Euthanasia and the Right to Death

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1. Introduction

This paper deals with the controversial issue of euthanasia and the right of people suffering from an incurable disease at terminal stage to a dignified death. Initially, reference is made to the fundamental right to life, which is protected by many conventions and other international texts worldwide. The definition of euthanasia is given and a distinction is made between voluntary/non-voluntary and active/passive forms of euthanasia, and then the countries in which the right to a dignified death is protected by law are presented. Following, some of the key arguments for and against the practice of euthanasia and assisted suicide are listed, as they are presented in the literature. Lastly, there is a four-instance case of the European Court of Human Rights concerning the specific right in which the court held that the right to life (Article 2) cannot be interpreted as a right to death, and also that the Member States have no positive obligation under Article 8 to assist in a suicide act.

2. The right to life

The Right to Life is the cornerstone of Human Rights and must be protected by law. The Universal Declaration of Human Rights of 1948, under the UN General Assembly, is the document, which for the first time in history has defined the fundamental rights of the people. According to art. 3 of the Declaration "*Everyone has the right to life, liberty and security of person.*"[1] The Universal Declaration of Human Rights laid the foundation for the protection of human rights and many other international and regional texts followed that, inter alia, protect the fundamental Right to Life. The art. 6 of the International Covenant on Civil and Political Rights states that:

> *"(1)Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life,"*[2]

while the Convention on the Rights of the Child on art. 6 states that:

> *"(1)States Parties recognize that every child has the inherent right to life.*

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[1] Universal Declaration of Human Rights (proclaimed by the United Nations General Assembly in Paris on 10 December 1948).

[2] International Covenant on Civil and Political Rights (Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976), art. 6.

(2)States Parties shall ensure to the maximum extent possible the survival and development of the child."[3]

At the regional level, the African Charter on Human and Peoples' Rights protects the Right to Life in art. 4:

"Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."[4]

The Charter of Fundamental Rights of the European Union states in its second article that:

"(1)Everyone has the right to life. (2)No one shall be condemned to the death penalty, or executed."[5]

The European Convention on Human Rights protects this right in art. 2, and it also defines the cases, in which death is not considered to be a violation of the article of the Convention. More specifically,

"(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.

(2)Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."[6]

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[3] Convention on the Rights of the Child (Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990), art. 6.

[4] African Charter on Human and Peoples' Rights (Adopted in Nairobi June 27, 1981, entry into force October 21, 1986), art. 4.

[5] Charter of Fundamental Rights of the European Union (entry into force on 1 December 2009), art. 5.

[6] European Convention on Human Rights (as amended by Protocols Nos. 11 and 14 and supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13, entry into force on 1 June 2010), art. 2.

These are just a few of the international and regional texts that protect the right to life.[7] However, the right to life does not mean protection against death, but a ban on the unjust deprivation of life against the will of the right holder.[8]

3. Euthanasia - assisted suicide

3.1. Definition

The word euthanasia derives from the ancient Greek words εὖ+θάνατος (good+death) and can be defined as the acceleration of a patient's death to prevent further pain and suffering.[9] The act of euthanasia is manifested in active and passive, voluntary and involuntary. *Passive voluntary euthanasia* is the withdrawing of treatment necessary to preserve life at the patient's request (for example discontinuation of medication or ventilator operation), while *passive involuntary euthanasia* is done without the patient's request (when the patient is not in a position to take such a decision). *Active euthanasia* is done with medical help (usually with medication) designed to end the life of a patient with an incurable or terminal stage disease and is distinguished in *voluntary* and *involuntary*.[10] While passive euthanasia is a generally accepted medical practice,[11] active euthanasia is a prohibited practice and is being prosecuted in almost all countries of the world.

3.2. States in which active voluntary euthanasia is permitted

The laws on dignified death are based on the view that patients, not their government, politicians and their ideology or religious leaders and their doctrine, must make end-of-life decisions and determine how much

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[7] For more regional treaties that protect the human rights and the right to life, see American Convention on Human Rights (art. 4) http://www.hrcr.org/docs/American_Convention/oashr4.html, Arab Charter on Human Rights (art. 5) http://al-bab.com/documents/arab-charter-human-rights-1994, Asian Human Rights Charter (art. 3) http://www.refworld.org/pdfid/452678304.pdf, Arab Charter on Human rights (art. 5) http://www.humanrights.se/wp-content/uploads/2012/01/Arab-Charter-on-Human-Rights.pdf

[8] Holford, S. (2012) There is a right to life; is there a right to die?, *The New Zealand Medical Student Journal,* No 16 November 2012, p. 25.

