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LEGISLATING EUTHANASIA IN FINLAND

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ABSTRACT

In Finland there is no legislation on euthanasia and at the same time Finland is lacking on case law that deals with euthanasia or similar end-of-life issues. Therefore, it is important to discuss euthanasia and the legal basis and legal rights that justify legislating euthanasia Finland. Additionally, it is valuable to examine different approaches on how euthanasia has been legalized in other countries and how those examples of legislation could be utilized in Finland when drafting euthanasia legislation in regards of the dos and the don'ts. A citizen's initiative proposing the legislating of euthanasia made its way to the Finnish parliament, but that initiative was rejected. By discussing the shortcomings and proposing modifications and solutions for the worries that resulted in the rejection of the initiative will make it more likely for a legislation on euthanasia to pass in the Finnish parliament in the future.

Key words: Active euthanasia, Legislation, Human rights, Self-determination, Finland.

INTRODUCTION

There are many people who refuse to live beyond their usefulness and become a burden not only to themselves but also to others. For many the fear of death is not as great as the fear of what one might become before death. Suicide is an option that is only a possibility for the people who have the means needed and the physical strength and capability to use those means. In certain circumstances, a person might be justified in their decision to end their life themselves in order to avoid pain and terminal suffering. However, too often, a person is not justified in asking an expert for assistance in that task. This presumption is somewhat hypocritical. In order to honor human dignity, one must change the way they perceive death.[1]

The inevitable truth about life is that everyone will face death sooner or later. In the past death has been seen as something that is natural. However, in today's society many have distanced themselves from the thought of death and dying. Because of the advances in modern medicine many people are kept alive for much longer than they would naturally have lived, which is an amazing achievement but sometimes it only leaves the patients in excruciating pain with little to no relief for their suffering.[2] Some of these people would want to decide to die with the help of others but in many states, such as Finland, they are not allowed to do so legally. Choosing under what circumstances, how and when one dies is a right that should be granted for everyone on the basis of the right self-determination and the right for a dignified end.

The aim of the paper is to find legal justifications for legalizing euthanasia in Finland and providing with suggestions on legal provisions that should at the very minimum be included in a legislation on euthanasia in Finland. This will be done by examining the right to life and the right to self-determination because it is assumed that the right to self-determination is the most important right that justifies the legalizing of euthanasia. Furthermore, examining the existing legal acts on euthanasia from Belgium and the Netherlands will give an overview on how euthanasia has been legalized in those countries and what shortcomings can be found in those legal acts that should be avoided in Finland.

This paper will start by discussing euthanasia as a phenomenon because it is important to understand what euthanasia is and how it has been viewed historically before the legalizing of euthanasia can be discussed. In addition to examining the legal rights and justifications for

[1] Morris, A.A. (1970). Voluntary Euthanasia. *Washington Law Review*, 45(2), 244.
[2] *ibid.* 239-240.

making euthanasia legal, the case law of the European Court of Human Rights regarding end-of-life issues will be reviewed to get a better understanding on how the right to life and self-determination relate to those issues. The situation in Finland regarding euthanasia will be discussed including the opinions of the public, what issues could arise from the legalizing euthanasia and how those issues could be solved. Lastly, the legal conditions that should be included in a euthanasia legislation in Finland will be introduced.

1. EUTHANASIA DEFINED

The word euthanasia is derived from the Greek words "eu" and "Thanatos" and the meaning of it is literally "a good death". Generally, euthanasia is understood as a mercy killing where one person ends the life of another person for the sake of that person. There are two important features in the act of euthanasia; it involves the deliberate taking of a person's life, and the life is taken for the sake of the person whose life it is, typically due to suffering from a terminal or an incurable disease.[3]

Euthanasia is considered to be voluntary when it is carried out by a person by the request of another person. Euthanasia can still be voluntary even if the person is no longer able or competent to declare their will to die when their life is ended. A situation like this could be when one finds themselves suffering from a disease that is incurable and an illness or an accident has left that person without any rational faculties and being unable to decide of their death. When one was still competent, and if they expressed their considered wish to die in a situation like this, then the person ending the life of the patient acts upon the wishes of that patient and performs voluntary euthanasia.[4]

When the person whose life is ended cannot choose for themselves between life and death means that the euthanasia is non-voluntary. An example of a situation like this would be if an illness or an accident has left someone who used to be competent permanently incompetent, and that person has not indicated whether they want euthanasia under certain circumstances or not. Non-voluntary euthanasia would also apply in a situation where a newborn infant is handicapped or hopelessly ill. If euthanasia is performed on a person who would have been able to give or withhold consent to their death but was not asked or actually withheld consent it will also be considered as being involuntary euthanasia. Cases that are clearly involuntary euthanasia are quite rare but some medical practices, such as withholding life sustaining treatment without consent, amount to involuntary euthanasia.[5]

1.1. Passive Euthanasia

Passive euthanasia is an act of allowing natural death to take its course which means rejecting measures that would in the vicinity of the patient's imminent death be directed at the medicinal

[3] Kuhse, H. *Euthanasia Fact Sheet*. Retrieved from https://wfrtds.org/euthanasia-fact-sheet/, 19.01.2021.
[4] *ibid*.
[5] *ibid*.

changes in their body and these measures would actually be useless. Measures like these include giving a dying patient fluids and nutrients or blood products. Also, the do not resuscitate (DNR) decision prohibits the restoration of heart functions in a situation where the restoration of those functions would be more harmful than beneficial to the patient. A person can express the DNR in their living will which is an expression of the patient's will concerning their care.[6]

Passive euthanasia is the act of expediting the death of the patient and it being in the patient's best interests because the expected quality of life would be negative. Passive euthanasia expedites death by withholding treatment which would delay death. There are three necessary conditions for passive euthanasia to occur; firstly, there is the withdrawing or withholding of life-prolonging treatment, secondly, the main purpose of withdrawing or withholding treatment is to expedite or bring about the death of the patient, and lastly, the reason for expediting the death of the patient is that dying is in the own best interests of the patient. [7]

Not all cases of withdrawing or withholding life-prolonging treatment are considered to be passive euthanasia. In cases of passive euthanasia, the grounds for it are the interests of the patient when their expected quality of life is so poor that death will be a better option. There are also other reasons for withholding or withdrawing treatment, such as treatment being ineffective and not benefitting for the patient. Another reason for withdrawing treatment might be that the treatment is not cost-effective or that the treatment is too harmful or demanding. None of these reasons are considered to be passive euthanasia as they miss one or more of the earlier mentioned conditions necessary for passive euthanasia.[8]

1.2. Voluntary Active Euthanasia

For the purposes of this paper euthanasia will be understood as being voluntary active euthanasia. The voluntary active euthanasia is the act of causing the death of a patient at the express will of the patient by administering treatment that is life-shortening.[9] In other words, euthanasia is the act of deliberately killing a person who is suffering from an incurable illness and whose death is imminent.[10] Why one might choose euthanasia is usually for the reason of

[6] Ministry of Social Affairs and Health. (2012). *Human Dignity, Hospice Care and Euthanasia*. Retrieved from https://etene.fi/documents/1429646/1561478/2012, 27.01.2021.
[7] Garrard, E., Wilkinson, S. (2005) Passive euthanasia. *Journal of Medical Ethics*, 31(64), 64-65.
[8] *ibid.*
[9] Pridgeon, J. (2006). Euthanasia Legislation in the European Union: Is a Universal Law Possible? *Hanse Law Review*, 2(1), 46.
[10] Diaconescu, A.M. (2012). Euthanasia. *Contemporary Readings in Law and Social Justice*, 4(2), 474.

not wanting to live with excessive suffering that is caused by an illness or a disease that is incurable and where the inevitable outcome is death. The three most important aspects of the act of voluntary active euthanasia are incurable suffering, painless end, and mercy.[11]

The act of voluntary active euthanasia is done under the impulse of compassion in order to relieve the physical pains that a person is suffering from. In euthanasia, the lethal medication is administered by a physician.[12] Voluntary euthanasia involves at least two persons who are willing; a patient and a doctor. Euthanasia must be voluntary on the part of the doctor as well and there is no requirement that a doctor must execute euthanasia. Rather, active voluntary euthanasia provides a way to legalize free choice. Therefore, a willing patient and a willing doctor, who acts under law, are required.[13] It is important not to mistake euthanasia for assisted suicide in which the patient themselves takes the medication, that is recommended by a physician, in order to expedite their death.[14]

