3 & 8 of the European Convention on Human Rights:

> …clearly felt that the matter should be examined under different articles, and the ultimate decision based on the interplay between them. The Court therefore went on to carefully consider the claim to a right to commit suicide in the face of terrible suffering under Article 3, which prohibits torture, inhuman or degrading treatment or punishment

[63] *Id.* at 4.
[64] Pretty v. United Kingdom, 35 Eur. Ct. H.R. 4 (2002).
[65] The Suicide Act, 1961, 9 & 10 Eliz. 2, c. 60, art. 2(2) (Eng.).
[66] *Id.* at 4.
[67] *Id.* at 4.

> in absolute terms, and Article 8, which guarantees, among other things, respect for "private life".[68]

Moreover, Lord Hope gave an opinion which stated that the decision to decide on the time of dying may be provided for under the right to private life:

> ...Respect for a person's 'private life', which is the only part of Article 8 which is in play here, relates to the way a person lives. The way she chooses to pass the closing moments of her life is part of the act of living, and she has a right to ask that this too must be respected. In that respect, Mrs Pretty has the right of self-determination. In that sense, her private life is engaged even where in the face of terminal illness she seeks to choose death rather than life. But it is an entirely different thing to imply into these words a positive obligation to give effect to her wish to end her own life by means of an assisted suicide. I think that to do so would be to stretch the meaning of the words too far.[69]

Though a violation of the Right to Life has not been found, the Court left the issue for states under a wide margin of appreciation, as a point had been made that the given issue may be raised in the future under the interrelation of various articles of the convention.

The next case on assisted suicide that was covered by the European Court on Human Rights was the case of Haas v. Switzerland that took place in 2011. The applicant, who was a 57-year old man, suffering from a bipolar disorder for 20 years, was a member of the Swiss organization Dignitas, which among its services assists in suicide. For these reasons the applicant made an attempt to obtain 15 grams of a lethal substance but failed to do so. The applicant further made several attempts to purchase the lethal drug with the permission of state authorities, however, the authorities refused on the ground that the drug requires the permission of a doctor, and Article 8 of the European Convention on Human Rights, that provides the right to respect for private and family life, cannot be interpreted in a way that would create a positive obligation

[68] Korff, Douwe. 2016. "The Right to Life A Guide To The Implementation Of Article 2 Of The European Convention On Human Rights." *Council Of Europe*. http://www.echr.coe.int/librarydocs/hr%20handbooks/handbook08_en.pdf.

[69] *Pretty v. United Kingdom*, 35 Eur. Ct. H.R. 19-20 (2002).

to the state to create conditions for committing suicide.[70] The applicant, however, believes that the fact that in order to obtain a lethal substance a prescription from a doctor is required, and that there are specific criteria in order to receive that particular description (which the applicant does not meet) constitutes an unproportionate interference, which constitutes a violation of Article 8 of the ECHR.

The European Court of Human Rights in its judgement noted that the applicant has a right to choose the manner of his own death if the applicant can express his free will and can make the according act. The fact that doctors do not provide prescription if the necessary conditions are not met does not constitute an unproportionate interference, as the existence of these requirements act for the purpose of "protecting individuals from hasty and unconsidered decisions"[71]. The Court viewed the issue of whether states have a positive obligation in providing necessary means for assisted suicide and came to the conclusion that there was no breach of Article 8 in means of positive obligation. However, the judgement of the Court makes an emphasize that there is a right to assisted suicide that is included in Article 8 of the Convention by stating the following:

> In the light of this case-law, the Court considers that an individual's right to decide by what means and at what point his or her life will end, provided he or she is capable of freely reaching a decision on this question and acting in consequence, is one of the aspects of the right to respect for private life within the meaning of Article 8 of the Convention.[72]

This statement in addition to the earlier mentioned requirements that there must an expressed free will and the ability to act in a according way emphasizes the way how the Court treats assisted suicide as a right and acknowledges it, which is a great shift forward from the judgement of the Pretty v UK case.

It the Courts decision, it has been noted that:

[70] *Haas v. Switzerland*, app. no. 31322/07, 20/02/2011, para. 10.
[71] Ibid, para. 16.
[72] Ibid, para. 51.

> The member States of the Council of Europe are far from having reached a consensus with regard to an individual's right to decide how and when his or her life should end. It should be noted that the vast majority of member States seem to attach more weight to the protection of the individual's life than to his or her right to terminate it. It follows that the States enjoy a considerable margin of appreciation in this area.[73]

The court in the current paragraph addresses the margin of appreciation of States of the Council of Europe, and how a consensus is not reached and is quite far from being reached, so the Court in its judgement recognized the existence of an individual right to assisted suicide, but leaves the issue of regulation towards the States.