[9] Annadurai, K., Danasekaran, R. and Mani, G. (2014) Euthanasia: Right to Die with Dignity, *Journal of Family Medicine and Primary Care*, 2014 Oct-Dec; 3(4), p. 477.

[10] Australian Human Rights Commission (2016) *Euthanasia, human rights and the law*, p. 3.

[11] Ibid., p. 9.

pain and suffering should endure. These laws allow intellectually capable adults with an incurable illness and confirmed prognosis to have 6 or fewer months of life to ask voluntarily and take a prescription drug to speed up their inevitable and imminent death. By giving this voluntary choice, these laws give patients dignity, control and serenity over the last few days of their lives with their family and their loved ones. Protections in the law ensure that patients remain the driving force in end-of-life care discussions.[12] Below are listed the states, where there is legislation guaranteeing the right to a dignified death through the practice of euthanasia.

- **Switzerland**: According to the Criminal Code of Switzerland, active euthanasia is forbidden.[13] The Swiss State does not recognize the concept of euthanasia,[14] however, according to Article 114 of the Code, "a murder at the victim's request" is considered less serious, than a murder without the victim's consent. Nevertheless, this act remains illegal. Article 115 of the Swiss Criminal Code states that assisted suicide is a crime and is prosecuted only if the motivation of the act is selfish, and does not prohibit the act of assisted suicide, if the motivation is altruistic.[15] Article 115 does not require the involvement of a doctor, nor that the patient is ill at terminal stage. It only requires the motivation to be selfless.[16] This liberal assisted suicide law, also, allows non-Swiss aliens to enjoy this "freedom", which has led to the phenomenon of "suicide tourism".[17]
- **Belgium**: Belgium legalized euthanasia through the *2002 Euthanasia Act*.[18] In 2014, the Belgian euthanasia law was extended to include minors suffering from terminal illness and being able to make decisions.[19]
- **Netherlands**: In 2002, *Termination of Life on Request and Assisted Suicide Act* came into force,[20] allowing euthanasia and assisted suicide by lethal medication from a doctor to patients, who meet the legal criteria of care.
- **Luxembourg**: Luxembourg adopted in 2009 legislation on euthanasia and assisted suicide.[21]

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[12] Death with Dignity Acts - States That Allow Assisted Death. (n.d.). https://www.deathwithdignity.org/learn/death-with-dignity-acts/

[13] Swiss Criminal Code, article 114.

[14] Hurst, S. A. και Mauron, A. (2003) Assisted suicide and euthanasia in Switzerland: allowing a role for non-physicians, *BMJ,* Feb 1, 2003, 326(7383), pp. 271–273.

[15] Swiss Criminal Code, article 115.

[16] Hurst, S. A. και Mauron, A. (2003), p. 271-273.

[17] Hurst, S. A. και Mauron, A. (2003), p. 273, Annadurai, K., Danasekaran, R. and Mani G. (2014), p. 477.

[18] Kidd, D. (2002) The Belgian Act of Euthanasia of May, 28th 2002.

[19] Boring, N. (2014) *Belgium: Removal of Age Restriction for Euthanasia,* Global Legal Monitor.

[20] Termination of Life on Request and Assisted Suicide (Review Procedures) Act (entered into force on April 1, 2002).

[21] The law of 16 March 2009 on palliative care, advance instructions and end-of-life accompaniment.