[11] Carl, L. (1988). The Right to Voluntary Euthanasia. *Whittier Law Review*, 10(3), 492.
[12] Diaconescu (2012), *supra nota* 10, 474.
[13] Morris (1970), *supra nota* 1, 245.
[14]Diaconescu (2012), *supra nota* 10, 474

2. HISTORY OF EUTHANASIA, ETHICS AND LAW

The idea of active voluntary euthanasia has appeared throughout history. For example, Thomas Moore and Francis Bacon recommended euthanasia for patients suffering from incurable diseases. Legalization of active voluntary euthanasia has been proposed by many, and as early as in 1870 it was proposed S.D Williams. Later in the early 1900s it was proposed by C.E. Goddard, and in 1931 proposed by C.K. Millard. What is more, countries such as Oregon State in the United States, Australia and Switzerland, have partially legalized active voluntary euthanasia, but only in facto and not in jure.[15]

Since the very early times, it has been believed that doctors and medical practitioners have an ethical duty to their patients. This means that the medical practitioners are not morally free to use their skills in any way they desire. Instead, the medical practitioner is bound by the nature and purpose that the was original nature of the medical activity, that is, to use one's skills for the benefit of the patient.[16] The medical professionals are bound by the Hippocratic Oath which states that "I will give no deadly medicine to anyone if asked, nor suggest any such counsel." Therefore, the practice of active euthanasia is antiethical to the traditional rules of the medical profession.[17] Because modern medicine is so advanced these days, it is possible to sustain biological life beyond the point where death would naturally occur. Sometimes within medical science, it is considered to be a burden to sustain the life of a patient who would be better off dead due to severe pains or other reasons. This is where the decision of allowing a patient to live on or to administer euthanasia has to be made. Legally, this creates a complicated issue where consent and choice clash with moral and legally declared rules.[18]

From a legal point of view, many judges have been involved in the debate on euthanasia. In 1961, Judge Slade stated that he accepts the fact that what the defendant did was not done with the thought of himself but out of compassion in a case dealing with mercy killing. Additionally, the judge stated that even though the act was done out of compassion, the defendant knew that

[15] Ryynänen, O-P., *et al*. (2002). Attitudes Towards Euthanasia Among Physicians, Nurses and the General Public in Finland. *Public Health*, 116, 323.
[16] Bamgbose, O. (2004). Euthanasia: Another Face of Murder. *International Journal of Offender Therapy and Comparative Criminology*. 48(1), 112.
[17] Lacewell, L.A. (1987). Comparative View of The Roles of Motive and Consent in the Response of the Criminal Justice System to Active Euthanasia. *Medicine and Law*, 6, 451.
[18] Bamgbose (2004), *supra nota* 16.

what he was doing was breaking the law and therefore the judge cannot pass over a matter of that gravity because it might tempt other people to think that also they can act in such way.[19]

When discussing legislating euthanasia, the slippery slope argument is one that always comes up at some point. The slippery slope arguments generally follow a certain form where it is stated that if a certain act A, which may not be morally wrong, is done or accepted, it will start a process which will lead to a clearly unacceptable result B. Therefore, in order to avoid B, one must refrain from A. An example of a slippery slope argument in regard to euthanasia is that in some cases, yes, euthanasia could be morally justified but executing it or making it legal would be the first step towards an inhumane society where the next steps would be killing the mentally handicapped or the useless elderly people against their will.[20]

The aforementioned slippery slope example is an extreme example and going very far by saying that legalizing euthanasia could eventually lead to the killing of the elderly without their consent. This is a justified concern but with a proper legislation regarding euthanasia a situation like this would be unlikely. Additionally, it has been pointed out that the slippery slope argument could be used to prevent the recognition of any new right because every imaginable action that is considered to be extreme could harm humanity.[21] There are, of course, possible problems with legalizing killing another person which is why strict conditions are needed and why euthanasia could be only possible in extreme cases where a life worth living is not an option anymore and the last moments would be inhuman and extremely painful with no relief.

[19] *ibid.*, 113.
[20] van der Burg, W. (2012). Slippery Slope Arguments. In: Chadwick, R (Ed.), *Encyclopedia of Applied Ethics*, Second edition (122-133). San Diego: Academic Press.
[21] Lacewell (1987), *supra nota* 17.

3. THE JUSTIFICATIONS FOR LEGALIZING VOLUNTARY ACTIVE EUTHANASIA

3.1. Case Law of the European Court of Human Rights

The European Court of human Rights (ECtHR) has dealt with issues regarding end-of-life issues such as euthanasia and assisted suicide in the past. The cases are valuable for understanding how the ECtHR views the relation between human rights that are protected in the European Convention on Human Rights (ECHR) and end-of-life issues such as euthanasia. Even if the cases are not about active euthanasia per se they are important to understand and review when discussing legislating active euthanasia. In the next chapters the two most relevant cases will be discussed.

3.1.1. Pretty v. United Kingdom

43-year-old British woman, Mrs. Pretty, suffered from a motor neurone disease which is a progressive neuro-degenerative disease within the central nervous system which is also incurable. The final stages of the disease were expected to be excessively distressing and undignified. Pretty was mentally competent and she wanted to commit suicide but due to her illness she was unable to carry out the suicide herself. However, her husband was prepared to assist her. Pretty therefore asked the Director of Public Prosecutions (DPP) not to prosecute her husband if he would assist her to commit suicide according to her wishes. It is worth noting that Mrs. Pretty asked for the DPP to not prosecute in advance, but prosecutors cannot exclude prosecution in advance because a decision to prosecute is always done ex post. The aforementioned is what makes this case so special.[22]

The case was not about euthanasia by a doctor nor was it determined as an actual assistance to suicide but instead it was an effort to be free from prosecution. The DPP refused to grant Mrs. Pretty's request to not prosecute her husband. The Divisional Court and the House of Lords did not grant the request either. Pretty therefore appealed to the ECtHR that her rights under the ECHR had been violated. Specifically, she complained that Articles 2, 3, 8, 9, and 14 were violated. These are the right to life, right to be free from inhuman or degrading treatment, right to privacy, right to freedom of thought, conscience and religion, and right to not be discriminated

[22] Leenen, H. (2002). European Court of Human Rights, Assistance to Suicide and the European Court of Human Rights: The Pretty Case. *European Journal of Health Law*, 9(3), 257-258.

against. All of the appeals were rejected.[23] In the next paragraphs the reasons why the ECtHR rejected the appeals will be discussed as well as the importance that this case and the decisions made have when discussing legalizing voluntary active euthanasia.

The ECtHR held that Article 2 of the ECHR does not only dictate the States to refrain from intentionally and unlawfully taking a life but also to take appropriate actions to protect the lives of those who are within that State's jurisdiction. Article 2 does not take interest in the quality of living or what a person might choose to do with their life. A right to die cannot be acquired from the wording of Article 2 without a misinterpretation of words. Even if it would be accepted that the right to life does not prevent a suffering patient to die with assistance from a doctor under strict safeguards, it would not contain an entitlement to get that assistance. Therefore, the ECtHR ruled that the prohibitive rules of the UK are not in violation with Article 2. However, the ECtHR did not mention whether under certain circumstances Article 2 allows the termination of life on request.[24]

Mrs. Pretty's demand to a dignified end through the legal recognition of a right to die fell outside of the wording of Article 2 as its most central concern is to guarantee respect for the holiness of life. Hence, the dignity of all humanity in the most universal and objective form in order to protect life is given force over the individual and subjective dignity of a person who is seeking for assistance to end their life. Consistent with its previous case law related to Article 2, the ECtHR confirmed that the right to life may only be instrumentalized to promote life and not to end it.[25]

Moving further, Article 3 establishes a positive obligation for a state to make sure that individuals are not subjected to inhuman or degrading treatment. Suffering occurring from an illness which results from natural causes might be covered by Article 3. However, it might only be covered in cases where there is a risk of the illness being made worse by treatment in such cases where authorities could be held responsible, for example in cases of confinement.[26] As there was no dispute on the fact that the government had not inflicted any ill-treatment nor was it suggested that Mrs. Pretty did not receive acceptable and sufficient care from the medical authorities, the ECtHR asserted that in order to find the state responsible for inhuman and