The next case on assisted suicide in the history of judgements made by the European Court of Human Rights was the case of Koch v. Germany, that took place on July 19, 2012.[74] In the given case the applicant's wife was a quadriplegic, who suffered from numerous conditions, but was not terminally ill and was expected to live for 15 years more. However, the conditions of her life were described by her as degrading, and thus, she wished to end life in a peaceful and dignified manner. She applied to the Federal Institute for Drugs and Medical Devices for permission to obtain the lethal medication but was refused to do so as the law allowed purchasing the medication only for the purpose of maintaining life. As a result, the applicant's wife travelled to Switzerland where she was able to commit suicide through the organization Dignitas. The applicant filed several appeals on the ground that the refusal of the Federal Institute for Drugs and Medical Devices were unlawful and that there was violation of his procedural rights under Article 8 of the Convention.[75] The Court in this case raised the issue of the right to assisted suicide under the Convention and whether the States have a positive obligation in regards to the right. The Court emphasized that protecting the right to life of persons is the most fundamental obligation of the state, at the same time, the Court

[73] Ibid, para. 55
[74] Koch v. Germany, app. no. 497/09, 19/07/2012.
[75] Ibid.

acknowledges once more that there is no consensus on the matter among member states of Council of Europe, and therefore, it is up to the state to decide on how to examine its merits.

As it may be seen, the European Court of Human Rights throughout its judgement made a considerable shift towards recognizing the right to assisted suicide and by developing a more liberal approach towards assisted suicide, and though giving the states a wide margin appreciation, is slowly beginning to act in support of the creation of a European consensus on the issue of assisted suicide.

Chapter III – The Current Legal Perspective of Assisted Suicide

The Council of Europe is considered to be "the leading intergovernmental organization in the development of common European norms relating to Bioethics".[76] For example, in December 1999 the Convention on Human Rights and Biomedicine stepped into force.[77] The given convention raises the issued of advanced directives, importance of informed consent, right to private life, human dignity and the primacy of the human being. At the same time, member states of the Council of Europe differ in terms of assisted suicide regulation. Therefore, while a general overview of the regulation of assisted suicide around the world has been made, it is necessary to research on the more detailed approach on assisted suicide of states of the Council of Europe, so the given section will provide information on both the most and least progressive approach of states.

3.1 A Progressive Approach

Considering the troublesome issue of assisted suicide, only a handful of States have a favourable position towards the issue. The given subchapter will review on the jurisdictions of the Netherlands, the historical development of assisted suicide and existing regulations.

Netherlands

The first country that addressed the issue of assisted suicide in an active manner was the Netherlands. The beginning for this process was put by a case that happened towards the end. of the 20th century. Andries Postma worked as a practitioner and was known for being a supporter of the right to die.[78] The mother of his wife suffered from several conditions and thus

[76] Roberto Andorno, "*Regulating advance directives at the Council of Europe*" in: Stefania Negri (ed.), Self-Determination, Dignity and End-of-Life Care. Regulating Advance Directives in National and International Law, Series: Queen Mary Studies in International Law, Leiden, Brill Academic Publishers, 2012, p. 73-85
[77] Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, Oviedo, April 4, 1997, https://rm.coe.int/168007cf98.
[78] Tony Sheldon, "Andries Postma," The BMJ 334, no. 7588 (2007): 320, accessed February 15, 2017, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1796690/.

lived in pain and suffering. She repeatedly requested assistance in dying, and in 1972, the wife of Andries Postma granted her wishing by aiding her in suicide.[79] She was prosecuted for aiding in suicide and the case raised public opinion on the issue of assisted suicide, which eventually led to the people changing their position towards the matter.

Consequently, by the 1980s, special conditions were formed in order to create an immunity for allowing assisted suicide by physicians.[80] An immunity is in need, due to the fact that assisted suicide is considered to be a crime under the Dutch Law. Article 294 of the Dutch Penal Code states the following: "Any person who intentionally incites another to commit suicide shall, if suicide follows, be liable to a term of imprisonment not exceeding three years or a fine of the fourth-category fine. Any person who intentionally assist another to commit suicide or provides him with the means to do shall, if suicide follows, be liable to a term of imprisonment not exceeding three years or a fourth-category fine".[81] In 2001, April 10th, the Bill "Termination of Life on Request and Assisted Suicide (Review Procedures) Act" was put in effect.[82] The Law legalizes assisted suicide if the conditions stated are followed:

> the patient's suffering is unbearable with no prospect of improvement;
>
> the patient's request for euthanasia must be voluntary and persist over time (the request cannot be granted when under the influence of others, psychological illness or drugs);
>
> the patient must be fully aware of his/her condition, prospects, and options;
>
> there must be consultation with at least one other independent doctor who needs to confirm the conditions mentioned above;
>
> the death must be carried out in a medically appropriate fashion by the doctor or patient, and the doctor must be present;

[79] Ibid.
[80] Andre Janssen, "The New Regulation of Voluntary Euthanasia and Medically Assisted Suicide in the Netherlands," *International Journal on Law, Policy and the Family*, no. 16 (2002), accessed November 15, 2017.
[81] Article 294, Dutch Penal Code.
[82] Andre Janssen, "The New Regulation of Voluntary Euthanasia and Medically Assisted Suicide in the Netherlands," *International Journal on Law, Policy and the Family*, no. 16 (2002), accessed November 15, 2017.

the patient is at least 12 years old (patients between 12 and 16 years of age require the consent of their parents).[83]

These requirements show that the physician play an important role in the assisted suicide, by making sure that all requirements are met, by consulting and being present throughout the procedure itself to make sure that no mistakes have been made. So, the given law is more concentrated on the role the physician plays and whether he/she follows all the necessary requirements. The physician also has the responsibility to conduct detailed reports on the case and submit them to a review committee, which will check the acts of the physician to be in compliance with the "Termination of Life on Request and Assisted Suicide (Review Procedures) Act". In case of discovering any violations, the physician may be prosecuted up to 3 years.[84]

Assisted suicide in the Netherlands can also be regulated through advanced directives, which means that people can write a written directive covering the future possibilities and conditions, that would express the will of the person to perform assisted suicide.

Since the legalization of assisted suicide in the Netherlands, opponents have been making claims that the amount of patients performing assisted suicide has risen, that some physician do not conduct and submit necessary reports, and that in general several accounts of malpractice occurs, and sadly, statistics show that some of these accusations are true:

> The Dutch News reported that the number of reported assisted deaths increased by 10% in 2016 with 6091 reported assisted deaths, representing 4% of all deaths in the Netherlands up from 5561 reported assisted deaths in 2015. There were 5875 euthanasia deaths and 216 assisted suicide deaths.
> Since 2006, in the Netherlands, there has been a 317% increase in assisted deaths.
> The 2010 study that was published in the Lancet (July 2012) indicated that 23% of all assisted deaths were unreported in the Netherlands. If this trend continued, that may have been 1400 unreported assisted deaths in 2016.[85]

[83] Termination of Life on Request and Assisted Suicide (Review Procedures) Act of 2002 (Upper House, parliamentary year 2000-2001, 26 691, no 137).
[84] *Euthanasia, assisted suicide and non-resuscitation on request*, Government of the Netherlands, last accessed April 23, 2018, https://www.government.nl/topics/euthanasia/euthanasia-assisted-suicide-and-non-resuscitation-on-request.
[85] Report 2016 euthanasia in Netherlands, European Institute of Bioethics, April 19, 2017, https://www.ieb-eib.org/en/document/report-2016-euthanasia-in-netherlands-488.html.

As it may be seen, the arguments of opponents of assisted suicide in fact do occur, and it may act as a warning to other states who are in path of legalizing assisted suicide to adopt new additional safety measures.

Moreover, the Netherlands are often criticized for the regulation of assisted suicide in relation to minors. Minors between the age of 12 – 16 are considered to be eligible for assisted suicide under the consent of their parents, and acts of assisted suicide and child euthanasia among minors is regulated under the Groningen Protocol. Belgium also covered assisted suicide for children, by cancelling the age requirement in its assisted suicide regulation. Naturally, all safety measure are kept at the same force, if not at a higher level, requesting that the child must make repetitious requests for assisted suicide, and that he or she will be psychologically evaluated in order to prevent any mistakes.

3.2 A Restrictive Approach

Considering the sensitivity of the issue of assisted suicide, a number of states hold to a somewhat conservative point of view in relation to the issue. Thus, this section will review the jurisdictions and perception on the issue in Italy.