- **USA**: So far, five States of America and Washington D.C. have established laws, that protect the right to a dignified death:
  - **California**: The *End of Life Option Act* in California came into force on 9 June 2016.[22]
  - **Colorado**: The *End of Life Options Act* in Colorado came into force on 16 December 2016.[23]
  - **Washington D.C.**: The *Death with Dignity Act* of 2016 in Washington D.C. entered into force on 18 February 2017.[24]
  - **Oregon**: The Death with Dignity Acts in Oregon was passed in 1994. In 1997, Oregon residents confirmed their support when they defeated a voting measure aimed at abolishing the law. The law came into force a little later and its implementation began in 1998. During the time of the law, the State of Oregon reports that more than 1,500 terminal patients were prescribed to die with medication while less than 1,000 used drugs to speed up their death.[25]
  - **Vermont**: The Law no. 39 "An act relating to patient choice and control at end of life" came into force in May 2013.[26]
  - **Washington**: The Death with Dignity Act entered into force on March 5, 2009.[27]
- **Canada**: assisted euthanasia is legal in Canada since June 17, 2016,[28] while the province of Quebec had passed the Act Respecting End of Life Care in 2014 with a view to its entry into force on 10 December 2015.[29]
- **Australia**: Euthanasia is illegal in Australia at a federal level, but various states and regions have passed laws on this issue. Legislation on euthanasia came into force in 1995 in the Northern Territory,[30] but two years later it was outlawed by the Parliament.[31] In the autumn of 2017, a bill passed by the Victoria Parliament, authorizing assisted suicide, but would not come into force until June 2019.

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[22] End of Life Option Act of 2016, ABX2-15 (AB-15).

[23] End of Life Options Act of 2016, Proposition 106.

[24] Death with Dignity Act of 2016 (D.G. ACT 21-577).

[25] Death with Dignity Acts - Oregon.

[26] No. 39. An act relating to patient choice and control at end of life.

[27] The Washington Death with Dignity Act of 2009.

[28] An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying) of 17 June 2016. For more information, visit https://www.canada.ca/en/health-canada/services/publications/health-system-services/medical-assistance-dying-interim-report-sep-2017.html

[29] Act Respecting End of Life Care of 2016.

[30] Rights of the Terminally Ill Act 1995.

[31] Euthanasia Laws Act 1997 (No. 17, 1997).

3.3. Arguments in favour of euthanasia

The right to a dignified death, through euthanasia or assisted suicide, is a fairly controversial issue, which has raised concerns within the scientific community. At this point, some of the arguments in favour of this right will be presented.

According to the supporters of the "right to a dignified death", people who have an incurable, degenerative or debilitating illness should be allowed to die with dignity. Therefore, they should be given the right to choose how and when to end their lives, as this choice is purely personal and is based on the principle of respecting the personal right of everyone to choose.[32]

Furthermore, the caregiver's burden is enormous and encompasses various areas, such as the economic, emotional, physical, mental, social, as well as the time required to take care of a person who cannot take care of themselves.[33] Many patients with permanent or chronic diseases do not want to burden their family members. For this reason, euthanasia can offer to these individuals the choice of dying with dignity.[34]

The right to refuse health care, including care that maintains or prolongs life, is recognized by most states. Denial of treatment or care in cases that it is necessary to keep a person alive is called passive euthanasia.[35] Therefore, if the passive form of euthanasia is already allowed by the law, appropriate conditions should also be created for active euthanasia.

3.4. Arguments against euthanasia

On the other hand, there are many who oppose this practice. Below are some of the arguments of the euthanasia opposers.

The right to life is a natural right protected by many conventions, so it is the duty of the state to protect life and duty of the doctor to care for and not harm the patients. Such practices risk undermining the status of the

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[32] Australian Human Rights Commission (2016), p. 12.

[33] Math, S. B. and Chaturvedi, S. K. (2012) Euthanasia: Right to life vs right to die, *Indian Journal of Medical Research,* 2012 Dec; 136(6), p. 901.

[34] Ibid., p. 901.

[35] Ibid., p. 901.

physician as a therapist, and, thus undermining the relationship of trust between the doctor and the patient.[36] Therefore, in a welfare state, the concept of euthanasia should not exist in any form.[37] In addition, if the "right to dying with dignity" is recognized, people with incurable and terminal diseases will not have space in our civilized societies.[38] On the other hand, there is the practice of palliative care, which provides relief from the symptoms and the pain and patient support during the last stages of their life.[39] The legalization of the practice of voluntary active euthanasia could undermine the role, the value, and the financial support given to the practice of palliative care.[40]

Those who oppose euthanasia claim that, as suicide attempts usually occur in patients suffering from depression, schizophrenia, substance users and people suffering from obsessive-compulsive disorder, it is important to assess the mental state of the person seeking euthanasia. The attempted suicide in classical psychology is seen as a psychiatric state of emergency and for this reason, attempted suicide is considered as an indication of mental illness.[41]