[23] *ibid*.
[24] *ibid.*, 259-260.
[25] Millns, S. (2002). Death, Dignity and Discrimination: The Case of Pretty v. United Kingdom. *German Law Journal,* 3(10).
[26] Leenen (2002), *supra nota* 22, 260.

degrading treatment would place an extended construction on the idea of treatment under Article 3.[27]

Article 3 of the ECHR states that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment."[28] The court stated that it must have a flexible approach in interpreting the ECHR and therefore leaving room for development in the future. Nonetheless, in this case, the court cannot allow the interpretation of the word "treatment" to be extended to mean the severe suffering of Mrs. Pretty in a manner where the DPP could guarantee the non-prosecution based on that. However, ECtHR did not precisely explain what falls under the term "treatment" in Article 3. As Article 3 deals with multiple types of actions, it is not obvious that "treatment" in Article 3 could not cover the prohibition to end severe suffering.[29]

What comes to Article 8, the right to private and family life, the ECtHR considers personal autonomy to be a fundamental principle of Article 8.[30] States can only interfere with the right to private and family life if it is necessary for public safety, for the prevention of disorder or crime, or for the protection of rights and freedoms of others.[31] When the ECtHR assessed whether the interference in Mrs. Pretty's private life had a legitimate justification, the essential issue at hand was the necessity of the interference. The restriction of assisted suicide was clearly enforced by law for the legitimate aim of safeguarding life and protecting the rights of others. The ECtHR noted that the idea of necessity requires that the interference has to be done due to a pressing social need which has to be proportionate to the legitimate aim that is sought. Eventually, the ECtHR was not convinced by Pretty's suggestion that the ban on assisted suicide was disproportionate as states are allowed to use the criminal law to regulate acts which may be detrimental to life and public health and safety.[32]

The ECtHR had no issues in promptly dismissing that there had been any violation of Article 9 in Mrs. Pretty's case. Article 9 guarantees the right to freedom of thought, conscience and religion, including freedom of belief. Mrs. Pretty appealed on this Article based on the claim that it includes the expression of her belief in assisted suicide, and due to the ban on getting assistance her individual circumstances were not taken into account. The ECtHR's discussion of

[27] Millns (2002), *supra nota* 25.
[28] Council of Europe. European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) as amended by Protocols Nos. 11 and 14. 4 November 1950, Art. 3.
[29] Leenen (2002), *supra nota* 22, 260.
[30] *ibid.*
[31] European Convention on Human Rights, *supra nota* 28, Art. 8(2).
[32] Millns (2002), *supra nota* 25.

Article 9 is hasty and superficial as not all opinions or convictions can constitute beliefs that would be protected under Article 9.[33]

The complaint of violation of Article 14, prohibition of discrimination, was also rejected. It was argued that Mrs. Pretty was discriminated against those people who are able to end their own lives without anyone's assistance. The ECtHR stated that while there might exist a difference in treatment, that was based upon a reasonable and an objective justification in order to avoid the risk of abuse of vulnerable people who might be coerced into asking for an early termination of their life.[34]

In this case the ECtHR ruled only based on the British law and it goes no further than the Pretty case. However, it was stated in more than one paragraph that it is mainly up to the states to determine how the right to life is protected. Additionally, if states were to loosen the prohibition on assisted suicide or on similar practices and creating exceptions it would be up to the states to assess the risks and the likelihood of abuse. When regulating euthanasia, the state's positive obligations requires that such regulation must include strict rules and guidelines relating to the patient's request, the unbearable suffering and the absence of an alternative that would relieve the suffering.[35]

3.1.2. Haas v. Switzerland

The applicant, Mr. Haas, had been suffering from a serious bipolar disorder for twenty years, during which he had attempted suicide twice and had stayed in psychiatric hospitals on multiple occasions. Mr. Haas became a member of Dignitas which is an association that offers assisted suicide as one of its services. As treatment for Mr. Haas' illness is difficult and the illness made it impossible for Haas to live with dignity, he asked Dignitas to assist him in ending his life. Haas approached several psychiatrists in an attempt to obtain the necessary lethal substance, but he was unsuccessful.[36]

After the applicant had unsuccessfully contacted various different official bodies in trying to seek permission for obtaining the lethal drug, he appealed to the Federal Court claiming that his rights under Article 8 of the ECHR had been violated. More specifically, he claimed that not being able to obtain a prescription for the drug needed to commit suicide was interfering with his

[33] *ibid.*
[34] *ibid.*
[35] Leenen (2002*) supra nota* 22*,* 259.
[36] Haas v. Switzerland, no. 31322/07, ECtHR, 2011.

right to respect for private life. He further argued that while this interference was in accordance with the law and it had a legitimate aim, it was not proportionate in his case. The Federal Court dismissed the appeals of the applicant. As a result, Mr. Haas complained to the European Court of Human Rights.[37]

Similarly, as in Pretty v. UK, the ECtHR stated that one aspect of the right to respect to private life is an individual's right to decide the moment and manner of their death as long as the decision is made voluntarily and without any duress. The Court correctly differentiated this case from Pretty v. UK on certain grounds; Haas was not in the terminal stages of an incurable illness nor was he denied the right to die as he was still able to act on his own, and Haas was not seeking immunity from prosecution. Accordingly, the question before the ECtHR was whether there is a positive obligation on a state to take measures that facilitate a suicide which an individual considers to be the most dignified, in this case a suicide that is the least painful and most likely to succeed. More specifically there was a question whether a state has an obligation to take action to help a citizen carry out their aim when a third-party refuses to act in a way that prevents the citizen from pursuing their most desired route.[38]

Again, the ECtHR repeated their view that personal choices around the time and circumstances of dying are protected under Article 8. Still, the ECtHR emphasized that the ECHR must be read as a whole and where life is in the balance, Article 2 must be considered, and it must be taken into account when interpreting Article 8. The ECtHR also stated that each state maintains a margin of appreciation over morally charged issues, such as assisted dying, because different approaches towards the practices exist in different countries.[39]

It was concluded by the ECtHR that Switzerland's requirement of a medical prescription following a psychiatric assessment constitutes a proportionate, necessary and a legitimate aim of safeguarding the protection of health and public safety and the prevention of abuse while still allowing choices around death being exercised. It was acknowledged that abuse is a very real possibility in a permissive state like Switzerland. Unlike in Pretty v. UK, Haas was seeking a positive in wanting the state to act and put aside enacted legal restrictions on obtaining a controlled substance. The ECtHR articulated that the fact that one has the right to make decisions

[37] *ibid*.
[38] Harmon, S.H., Sethi, N. (2011). Preserving Life and Facilitating Death: What Role for Government After Haas v. Switzerland? *European Journal of Health Law*, 18(4), 359-360.
[39] *ibid.,* 360.

concerning their death cannot impose an obligation on the state to assist in that death by abolishing statutory rules which have legitimate public health purposes.[40]

3.2. Human Rights

3.2.1. Right to life

According to the most traditional concepts, life is the most important right of people and it is protected by national and international regulations, such as the Constitutions of different states, the Universal Declaration of Human Rights (UDHR) and the European Convention on Human Rights.[41] The right to life is considered as such a sacred right that it can't be ended at consent or will.[42]

The right to life is vital to the system of human rights and freedoms. What is more, without the protection of the right to life, the safeguarding of all the other rights would be purposeless. There are certain specific juridical characteristics to the right to life. Firstly, it is a fundamental right which validates its sovereignty to the other rights of personhood. Secondly, it is an absolute right before all other persons and before public authorities. Lastly, it is a right that the owner cannot reject. The aforementioned juridical characteristics of the right to life may become controversial when taking into account situations where a person wishes to be euthanized due to a severe illness and their wish is granted under conditions that are guaranteed by euthanasia legislation.[43]

Article 3 of the UDHR states that "everyone has the right to life, liberty and security of person." In addition, the International Covenant on Civil and Political Rights states in article 6 that "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."[44] Article 2 of the ECHR states that "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."[45] Article 7 of the Finnish Constitution guarantees every Finnish person the right to life,