Italy is one of the states with the most restrictive approach towards matters of assisted suicide. historically had a strict approach towards end-of-life related issues:

> Traditionally, in Italy the majority of the population has always been Catholic. For this historical reason, the Italian legal system has acknowledged a special position for Catholicism. In contrast to the constitutional prohibition on the governmental establishment of religion in the United States, the Italian Constitution provides a special constitutional status to the international treaty (Concordat) between the Italian state and the Catholic Church in Article 7. Prior to the adoption of the 1948 Constitution, relations between the Italian State and the Roman Catholic Church were already based on the Concordats in the form of the Lateran Treaties signed in 1929. These treaties were subsequently amended, and today relations between the State and the Catholic Church are regulated by the amended Concordat of 1984, colloquially known as Villa Madama agreements.[86]

[86] Barsotti, Vittoria, et al. *Italian constitutional justice in global context*. Oxford University Press, 2015.

Thus, the negative approach towards end-of-life issues is in some way being justified to the religious history of the country. The urge to be in compliance with the Catholic Church greatly influenced the legal regulations of certain issues in the country. This approach leads to the fact the assisting in suicide is punishable by law. The Criminal Code of Italy states in Article 580 "Instigating or Assisting Suicide":

> Whoever brings about another's suicide or reinforces his determination to commit suicide, or in any way facilitates its commission, shall be punished, if the suicide occurs, by imprisonment for from five to twelve years. If the suicide does not occur, he shall be punished by imprisonment for from one to five years, provided that the attempted suicide results in serious or very serious personal injury. These punishments shall be increased if the person instigated or incited or assisted falls within one of the conditions specified in subparagraphs (1) and (2) of the preceding Article. However, if the said person is under the age of fourteen years or is in any way bereft of capacity to understand or to will, the provisions relating to homicide shall be applied.[87]

The prohibition of assisted suicide in Italy led to several widely-known cases, where ill patients attempted to challenge the constitutionality of the given prohibition. Some of them raised high awareness in society and led to acts of support towards the applicants. The right to life is not provided expressly in the Constitution of Italy, "but can be considered the first and most important of the inviolable rights protected by Article 2".[88]

One of these widely-know cases is the case of a famous Italian DJ Fabiano Antoniano, who with the help of a assisted-suicide supporter Marco Cappato travelled to Switzerland to reach the end of life through assisted suicide. The Italian artist previously made attempts of achieving his right to die by addressing the Italian President, but his request was refused. The supporter was then charged with criminal offense, however, the Court decided not to charge him due to the fact that "he did not reinforce DJ Fabo's purpose to die".[89] Marco Cappato during the judicial litigations stated that "Life is a right, not a duty". Following this decision,

[87] Criminal Code of Italy, art.580,
[88] Barsotti, Vittoria, et al. *Italian constitutional justice in global context*. Oxford University Press, 2015.
[89] *Major case of assisted suicide goes before Italy's Constitutional Court,* Xinhua net, last accessed March 29, http://www.xinhuanet.com/english/2018-02/15/c_136976560.htm.

the Court applied to the Italian Constitutional Court to decide on whether the prohibition of assisted suicide is in compliance with the Italian Constitution.

The given case triggered a change of perception on end of life issues, and as a result, Italy adopted new regulations on December 2017, which allows patients to create living wills and to refuse medical treatment, or in other words, legalized passive euthanasia, despite the strong criticism of the Catholic Church. The Oviedo Convention also notes in Article 9 the following: "The previously expressed wishes relating to a medical intervention by a patient who is not, at the time of the intervention, in a state to express his or her wishes shall be taken into account".[90] The living will would allow patients to state their will in advance, for example, to not be reanimated, or to not receive life-sustaining treatment, like forceful nutrition and hydration, or to be connected to life – supporting equipment. These living wills will allow to secure the patient's free will in advance in case he or she will no longer be able to express their will. This bill acknowledges the importance of the informed consent of the patient. Treating a patient without informed consent is not allowed by most state legislations. The importance of informed consent lies in the respect of the human dignity. The respect of the human dignity is a fundamental basis for bioethics. The primary supporter of the bill Donata Lenzi, the lower house lawmaker who sponsored the bill, stated the following: "This law does not take anything away from any ill person, this law gives. Because it recognizes that until the end you are not just a body to heal but a person with your own mind, your own ideas, your own convictions and you have the right to be heard."[91]

[90] Article 9, Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, April 4, 1997.
[91] Elisabetta Povoledo, *Italy to Allow Living Wills and the Refusal of End-of-Life Care*, The New York Times, December 14, 2017, https://www.nytimes.com/2017/12/14/world/europe/italy-living-will-end-of-life-right-to-die-assisted-suicide.html.