In addition, there is a risk of abuse of the right to euthanasia by family members or relatives in order to inherit the patient's property, or for other selfish incentives.[42] Euthanasia is often the solution that people, who have no financial means to pay for their medical care, prefer. Therefore, if euthanasia is legitimized, there is a risk that many people from lower social strata prefer this practice, as the cost of staying alive is very high.[43] Thus, the legitimation of voluntary active euthanasia is likely to lead to other forms of euthanasia, such as non-voluntary active euthanasia or voluntary euthanasia in non-terminal cases.[44]

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[36] Australian Human Rights Commission (2016), p. 10.

[37] Math, S. B. and Chaturvedi, S. K. (2012), p. 900.

[38] Ibid., p. 899.

[39] Ibid., p. 899.

[40] Australian Human Rights Commission (2016), p. 11.

[41] Math, S. B. and Chaturvedi, S. K. (2012), p. 900.

[42] Ibid., p. 900.

[43] Math, S. B. and Chaturvedi, S. K. (2012), p. 900.

[44] Australian Human Rights Commission (2016), p.11.

4. Cases in the European Court of Human Rights

Below will be presented four cases in the ECtHR concerning this right. As we shall see below, the Court did not consider a violation in any of the cases, insisting on the view that no right to death can be derived from Article 2 of the ECHR and that there is no positive State obligation to assist in suicide that can be derived from Article 8 of the Convention.

4.1. Pretty v. the United Kingdom[45]

The applicant was a 43-year-old woman who suffered from motor neuron disease. It is a progressive neurodegenerative disease, that affects the motoric cells within the central nervous system. The disease is associated with progressive muscle weakness and, as a result of disease progression, severe weakness of the hands and feet and muscles involved in breath control occurs. Death is usually caused as a result of the weakness of respiratory muscles, coupled with the weakness of the muscles that control speech and swallowing, leading to respiratory failure and pneumonia. No treatment can prevent the progression of the disease.

The applicant's situation had worsened rapidly since the diagnosis of the disease in November 1999 and the disease was at an advanced stage. The applicant was paralyzed from the neck to the bottom, and her life expectancy was just a few weeks or months. However, her intelligence and decision-making had remained untouched. The final stages of the disease are extremely unpleasant and undignified, and, therefore, the applicant wanted to be able to control how and when she would die so that she would escape from excessive discomfort and indignation.

Although under English law, the suicide act is not a crime, the applicant, due to her physical condition, was unable to do so and needed the help of her husband. However, according to Article 2 (1) of the 1961 Suicide Act, assisted suicide is a crime. Thus, as the authorities refused her application, the applicant complained that her husband would be prosecuted if he would help her to die.

The applicant argued that assisting suicide is not in conflict with Article 2 of the ECHR, otherwise countries in which assisted suicide is not illegal would violate this provision. In addition, Article 2 protects not only the right to life but also the right to choose whether or not to continue living. It protects the right to life rather than life itself, and it is intended to protect individuals from third parties, that is, from the state and the public

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[45] *Pretty v United Kingdom* (European Court of Human Rights, Chamber, Application No 2346/02, 29 April 2002)

authorities and not from themselves. Article 2, therefore, recognizes that it is up to the individual to choose whether or not to continue to live and protects their right to death in order to avoid further suffering and indignation, as a consequence of the right to life.

The applicant, also, claimed that the suffering which she faced constituted degrading treatment, in accordance with Article 3 of the Convention, and that the State owes its citizens not only a negative obligation not to impose such treatment but also a positive obligation to protect people from it. In this case, this obligation was to take measures to protect herself from suffering, which she would otherwise have to endure. The applicant also complained of a breach of Article 8 of the ECHR, which protects private and family life. According to art. 8 of the ECHR:

> *"(1)Everyone has the right to respect for his private and family life, his home and his correspondence.*
> *(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."*[46]

According to the applicant, it was clear that the individual's right to privacy and self-determination included the right to make decisions about his or her body. She claimed, that this included the right to choose when and how she wants to die. In addition, a violation of Articles 9 (protection of freedom of thought, conscience and religion) and 14 (prohibition of discrimination) was advocated. According to art. 14:

> *"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."*[47]

The applicant claimed that she had suffered discrimination, because she could not commit suicide due to her physical condition and the fear of her husband's persecution prevented her from exercising the right enjoyed by others, who could end their lives without help, because they were not prevented to do so from having a disability.