[40] *ibid.,* 361-362.
[41] Simion, M. (2019). Euthanasia, Pros and Cons in the Jurisprudence of the European Court of Human Rights. *Fiat Iustitia*, 2, 174.
[42] Bamgbose (2004), *supra nota* 16, 118.
[43] Morar, D.E. (2019). Considerations Concerning the Person's Right to Life Vs. The Person's Right to Self-determination in the Jurisprudence of the European Court of Human Rights. *Revista Facultatii De Drept Oradea*, 2019(1), 68-69.
[44] Nemtoi, G. (2020). The Right to Life versus the Right to Die. *Logos Universality Mentality Education Novelty Section: Law*, 8(1), 2.
[45] European Convention on Human Rights, *supra nota* 26, Art. 2(1).

personal liberty and integrity and security. The Article further states that "no one shall be sentenced to death, tortured or otherwise treated in a manner violating human dignity. The personal integrity of the individual shall not be violated, nor shall anyone be deprived of liberty arbitrarily or without a reason prescribed by an act."[46]

There are some limited circumstances under which the deprivation of life may be justified. The ECtHR has explained the limitation by referencing to the very nature of the right to life. Life is the foundation of all other rights and freedoms, and also a necessary requirement for the enjoyment of those, and therefore it can't be disposed of within the same margins that are established by different norms that grant freedoms. The freedom of religion, trade union freedom or the right to representative democracy all have a so-called negative aspect meaning that these rights themselves include the freedom of not to believe in any religion, not to join a union or not to use one's right to vote. However, the ECtHR has dismissed the premise that Article 2 of the ECHR protects the right to life instead of life itself. ECtHR has stated that Article 2 is unidirectional, because it can't be interpreted as granting the total opposite right, this being a right to die, without a distortion of language. Hence, no right to die can be derived from Article 2 according to the ECtHR.[47]

In addition to the legal reasonings of Article 2, it can be discussed that when a severely suffering person, who has no alternatives to alleviate the suffering, is not allowed to get assistance to end their life, the right to life is actually converted into a duty to live. This goes against the intention of classical human rights which today and also historically aim at protecting people against the state and against private parties. Even the title of the ECHR is aimed at rights and freedoms instead of creating duties upon the individual. It is not meant to limit the rights of the individuals.[48] Article 2 of the ECHR establishes positive obligations to the State Parties. These obligations include the obligation to protect an individual whose life is at risk and, in certain cases, the obligation to protect individuals against themselves.[49]

One could argue against the legitimacy of euthanasia on the basis of the ECtHR interpretation of Article 2. Nonetheless, the ECtHR has balanced the protection of life with other values, such as the right to respect for private and family life that is guaranteed in Article 8 of the ECHR. The

[46] Suomen perustuslaki 11.6.1999/731. Art.7. Retrieved from https://www.finlex.fi/fi/laki/ajantasa/1999/19990731#L2P7, 05.05.2021.
[47] Zannoni, D. (2020). Right or Duty to Live? Euthanasia and Assisted Suicide from the Perspective of the European Convention on Human Rights. *European Journal of Legal Studies*, 12(2), 190-191.
[48] Leenen (2002), *supra nota* 22, 259.
[49] Zannoni (2020), *supra nota* 47, 191-192.

ECtHR includes the right to have children in the right to family life. This right also includes the right to not have children. Therefore, the ECtHR recognizes that the right to abortion is included in Article 8, and it is a legitimate expression of self-determination of the mother. As a conclusion, the right to private and family life involves a restriction of the possible right to life of the aborted embryo.[50]

3.2.2. Right to Private Life and Self-Determination

Many jurisdictions today recognize the right of competent patients to be entitled to make their own decisions about medical treatment that is life-sustaining. Patients can refuse life-sustaining treatment even if that decision is nearly identical to a decision of ending one's life. The crucial basis of the right to decide about maintaining or ending life-sustaining treatment is the respect for a person's autonomy and assessment of what will be best for them which is why it is reasonable to assume that it has a direct relevance to the legalization of voluntary euthanasia. Accordingly, broadening the right of self-determination to cover cases of voluntary euthanasia does not require a huge shift in legal policy, and no new legal values or principles need to put into effect.[51]

Article 8 of the ECHR covers the right to physical and psychological integrity and making choices related to one's body also in the negative sense, meaning that a person has the right to make choices about their own body even if the behavior poses a danger to health or might even be life-threatening. When the refusal of medical treatment is involved the relevance for the right to private life is maybe even more clear. The focal point switches from physical and psychological integrity to a more subjective element that is related to the personal way that one conceives their relationship with illness, their body, and with their dignity and personal identity which is defined by each person's own belief of life. A patient denying a transfusion, refusing an amputation, or asking for the discontinuation of artificial ventilation might do so in order to protect their own values and ideals that establish their own personal identity. Their personal identity might overrule their wish to stay healthy and alive. A good example of this is a Jehovah's Witness who wishes to live but doesn't allow a blood transfusion as they would rather choose death over eternal damnation.[52]

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[50] *ibid*.
[51] Young, R. (2020). Voluntary Euthanasia. *The Stanford Encyclopedia of Philosophy* (Spring 2020 Edition). Edward N. Zalta (ed.), retrieved from https://plato.stanford.edu/archives/spr2020/entries/euthanasia-voluntary/, 09.02.2021.
[52] Zannoni (2020), *supra nota* 47.

The ECtHR has pointed out that in the medical field the refusal to receive certain medical treatment could lead to fatal outcomes. Nevertheless, the use of medical treatment without having a mentally competent adult patient's consent would interfere with that person's physical integrity that could violate the right to private and family life. Accordingly, a person can exercise their choice to die by refusing their consent to life-prolonging treatment. Similarly, euthanasia, being an expression of self-determination of a competent person, has its foundation and protection under Article 8 of the ECHR.[53]

In the case Pretty v. UK, the ECtHR acknowledged that it was not able to exclude that preventing a person from exercising their choice to avoid what they consider as being an undignified end to their life might constitute as being an interference to the right to private life. Hence, not taking into account the indirect formulation and using the word "choice", the ECtHR accepted that a person's wish to be assisted in suicide falls within the concept of private life.[54] The ECtHR accepted the suggestion that Article 8 characterized the right to self-determination including the right to make decisions about one's body as well as the right to choose how and when to do die so that suffering and indignity could be avoided. Additionally, in Pretty v. UK, the ECtHR stated that the way one chooses to pass the last moments of their life are a part of the act of living and everyone has the right to ask that choice to be respected. [55]

The ECtHR, in its discussion about human dignity in Pretty v. UK, stated that human dignity is the very essence of the European Convention on Human Rights. What is even more substantial, the conception is not linked to the sanctity of human life but instead to the quality of life which may fall within the scope of Article 8. In a statement, the ECtHR has emphasized the link between law and the development of medical technologies and argued that the ever more developing field of medical knowledge allowing longer life expectancies should not mean that people are "forced to linger on in old age or in states of advanced physical or mental decrepitude which conflict with strongly held ideas of self and personal identity." This statement is an important step towards acknowledging that respect for dignity consists of a social element regarding issues dealing with quality of life instead of being only limited to a consideration of life in itself. [56]

[53] *ibid.,* 195.
[54] *ibid.*
[55] Millns (2002), *supra nota* 25.
[56] *ibid.*

Additionally, in Haas v. Switzerland the ECtHR considered that Article 2, the right to life, requires the national authorities to prevent people from taking their lives when the decision is not made freely or with full understanding. The ECtHR further specified that when an individual has the ability to make a free decision and act upon it, that right should be considered to be one of the aspects of the right to private life within the meaning of Article 8. However, the court lastly stated that even though a person's wish to die falls within Article 8, it does not imply that a right to die exists.[57]

A person can exercise their right to private life by making a free decision about their death and acting upon it. However, as can be seen from the case law discussed earlier, a state has no obligation to assist a person in taking their life by annulling existing legislations or limitations that are in existence for the protection of the public safety and health. A state is within their right to put more weight on the protection of life than on the right end it.[58] However, as states respect the right of a patient to refuse medical treatment, that refusal in many cases being detrimental to that patient's life, states should be able to expand that same respect to the right to get active euthanasia in cases where there is no relief for pain or no life worth of living.

[57] Zannoni (2020), *supra nota* 47.
[58] Harmon, Sethi (2011), *supra nota* 38, 360.