However, the same bill has been met with critique from certain members of parliament, by stating: "It's a brutal chaos that doesn't cancel suffering but instead aggravates it. The law is confused from a legislative and constitutional point of view, and "profoundly wrong from an ethical and moral point of view," regardless of one's religious beliefs".[92]

Poland holds the same restrictive approach towards end of life issues. The polish penal code states: "each who kills human being on his demand and under influence of compassion for him is subjected to imprisonment from 3 months through 5 years"[93], despite any conditions of a certain case and if the person who performs the act is a physician is also not taken into account. The reasons for such a strict approach are also tied to the strong bond of the state with the Catholic Church. However, state regulation allows patients reach own natural death if there was an express will for the "do not resuscitate" principle, which shows that the State in this case respects the will of the patient. At the same time, Poland, unlike Italy, do not regulate living wills and remain holding a strong position in prohibiting any end of life means.

Though Italy primarily opposes the right to assisted suicide due to the will of being compliant with the belief of the Catholic Church, as time goes, and society develops, Italy slowly changes its position and recognizes one of the few means of ending one's life by developing a more liberal approach towards end of life issues, like the recent improvement in regulating passive euthanasia and allowing advanced directives.

[92] *Italy to Allow Living Wills and the Refusal of End-of-Life Care*, The New York Times, December 14, 2017, https://www.nytimes.com/2017/12/14/world/europe/italy-living-will-end-of-life-right-to-die-assisted-suicide.html.

[93] Article 150, Polish Penal Code.

Conclusion

The right to life has always been the most fundamental and important human right, with the highest protection. However, as terminal illnesses and intolerable pains continue to be present in the lives of humans, sometimes life loses its colours and becomes a mean of surviving through endless suffering. In these cases, terminally-ill patients declare their will to end their lives in the most peaceful, painless, dignified matter, surrounded by family and friends. They, and other supporters of assisted suicide believe that one owns his/her own life, therefore, it may be only up to him/her to decide on when and how to end his/her life. Moreover, they believe that the state cannot interfere in such crucial and personal decisions as ending one's life of suffering and unbearable pain, in addition to the moral agony of knowing that there is no cure and that terminal illness will develop rapidly towards the end of one's life, which would last in terrible suffering.

Surely there are counter – arguments to assisted suicide, like underlining the positive obligation of the state to fully protect the right to life of the people, and such arguments as the slippery slope argument, which means that the legalization of assisted suicide could lead to uncontrollable and unwanted consequences. However, the existence of such risks does not eliminate the core of the issue, the survival of terminally-ill people.

Several states of the Council of Europe, such as the Netherlands, Belgium, Luxembourg, Switzerland have adopted measures to acknowledge and protect the right to assisted suicide, in addition to adopting safeguard measures in order to avoid future unwanted consequences. These measures include in themselves setting certain criteria, that the person clearly expresses his free will, that he has the capacity to do so, and that the person suffers from a terminal illness, and no cure is foreseen to be created in the near future. Though some might argue that since the legalization of assisted suicide, the number of applicants quickly

increases, it must be taken into account that the criteria are being met, therefore, the applicants of assisted suicide are in need of making such a decision.

At the same time, other states as Poland and Italy remain a highly strict policy towards assisted suicide by making it illegal, thus, residents of these states are left with no other choice than to die in intolerable sufferings and in the least dignified manner. However, the most recent case of assisted suicide in Italy sparked new debated on the matter in the Italian society, which lead to the adoption of the law on living will and the recognition of assisted suicide.

The European Court of Human Rights has developed its position on assisted suicide throughout time in its judgements, eventually recognizing assisted suicide as an individual right. This positive shift, the change in the perception of assisted suicide creates an image of the general change of mind on the matter, which gives hope to those in need that the development of an European consensus would create a general standard on the regulation of assisted suicide. Moreover, the overall change towards assisted suicide in international law (as the development of General Comment on the Right to Life by the Human Rights Committee of the United Nations, which General Discussion started on July 14th, 2015 in Geneva, that concerns the preparation of a General Comment on Article 6 of the International Covenant on Civil and Political Rights.[94] As stated on the Procedure for the Adoption of the General Comment: "The purpose of the general comment is to provide appropriate and authoritative guidance to States Parties and other actors on the measures to be adopted to ensure full compliance with the rights protected under this provision".[95], and as the change of attitude towards end – of – life measures, such as the recent legalization of passive euthanasia

[94] "OHCHR | General Comment No.36 - Article 6: Right To Life". 2015. *Ohchr.Org*. http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx.
[95] "OHCHR | General Comment No.36 - Article 6: Right To Life". 2015. *Ohchr.Org*. http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx.

in India) shows how society develops over time and that there is a probability, which gets clearer with time, that a European consensus on assisted suicide will be achieved and general standards on the matter will be created.

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