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[46] European Convention on Human Rights, article 8

[47] Ibid., article 14

The judgment of the Court is that there has been no violation of Articles 2, 3, 8, 9 and 14. More specifically, the ECtHR held that no right to death, either with the help of a third party or with the assistance of a public authority, can be derived from Article 2 of the ECHR. With regard to Article 3, the Court has held that, in the present case, the State did not cause any ill-treatment to the applicant, and there was no complaint, that she had not taken sufficient care of the state medical authorities. It concluded that there is no positive obligation under Article 3 of the Convention to commit the state not to prosecute the applicant's spouse, if he helped her commit suicide or to provide him with a legitimate opportunity for any other form of suicide assistance.

As far as Pretty's right to respect for her private life is concerned, in accordance with Article 8, the Court held that intervention, in this case, can be justified as "necessary in a democratic society" for the protection of the rights of others. As regards the applicant's argument, that Article 9 of the Convention had been infringed, the Court ruled that her allegations do not include any form of expression of religion or other beliefs, and therefore there was no breach. Finally, as regards the allegation of breach of Article 14 of the ECHR, the Court held that the State did not violate this provision because it had an objective and reasonable justification for non-discrimination between those who are competent and those who are unable to commit suicide, as the opposite would seriously undermine the protection of the right to life, guaranteed by the 1961 Act, and the risk of abuse would, also, increase significantly.

4.2. Haas v. Switzerland[48]

The applicant is a Swiss citizen born in 1953, who suffered from severe bipolar disorder for about twenty years. During this period, he had made two unsuccessful suicide attempt and was multiple times admitted to psychiatric hospitals. On July 1, 2004, he became a member of Dignitas,[49] an association that offers, amongst other services, assisted suicide. Considering that his illness, for which treatment is difficult, made him unable to live in a dignified manner, the applicant asked Dignitas to help him end his life. Trying to obtain the necessary lethal drug, namely 15 grams of sodium pentobarbital, which is available only on prescription, in order to end his life, he approached many psychiatrists, without being successful.

In June 2005 he approached various federal and cantonal authorities seeking permission to obtain sodium pentobarbital without a prescription. He argued that Article 8 of the ECHR imposed on the state a positive obligation to create suicide conditions, that protect against the risk of failure and pain. His application was rejected. The Federal Court found, inter alia, that a distinction had to be made between the right to death of a person - which was not contested - and the right to suicide with the help of the State or a third party. The

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[48] *Haas v. Switzerland* (European Court of Human Rights, Chamber, Application No. 31322/07), 20 January 2011

[49] For further information about Dignitas, visit http://www.dignitas.ch/?lang=en

Court held that the second case could not be derived from the Convention, which did not guarantee the right to assisted suicide.

Based on Article 8 of the ECHR, Mr Haas claimed that his right to end his life with safety and dignity was violated by the Swiss State as a result of the conditions to be met in order to be able to obtain sodium pentobarbital. He then appealed to the ECtHR on 18 July 2007.

The ECtHR recognized that the right of a person to decide how and when to end his life, provided that the person in question is able to make decisions, is an aspect of the right to respect for privacy. However, the difference in Mr Haas's case concerned another issue: if under Article 8, the State had a positive duty to allow him to obtain, without prescription, a substance, that would allow him to end his life without pain and without risk of failure. Unlike the Pretty case (see above), the applicant's wish cannot, actually, be considered valid, because he is not in the final stage of an incurable degenerative disease, that would prevent him from taking his own life.

Although the Court acknowledged that Mr Haas wanted to commit suicide in safety, dignity and without excessive pain, it was of the opinion that the Swiss prescription requirement to take sodium pentobarbital aims to protect people from making hasty decisions and to prevent abuse, especially in a country like Switzerland, that allows assisted suicide. The Court had held that the risk of abuse is inherent in a system that facilitates assisted suicide and could not be underestimated. Restricting access to this medicine is aimed at protecting the health and public safety and preventing crime. The Court considered that even supposing that states had a positive obligation to take measures to facilitate a dignified suicide, the Swiss authorities did not breach this obligation in this case. Therefore, there has been no violation of Article 8 of the Convention.