4. EUTHANASIA LEGISLATION IN THE NETHERLANDS AND BELGIUM

In the Netherlands, The Termination of Life on Request and Assisted Suicide Act (Dutch Euthanasia Act) came into force on the 1st of April 2002.[59] Goals of the law is to provide legal security for all involved in the process of euthanasia, assuring cautious practice, and providing a sufficient framework for physicians to be accountable for their actions and for increased transparency and societal control. The Dutch society found euthanasia legitimate based on the principle of compassion and the principle of autonomy or the right to self-determination.[60] Before the Dutch Euthanasia Act, euthanasia or assisted suicide were prohibited acts under all circumstances according to sections 293 and 294 of the Dutch Criminal Code. Up to that date, the relevant case law recognized an exception to that prohibition in certain situations, specifically in cases where a physician acted at the request of the patient and complied with a number of due care requirements. The legal basis for this can be found in the general statutory ground for exemption from criminal liability of force majeure in the sense of a conflict of duties. The conflict of duties in this case would be the legal duty to not terminate a life and the professional duty to remove unbearable suffering when there is no chance of recovery. If the court were to accept force majeure as a defense, the charges against the physician would be dropped.[61]

In 2002, the Dutch Euthanasia Act added an exemption from criminal liability to the sections 293 and 294 of the Criminal Code. Under these exemptions euthanasia does not constitute a criminal offence if the action is done by a physician, if the physician complies with the due care requirements found in section 2 article 1 of the Dutch Euthanasia Act, and if the physician also reports the termination to the municipal forensic pathologist. In principle, termination of life has not been legalized as it still remains as a punishable offence but if it is performed under the conditions that are specified in the Act it is not deemed to be punishable.[62]

There are several different due care requirements laid out in section 2 article 1 of the Dutch Euthanasia Act and the physician must comply with all of them in order to invoke the exemption

[59] Legemaate, J., Bolt, I. (2013). The Dutch Euthanasia Act: Recent Legal Developments. *European Journal of Health Law*, 20(5), 452
[60] Denys, D. (2018). Is Euthanasia Psychiatric Treatment? The Struggle with Death on Request in the Netherlands. *The American Journal of Psychiatry,* 175(9), 822.
[61] Legemaate, Bolt (2013), *supra nota* 59.
[62] *ibid*.

from criminal liability of euthanasia. Firstly, the physician must be certain that the request made by the patient was voluntary and well-considered. Secondly, the physician must be convinced that the patient is suffering unbearably and has no prospect of recovery, and the physician must also have informed the patient of their situation and outlook. Thirdly, both the physician and the patient have to be convinced that there is no other reasonable solution to the patient's situation. The patient has to be seen by at least one other independent physician who will give their opinion in writing to the conditions mentioned above. Lastly, the termination of life has to have been carried out with due care from the medical perspective.[63]

The Belgian House of Representatives passed the Act Concerning Euthanasia (the Belgian Euthanasia Act) on 28th of May 2002. The Act came into force on 23rd of September the same year. [64] The issue of euthanasia evolved gradually in Belgium and it revealed itself in medical progress's wake where people understood that life can be prolonged but that does not mean that patients get the treatment necessary for their disease or appropriate pain relief.[65] The legislative process was relatively short in Belgium as it began in 1999. The reason why the brief legislative process is worth discussing is because it was in no way legally structured beforehand; there existed no relevant case law and the public prosecutor's office had not initiated proceedings against anyone regarding euthanasia. Because there is a lack of case law in Belgium, the euthanasia act includes many detailed provisions.[66]

Section 2 of the Belgian Euthanasia Act defines euthanasia as being the intentional termination of life by someone other than the person concerned at the request of the latter. The act partially decriminalizes euthanasia as it is not considered to be an offence in two circumstances.[67] Section 3 of the act lays out the circumstances under which euthanasia is not to be considered as an offence. Section 3 Article 1 states that a physician who performs euthanasia commits no criminal offence as long as they ensure that the patient is of age or is an emancipated minor, and that the patient is legally competent and conscious at the moment of making the request. In addition, the request has to be voluntary, well-considered and repeated, and it cannot be the result of any external pressure. Lastly, the patient has to be in a medically futile condition of constant and

[63] *ibid.*, 453.
[64] Adams, M., Nys, H. (2003). Comparative Reflection on the Belgian Euthanasia Act 2002. *Medical Law Review*, 11, 353.
[65] Van Overstraeten, M. (2009). Belgian Act on Euthanasia: Alterations to be Expected? *Medicine and Law*, 28(4), 755.
[66] Adams, Nys (2003), *supra nota* 64.
[67] Van Overstraeten (2009), *supra nota* 65, 756.

unbearable physical or mental suffering that cannot be relieved, and it is resulting from a serious and incurable disorder that is caused by an illness or accident.[68]

According to the section 3 article 1 and section 4 article 2 of the Belgian Euthanasia Act the physician who performs euthanasia does not commit a criminal offence as long the rules and procedures mentioned above have been followed. Legally this implies that euthanasia remains as a criminal offence and that only a physician can practice euthanasia which is not a legal offence as long as the conditions are respected. The situation is similar in the Netherlands where euthanasia is also reserved only to the medical profession.[69] It is important to leave the practicing of euthanasia only to the medical professionals as that ensures euthanasia being a reliable procedure with minimal chances of anything going wrong.

Article 2 of section 3 additionally states all the necessary steps a physician must take before carrying out euthanasia. These actions include the physician informing the patient about their health condition and life expectancy and discussing with the patient their request for euthanasia and the possible therapeutic and palliative courses of actions and what are the consequences of those. The physician must, together with the patient, come to the belief that there is no reasonable alternative to the patient's situation and that the patient's request is completely voluntary. The physician must be certain of the patient's constant physical or mental suffering and the durable nature of their request. The physician must also consult another physician, who is independent of the patient as well as of the physician and they must be competent to give an opinion about the disorder in question, about the serious and incurable character of the disease.[70]

4.1. Euthanasia on Psychiatric Patients and Minors

The requirement of the suffering being caused "from a serious and incurable disorder that is caused by an illness or accident" in the Belgian Euthanasia Act provoked some debates in the Belgian Parliament. The Belgian Euthanasia Act makes no distinction between physical or mental disorders. Therefore, in this situation, mental suffering without physical suffering is an adequate condition which has led to the acceptance of euthanasia on the request of psychiatric patients. When the legalization of euthanasia was discussed in the Parliament a psychiatric patient to be entitled to ask for euthanasia was something that was considered as being prohibited. The president of Chamber Commission of Justice concluded that psychiatric patients

[68] The Belgian Act on Euthanasia of May, 28th 2002. (2003). *European Journal of Health Law*, 10(3), 329.
[69] *ibid*.
[70] *ibid.,* 329-330.

would not be allowed to ask for euthanasia as that is not consistent with the condition of free and voluntary expression of will. However, a mental illness does not automatically mean that a person is not able to make valid legal decisions.[71]

Even if a mentally ill person would be able to make valid legal decisions, that does not mean that people with psychiatric illnesses should have the possibility to get euthanasia. At least for the time being euthanasia should be strictly reserved for people with a physical illness because there is still complexity in assessing the criteria of due care in cases of psychiatric suffering.[72] The criteria for psychiatric suffering are less objective and psychiatric disorders by their very nature are not life-threatening. Additionally, making a distinction between disorder-related and suffering-related want to die is difficult.[73]

In 2014, the Belgian Euthanasia Act gave minors the right to request euthanasia, as long as the parents of the child agree with the request. There is no minimum age mentioned in the Act, but the minor must be factually capable of making a request for euthanasia. The Dutch Euthanasia Act allows a minor aged between 16-18 to make a request for euthanasia when they have an understanding of their own interests and their parents are involved in the decision-making process. What is more, if a minor aged between 12-16 has an understanding of their own interests then a physician can consent on the request for euthanasia, again the parents have to agree with the request.[74] The Belgian Euthanasia Act has much more stricter conditions on euthanasia on minors than the Dutch Act. The Belgian Act requires that the minor patient has to be suffering with constant and unbearable physical pain that cannot be alleviated and which is a result from an incurable disorder that will cause death within a short period of time. The Dutch Act, however, grants euthanasia for minors under the same circumstances as for adults with the exception that parents have to be involved in the decision-making process.[75]

Euthanasia is generally justified on the principle of respect for self-determination and individual autonomy. It is much more complicated to use this as a justification for allowing minors to request euthanasia; it is an ongoing discussion whether minors are able to make autonomous

[71] Nys, H. (2017). A Discussion of the Legal Rules on Euthanasia in Belgium Briefly Compared with the Rules in Luxembourg and the Netherlands, 16-17. In D. Jones, C. Gastmans, & C. MacKellar (Eds.), *Euthanasia and Assisted Suicide: Lessons from Belgium* (Cambridge Bioethics and Law 5-6). Cambridge: Cambridge University Press.
[72] Evenblij, K., *et al.* (2019). Euthanasia and physician-assisted suicide in patients suffering from psychiatric disorders. a cross-sectional study exploring the experiences of Dutch psychiatrists. *BMC Psychiatry*, 19(74).
[73] Denys (2018), *supra nota* 60.
[74] Nys (2017), *supra nota* 71, 14.
[75] *ibid.*, 19.

choices due to their age and sensitivity. Some argue that in general minors do not have the intellectual capacity and experiential knowledge that is needed to formulate complex judgment which would mean that they have limited capabilities when giving informed consent and making specific decisions about euthanasia.[76] The question whether minors should be allowed to request is a complex one and the debate surrounding euthanasia in minors is one that is at an early stage. There is also a lack of actual experiences of minors and their parents who have been involved in the process of euthanasia. The topic is a sensitive and it needs to be studied more to reach any definite ethical conclusions.[77] For the aforementioned reasons euthanasia in minors should not be allowed in Finland.

[76] Cuman, G., Gastmans, C. (2017). Minors and euthanasia: a systematic review of argument-based ethics literature. *European Journal of Pediatrics*, 176, 841.
[77] *ibid.*, 846.

5. CURRENT STATUS OF EUTHANASIA IN FINLAND

Finland does not have any legislation regarding euthanasia, but it is a punishable act under the Finnish Criminal Act and more specifically acts of active euthanasia will be punishable under Chapter 21 of the Finnish Criminal Act as voluntary manslaughter, murder or voluntary manslaughter under mitigating circumstances. Article 1 of Chapter 21 states that who kills another person shall be sentenced of voluntary manslaughter to at least eight years of imprisonment.[78] Finnish Criminal Act defines murder in article 2 of Chapter 21 as manslaughter that is premeditated, committed in a particularly cruel manner, or committed in a manner that causes serious danger to the public, and when assessed as a whole the offence is aggravated.[79]

Active euthanasia would most likely be punished as voluntary manslaughter under mitigated circumstances as defined in article 3 of Chapter 21: if the manslaughter, when taking into account the exceptional circumstances of the offence, the motives of the offender or other related circumstances, when assessed as a whole, is to be considered to be committed under mitigating circumstances, the offender shall be sentenced to imprisonment for at least four years and at most ten years.[80] The fact that euthanasia is done at the request of the person suffering with an illness means that act might be considered as being done under mitigated circumstances because the one performing euthanasia is acting out of compassion and at the request of the person. These circumstances of course do not remove the criminal liability, but they might affect which criminal offence the act falls under and might therefore reduce the sanction.

Euthanasia is illegal and a punishable act on the grounds of the Criminal Act and also on grounds of the Act on the Status and Rights of Patients. Therefore, as stated earlier, ending a patient's life by a physician or some other assistant is punishable by law.[81] The act on the Status and Rights of Patients gives the patient the right to refuse treatment. In Finland the patient's self-determination is at its strongest in refusing from getting treatment but it does not give the patient the possibility or right to demand certain care or treatment. Therefore, a patient cannot demand euthanasia and its execution.[82]

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[78] Rikoslaki, 19.12.1889/38. Chapter 21, Art. 1. Retrieved from https://www.finlex.fi/fi/laki/ajantasa/1889/18890039001#L21, 02.03.2021.
[79] *ibid*., Art. 2.
[80] *ibid*., Art. 3.
[81] Herminen, P. (2019). The Legality of Active Euthanasia in Relation to Human Rights and Legal Approaches to Active Euthanasia in Different States. *L'Europe Unie*, 15, 45.
[82] Lääkäriliitto. *Eutanasia ja avustettu itsemurha*. Retrieved from https://www.laakariliitto.fi/laakarinetiikka/elaman-loppu/eutanasia-ja-avustettu-itsemurha/, 02.02.2021.

The Belgian Euthanasia Act does not apply to assisted suicide which might be due to the fact that the Belgian criminal law does not recognize suicide as a punishable offence. Therefore, it could be argued that assisted suicide is not either illegal as to why there is no need for regulation. However, assisted suicide might be a punishable offence in an indirect way and because there is a lack of case law it is difficult to know whether it would be punishable or not.[83] This is similar to the situation in Finland because in Finland assisted suicide is not illegal as there is no legislation related to that and neither suicide is considered to be illegal in Finland. However, legal experts believe that if someone working in the medical field would assist a patient in committing suicide, they would most likely be punished but for now no precedent exists.[84]

Recently, in January of 2021, the Northern Karelia District Court sentenced a man to four years and six months of imprisonment for assisting his partner in committing suicide in Finland. The man was also the caregiver of the woman. The woman suffered from diabetes and was wheelchair bound and unable to get out of bed on her own, but she was still able to use her hands. The man gave the woman, at her request, a lot of alcohol, pills and insulin. The woman had taken the pills and injected the insulin herself. The man knew the suicidal intention of the woman and witnessed the act but did not try to stop the woman. He called for help only when he woke up in the morning after the woman had already died. The man was prosecuted with voluntary manslaughter by the prosecutor, but the District Court detected alleviating conditions and convicted the man of voluntary manslaughter under mitigating circumstances.[85]

According to the evaluation of the District Court the death of the woman was caused due to the actions of the caregiver. The man had a contract based legal duty as the caregiver to prevent the death but instead he encouraged it by supplying the woman with the alcohol and drugs. The Court determined that the woman's ability to regulate her behavior was diminished due to sleep deprivation, intoxication and a severe mental disorder, and therefore she was not fully competent to make a decision regarding her death, but she understood the risks of her actions. The fact that the woman had expressed her will to die and asked for assistance, was seen as one of the

[83] Adams, Nys (2003), *supra nota* 64, 356.
[84] Mäki, K. (2020). Dödhjälpsdebatten i Finland. In: M.A. Horn, D.J.H. Kleiven, M. Magelssen (Eds.), *Dødshjelp I Norden? Etikk, klinikk og politikk* (76). Oslo: Cappelen Damm Akademisk.
[85] Kainulainen, J. (2021). *Omaishoitaja antoi avopuolisolleen alkoholia, lääkkeitä sekä insuliinia hengen riistämistä varten - tuomittiin surmasta 4 ja puoleksi vuodeksi vankeuteen.* Retrieved from https://yle.fi/uutiset/3-11723306, 03.03.2021.

mitigating circumstances in favor of the defendant. The expression of will of the woman was the key motive for the actions of the defendant.[86]

Matti Tolvanen, a Finnish professor of criminal law, has stated that the judgment of this case was balanced and in line with the existent legal situation. A lot of importance was put on the fact that the defendant was the caregiver of the woman and that the woman was not able to fully understand the consequences of her actions. If the situation had been different the judgment might be completely different. In a case where someone witnesses another person committing suicide but does not prevent it, it is unlikely that the witness would be prosecuted. However, the situation gets more complicated if the person actively contributes to someone committing suicide. Even experts have different views on how such matters should be approached legally.[87]

Assisted suicide is a very grey area in Finland what comes to the legislation and prosecution because there is no straightforward answer to whether assisted suicide is illegal or not. Tolvanen further stated that this is worrisome when talking about due process because the aim of the law is to be as unambiguous as possible. Hence, it is problematic that a person can't anticipate the consequences that one's actions can have. Tolvanen stated that it would be important to get clarity on the legislation and that this case could be an important precedent if the defendant appeals and takes the case further.[88] The defendant has appealed on the judgment and it will be brought before the Appellate Court.[89]

It will be interesting to see whether the Appellate Court will hold a different opinion than the District Court. However, it is unlikely that their opinion will differ as the defendant did have a responsibility as a caregiver to care for the woman's health, even more so as the woman was not competent to fully make an informed decision regarding her death. What is more, as long as there is no legislation concerning end-of-life issues one will have to rely on precedent but for now no precedent exists. It would be necessary to have a legislation of some sort regarding the issues of end-of-life care and termination of life at someone's request to avoid unexpected situations and unpredicted judgments of courts due to the fact that there is no legislation and no precedent about these issues at the moment.