4.3. Koch v. Germany[50]

Since 2002, the applicant's wife suffered from complete aesthetic-motor quadriplegia after an accident. She was almost totally paralyzed and needed artificial ventilation and continuous care and help from nursing staff. She also suffered from spasms. She had a lifespan of at least fifteen years, but she wished to terminate her life by committing suicide with the help of her husband, because her condition was preventing her from living a decent life. In 2004, the applicant unsuccessfully submitted an application to the Federal Institute of Pharmaceutical and Medical Products to authorize a lethal dose of a medicine, that would allow his spouse to commit suicide at her home in Germany.

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[50] *Koch v. Germany* (European Court of Human Rights, Chamber, Application no. 497/09), 19 July 2012

On 14 January 2005, the applicant and his wife filed an appeal with the federal institute. In February of the same year, the applicant and his wife traveled about ten hours, more than 700 kilometres, from Braunschweig to Zurich, Switzerland. On 12 February 2005, the applicant's wife committed suicide there, assisted by Dignitas. In March 2005, the Federal Court of Justice verified its previous decision, that Article 8 of the ECHR cannot be interpreted as imposing an obligation on the State to facilitate suicide with medicinal products, by granting permission to obtain a lethal dose . In April 2005, the applicant unsuccessfully brought an action seeking the declaration, that the decisions of the federal institute were unlawful. His actions in the administrative court, the administrative court of appeal and the federal constitutional court were declared *inadmissible*. The applicant complained that the refusal by the national courts to examine the merits of his complaint, concerning the refusal of the federal institute to allow his wife to obtain a lethal dose of sodium pentobarbital, had breached his right to respect for private and family life, in accordance with Article 8 of the ECHR.

In view of the extremely close relationship between the applicant and his spouse and his direct participation in the fulfilment of her desire to end her life, the Court held that the applicant was directly affected by the refusal to grant a lethal dose of the drug. It held that, as regards the refusal of the German courts to examine the merits of the complaint in the specific case, the applicant's procedural rights under Article 8 of the Convention (right to respect for private and family life) had been violated. As regards, however, the merits of the applicant's complaint, the Court held that it was for the German courts to examine it, in particular, due to the fact that there was no consensus between the member states of the Council of Europe on whether or not any form of assisted suicide should be allowed.

According to the Court, the refusal by the German authorities to grant access to the lethal substance was "necessary in a democratic society" and "proportionate with the aim pursued". The conclusion results from the argument that assisted suicide cannot be considered as included and protected by the Convention. Other reasons are, inter alia, the strong ethical dimension of this issue, the fact that there was no consensus between the Member States on this matter, the strong defence of human dignity by the German legal system for historical reasons, the protection of public security and the prevention of crime and abuse and the fact that mr. Koch's wife had access to assisted suicide abroad, and that the applicant had not shown that the trip Switzerland with his wife was capable of violating his right to private and family life.[51]

4.4. Gross v. Switzerland[52]

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[51] Puppinck, G. και Popescu, A. (2011) Koch v. Germany: The ECHR called again to decide on assisted suicide.

[52] Gross v. Switzerland (European Court of Human Rights, Grand Chamber, Application no. 67810/10), 30 September 2014

The applicant was an elderly woman, who wished to end her life, but was not suffering from a degenerative, terminal or any other disease. The applicant complained that the Swiss authorities would not grant her permission in order to take a lethal dose of a medicine to commit suicide. Ms Gross complained, that by denying her right to decide how and when she would end her life, the Swiss authorities breached Article 8 of the ECHR (the right to respect for private and family life). On 14 May 2013, the Court ruled that there had been a violation of Article 8 of the Convention, as the Swiss law was not clear enough as to in which circumstances assisted suicide was allowed. Subsequently, the case was referred to the Grand Chamber.

In January 2014, the Court was informed that the applicant had died in November 2011. In the decision of the Grand Chamber of 30 September 2014, the Court declared the action inadmissible. It concluded that the applicant had intended to mislead the Court on a question concerning the core of her complaint. In particular, she took special precautions to avoid disclosing information about her death to her lawyer and, thus to the Court, in order to avoid interruption of her case. Consequently, the Court held that her conduct constituted an abuse of the right to an individual appeal (Article 35 § 3 (a) and 4 of the Convention). Consequently, the decision of 14 May 2013 was no longer valid.[53]

5. Conclusion

The right to life is a fundamental human right and is protected by many international and regional conventions. States have a positive obligation towards citizens to protect them from acts that violate this right. However, this does not necessarily mean protection against death.