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[86] *ibid.*
[87] Kangas, L. (2021). *Laki ei sano suoraan, onko itsemurhan auttaminen laitonta vai ei – rikosoikeuden professori: tilanne on kohtuuton.* Retrieved from https://yle.fi/uutiset/3-11724656, 03.03.2021.
[88] *ibid.*
[89] Kainulainen, J. (2021). *Avopuolisonsa surmasta neljän ja puolen vuoden vankeuteen tuomittu 37-vuotias omaishoitaja valittaa hovioikeuteen.* Retrieved from https://yle.fi/uutiset/3-11769648, 03.03.2021.

A legislation on euthanasia would be important for due process so that assisted suicide as a legal issue in Finland would not be as unclear as it is now. Legalizing euthanasia will make it clear that no one but a medical professional has the right to help another person die, and that it is also an act that needs to be performed under strict guidelines and only after certain premises have been fulfilled. Legalizing euthanasia would not only strengthen people's right to self-determination, but it will also safeguard the doctors and give them more legal protection because they will clearly know what they are allowed to legally do and under what premises. For now, in Finland, that is not clear enough as assisted suicide is basically legal but most likely one will still get prosecuted for committing such an act.

5.1. Public opinions

In 2016, a citizen's initiative for the legislation of euthanasia was started and it got over 63,000 confirmed votes of support. The initiative proposed that the Finnish parliament would start drafting legislation for euthanasia and making euthanasia legal in Finland. According to the initiative, a law for euthanasia is needed so that people who are at the end of their life and who cannot get enough relief for their pains even from the best palliative care would have another possibility and choice regarding their end of life. The citizen's initiative was eventually rejected in the Finnish parliament in 2018.[90] When the citizen's initiative was rejected the parliament wanted to set up an expert group to investigate the need for a legislation about good end-of-life care, right to self-determination as well as palliative care and euthanasia. The expert group was set up by the Finnish Ministry of Social Affairs and Health and its term of office will be until June of 2021. If needed the Finnish Ministry of Social Affairs and Health will give the parliament suggestions to change the existing legislation.[91] The initiative making its way all the way to the Finnish Parliament shows willingness among some Finnish citizens to make euthanasia legal and to make changes to the current legislation that does not allow active voluntary euthanasia under any circumstances.[92]

The Finnish Medical Association (FMA) made a questionnaire in 2020 where they asked the members of the FMA questions about euthanasia. The questionnaire was answered by 6489 doctors and 400 medical students. The study shows that 48,1% of the doctors who answered are

[90] Eduskunta. *Eutanasia-kansalaisaloite*. Retrieved from https://www.eduskunta.fi/FI/naineduskuntatoimii/kirjasto/aineistot/kotimainen_oikeus/LATI/Sivut/eutanasia-kansalaisaloite.aspx, 02.02.2021.
[91] Mäki (2020), *supra nota* 84, 95.
[92] Herminen (2019), *supra nota* 81, 45-46.

in favor of euthanasia and 46,6% are against it. The number of doctors who are in favor of euthanasia has gone up from the previous studies. In 2003 30% of doctors agreed that euthanasia should be legalized in Finland and in 2013 the number was 46%. In recent years there has clearly been a rise in the number of doctors who support euthanasia. 52% of doctors agree that Finland should adopt similar legislation to Belgium and the Netherlands where euthanasia is legal under strict rules and circumstances. Almost 70% of the one's who answered the survey thinks that if euthanasia were to be legal in Finland it should only be in cases where the patient is in the end of their illness with difficult physical symptoms. Only 10% agree that the justification for euthanasia could be the feeling of loneliness or feeling like a burden due to old age, for example.[93]

In 2020, the members of the Finnish Social Affairs and Health committee and all of the 17 members of the committee gave an answer on the issue of legalizing euthanasia. Seven members are in favor of changing the legislation to allow euthanasia and the reasoning behind this was the right to a dignified death without medication and suffering. Minna Reijonen, for example, stated that when legislating euthanasia, the person should be fully competent to make that decision and the legislation needs to be very strict. Additionally, Noora Koponen from the Green party is in favor of legislating euthanasia, but she stated that it is important to take into account the role of the medical personnel when executing euthanasia, and no employee should be obliged to perform euthanasia against their own will.[94]

These opinions from the public, doctors and the members of the Finnish Social Affairs and Health committee show that there is a want in Finland for a legal act on euthanasia and that many people value the right to a dignified death without excess suffering. The way that most would be willing to legalize euthanasia under strict guidelines would include the patient suffering with physical symptoms, they have to be fully competent when making a decision and that no doctor has to perform euthanasia against their own will. These are similar guidelines to the ones found in the legal acts on euthanasia in Belgium and the Netherlands. Therefore, a legislation similar to the aforementioned countries would be the most adequate one for Finland.

[93] Lääkäriliitto. (2020). *Eutanasia ja lääkäriavusteinen itsemurha vuonna 2020 -kysely.* Retrieved from https://www.laakariliitto.fi/site/assets/files/5227/sll_kysely_eutanasia_ja_laakariavusteinen_itsemurha_vuonna_2020_final.pdf, 16.03.2021.
[94] Portaankorva, J. (2020). *"Eutanasia ei ole elämän väheksymistä" – Eutanasian laillistaminen saa kannatusta sosiaali- ja terveysvaliokunnassa.* Retrieved from https://yle.fi/uutiset/3-11548856, 17.03.2021.

6. LEGALIZING EUTHANASIA IN FINLAND

Exitus, a Finnish association whose main goal is to contribute to Finland making euthanasia legal, gets contacted around 70 times on issues related to euthanasia, assisted suicide and palliative care. This number could be an indicator on how many people would benefit from a euthanasia legislation yearly. There are some Finnish people who have also travelled to Switzerland to get assisted suicide but that is expensive and onerous.[95] This demonstrates a need and a demand for a legal act on euthanasia amongst Finnish people. These people could benefit from having euthanasia as an option when no other alternative is left. Practicing the right to self-determination will grant the patients who are suffering with incurable illnesses a possibility to make a choice about their death and about circumstances surrounding their death, a choice that according to the case law of the ECtHR falls under the scope of Article 8 of ECHR as long as the person is able to form their own judgment and act accordingly.[96]

In the Pretty case, the ECtHR stated that it is mainly up for the states to assess all the risks and the likelihood for abuse if the prohibition on assisted suicide would be relaxed or certain exceptions would be created. It can be assumed that this also applies to euthanasia when it is administered by a doctor following strict guidelines.[97] Most importantly, strict guidelines on getting the patient's consent need to be put into effect to avoid any abuse or misuse of legal euthanasia as well as strict rules on the medical personnel and what are the steps that they need to take. In patient consent it is vital to determine that the patient is not under any outside pressure when requesting euthanasia and that they have made the decision completely independently. What is more, there should be strict monitoring of hospitals and medical personnel that perform euthanasia, and that monitoring should happen before, during and after executing euthanasia.

If a legislation on euthanasia would be enacted in Finland, inevitably a decision would have to be made about when life is no more worth living. According to the proposed way of carrying out euthanasia in the citizen's initiative the concept of life not worth living would be defined on the basis of health criteria, such as suffering. However, experts believe that the value of life cannot be determined on the basis of suffering. Euthanasia does not take a stand on the value of life, but

[95] Iltalehti. (2019). *Oululainen Kari saa puheluita ihmisiltä, jotka ovat päättäneet kuolla: Suomalaisiakin lähtenyt Sveitsiin avustetun itsemurhan perässä.* Retrieved from https://www.iltalehti.fi/kotimaa/a/037ffa89-9759-4a87-bab8-274e49a3a62f, 6.5.2021.
[96] European Court of Human Rights. (2020). *Guide on Article 8 of the European Convention on Human Rights – Right to respect for private and family life, home and correspondence.* Retrieved from https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf, 13.04.2021.
[97] Leenen (2002*) supra nota* 22*,* 259.

more importantly, the action should be based on the individual will of the patient.[98] The evaluation of allowing euthanasia needs to be made separately in each case and taking into account all the circumstances leading to the person wanting to get euthanasia.