In the case of people suffering from an incurable or terminal illness, many times the prolongation of life may be undesirable, thus many people choose to resort to ending their lives. Although passive euthanasia, ie the ending of a person's life by the withdrawal of the means, necessary for the preservation of life, is a practice widely accepted, active euthanasia is illegal in most states of the world. So far, only six countries and some U.S. states have recognized the right to a dignified death.

Active voluntary euthanasia is the act of taking a medication to end life at the request of the patient. This practice enables individuals, who suffer from a terminal disease or from an incurable illness, that deprives them of any quality of life, to choose when and how they will die. In this way, patients have the ability to avoid an undignified and painful death and gain control of their condition in the last stages of their lives.

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[53] For more cases in ECtHR, see. Lambert and Others v. France, Sanles v. Spain, Ada Rossi and Others v. Italy, Nicklinson and Lamb v. the United Kingdom, Gard and Others v. the United Kingdom.

On the other hand, it is argued that the legalization of such a practice poses significant risks, which should be taken into account. The risk of abuse of this right may lead to extremely undesirable situations, such as non-voluntary or even voluntary euthanasia of individuals, who are not suffering from incurable diseases. However, by creating a transparent regulatory framework regulating this issue, cases of abuse are less likely to occur, than in an environment that does not include any such regulation.[54]

Another dominant argument against the legalization of euthanasia is that it is the duty of doctors is to provide treatment to the patients, not to deliberately cause their death. If euthanasia is legitimized, the physician's role as a therapist may be degraded and, thus the relationship of trust between the doctor and the patient may be degraded, as well. For people with an incurable illness, there is the so-called palliative care, which aims to improve the quality of life of the patient in the later stages of his life. However, often, medical care is not enough to help an individual suffering from a degenerative disease. In cases where even palliative care is not enough to save a patient from excessive pain, active euthanasia can be treated as a further form of palliative care,[55] and the physician as someone providing a service desired by the patient, in order to be relieved of his suffering.[56]

At the European Court of Human Rights, there is case law regarding this issue. The Court has held that no right to death can be derived from Article 2 of the ECHR. It acknowledged that the right to decide on how to end someone's life is an aspect of the right to privacy, but states are not required by the Convention to provide assistance for suicide acts. Also, as there was no agreement between the member states of the Council of Europe on whether or not to allow any form of assisted suicide, the Strasbourg Court ruled that it is up to the States to decide.

The right to a dignified death is extremely important, as it offers individuals the ability to choose when and how they will die. Although the right to death cannot, in any way, be interpreted as an aspect of the right to life; according to the ECtHR, it is part of the right to privacy. The *Gross v. Switzerland* case and the findings of 14 May 2013 are very important, as the Court was called upon to take a decision on the right to assisted suicide even in cases where a person does not suffer from a degenerative or terminal illness. The ECtHR initially ruled that the Swiss authorities had violated the applicant's right to privacy, by not allowing her to commit suicide with medical help, as the law is not sufficiently clear as to when assisted suicide is allowed. The case was referred to the Grand Chamber, as it concerned a rather controversial issue, but it was considered *inadmissible,* and the findings of the former decision were not made final.

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[54] Australian Human Rights Commission (2016), p.10.

[55] Australian Human Rights Commission (2016), p.11.

[56] Ibid., p.10.

This case is of great importance because, although the decision of 14 May 2013 has not become final, it opens the way for a more liberal interpretation of the Article 8 of the ECHR. Accordingly, with the findings of this case, suicide is an expression of individual autonomy, and therefore the recognition of the "right to assisted suicide" will not be due to inevitable death, but will result from respect for privacy and individual freedom.[57]

[57] Hougue, C. and Puppinck, G. (2014) The right to assisted suicide in the case law of the European Court of Human Rights. https://eclj.org/euthanasia/echr/the-right-to-assisted-suicide-in-the-case-law-of-the-european-court-of-human-rights

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