6.1. The Issue of Consent

Because this paper is focused on active voluntary euthanasia, when discussing consent, the author is purely discussing situations where the person themselves is requesting euthanasia and is able to make decisions and is competent to make such decisions, whether that be fully competent or with diminished competence. This paper does not take a stand on situations where a person is completely incapable of stating their wishes by being left in a vegetative state, for example.

There are strict rules about consent within the field of medicine in international law as well as in Finnish legislation. In Finland, the Act on the Status and Rights of Patients gives patients the right to get full information regarding their health, the meaning of treatment, different alternatives of treatment and their effects, and other factors related to their treatment that has an effect when deciding about medical care.[99] Additionally, Article 6 of the Act on the Status and Rights of Patients states that a patient must be treated in a mutual agreement with the patient and if a patient refuses a certain treatment or medical care they must be treated in some other medically approved way that the patient agrees on.[100]

Under most penal systems, killing another person will make one liable for murder, even if the killing is done at the person's request. This is due to the fact that consent is not usually an acceptable defense in criminal law cases.[101] The issue of consent is one that has an essential and central role. It is difficult to distinguish the role of consent within the context that involves both medical and legal aspects. In the medical field, it is acknowledged that treatment that involves touching the patient is lawful because the patient would in most cases consent to it. However, if the patient would not consent to being touched or treated then any further touching will become unlawful. In criminal law, consent is not accepted as a defense in all cases. Sometimes in cases

[98] Mäki (2020), *supra nota* 84, 93.
[99] Laki potilaan asemasta ja oikeuksista 17.8.1992/785. Art. 5. Retrieved from https://finlex.fi/fi/laki/ajantasa/1992/19920785#L2P5, 23.02.2021.
[100] *ibid.*, Art. 6.
[101] Harmon, Sethi (2011), *supra nota* 38, 116.

of rape or stealing consent as a defense might be accepted but never has consent been accepted in cases of murder or euthanasia.[102]

In most jurisdictions suicide and attempted suicide are no longer criminal offences and this is an indication of the fact that the essential importance of individual self-determination in similar situations has been accepted. Probably the best explanation as to why voluntary euthanasia has not been more broadly legalized is the difficulties for establishing the genuineness of consent. However, there are procedures for competently refusing demanding or unwanted medical treatment, and therefore, establishing suitable procedures for giving consent to voluntary euthanasia cannot be more difficult.[103] Euthanasia is a medical procedure and hence one should be able to request euthanasia and consent to it similarly that they consent to any other medical treatment, but with certain exceptions and premises.

The right to informed consent consists of the right to give consent and the right to withdraw consent. This right is embodied in the Universal Declaration on Bioethics and Human Rights (UDBHR) and in the 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 (the Oviedo Convention) which both feature an important role when it comes patient consent.[104] Possibly the first bioethical rule that was established in the post-World War 2 period is the right to refuse medical treatment. The EU Charter of Fundamental Rights has a provision on consent in the first chapter and it is dedicated to dignity. The first chapter suggests that free and informed consent is the most fundamental safeguard for human dignity. Additionally, the jurisprudence of the ECtHR makes it clear that all medical treatment requires the free and informed consent of the patient, and it is a projection of Article 8 of the ECHR protecting the right to private life.[105]

The right to consent is related to the right to information. The right to information refers to the right to get and understand information whereas the right to consent refers to the right to voluntarily make a decision about allowing medical treatment or not, and that decision has to be informed.[106] Article 5 of The Oviedo Convention states that "an intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.

[102] Bamgbose (2004), *supra nota* 16, 118.
[103] Young (2020), *supra nota* 51.
[104] McKenney, J. (2018). Informed Consent and Euthanasia: An International Human Rights Perspective. *International and Comparative Law Review*, 18(2), 124-125.
[105] Zannoni (2020), *supra nota* 47, 193-194.
[106] McKenney (2018), *supra nota* 104, 128.

This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks. The person concerned may freely withdraw consent at any time."[107]

As people who would choose to get euthanasia due to an incurable disease are usually in a stressful situation and tired and weakened giving consent to euthanasia might become even more problematic. Therefore, the question of whether that person suffering with an incurable disease has legal capacity to make a decision comes into play. Knowing that a disease is going to leave one in an undignified state and in pain without any relief and knowing that the disease is eventually going to kill the one diagnosed with it is enough to affect someone's mental state in a negative way. It is known that confusion and depression are both frequent symptoms in terminal diseases.[108] Therefore, when making a decision as serious as getting euthanasia it has to be determined that the patient asking for it is mentally stable and capable to make such a decision and that the request for euthanasia is not just made on the spur of the moment, but the request has to be repeated.

The Oviedo Convention lays out rules on person's who are not able to consent. Article 6 paragraph 3 states that when "an adult does not have the capacity to consent to an intervention because of a mental disability, a disease or for similar reasons, the intervention may only be carried out with the authorization of his or her representative or an authority or a person or body provided for by law. The individual concerned shall as far as possible take part in the authorization procedure."[109] However, a representative should not be able to consent on euthanasia on behalf of another person, but the request should always be made by the patient themselves. Even if a person has a diminished capacity to consent due to an illness or other reasons information still needs to be presented to the patient in accordance with their legal capacity, which has to be determined, in order for the patient to be able to make an informed decision if at all possible.[110] This does reduce the possibility of abuse of euthanasia and someone taking advantage of their position as a representative. When requesting euthanasia, the opinion and desires of the patient has to be taken into account and adhered to as long as it can be proven

[107] Council of Europe. 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. 4 April 1997, Art. 5. Retrieved from https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cf98, 24.02.2021.
[108] Hurst, S.A., Mauron, A. (2006). The ethics of palliative care and euthanasia: exploring common values. *Palliative Medicine*, 20, 109.
[109] *ibid.*, Art. 6(3).
[110] McKenney (2018), *supra nota* 104, 125.

that the patient does understand what they are authorizing and what the outcome of that decision will be.

Anand Grover, the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health from 2008-2014, has written an annual report on informed consent and health where he outlined three elements needed for informed consent. These elements are the respect for legal capacity, respect for personal autonomy and completeness of information. Grover described informed consent as being a voluntary and sufficiently informed decision. That decision protects the right of the patient to be involved in making medical-related decisions, and at the same time assign duties and obligations on to healthcare workers. Grover went on to state that legal capacity is when a person is able to believe, comprehend and retain information in order to make a decision. Additionally, adults are assumed to have legal capacity.[111]

Grover further described personal autonomy as consent that is given voluntarily and is not coerced in any way or given under inappropriate influence or misleading information. Coercion includes a patient being under stress, fatigued, or under the impression that something bad might happen unless they consent, as might be the case with patients who are suffering with an incurable illness. Documentation that shows that consent was given before any medical procedures are done must also exist. Completeness of information means that informed consent cannot happen without the patient being told about alternatives, benefits and risks of the medical treatments.[112]

When legalizing euthanasia, states are responsible for establishing legislation that ensures that patients receive the most sufficient support that will allow them to give informed consent. Legislation should require that the patient is involved in the process of giving consent as much as possible. Additionally, specific factors should be met before a patient is considered to be lacking the capacity to give informed consent and declined capacity should not automatically mean that representative rights are triggered. This legislation should also be strictly monitored in hospitals, hospices and medical facilities in order to confirm compliance. There should be adequate judicial remedies for patients and their representatives in the event of their right to informed consent is

[111] *ibid.*, 123.
[112] *ibid.*, 123-124.

being declined. Measures to hold medical personnel accountable for misconduct should be established.[113]

As important as it is to protect the patients' rights to informed consent it is also important to allow the medical personnel the same respect for their choice of executing euthanasia or not. Because active euthanasia goes against the traditional ethics and rules of the medical profession[114] no doctor or another person working in the medical field can be forced to execute euthanasia and this right to choose must be respected and taken into account when drafting the legislation for euthanasia.

6.2. Euthanasia vs. Palliative Care

When the citizen's initiative was discussed in the Finnish parliament, the ones against euthanasia stated that there is firstly a need to be able to provide high quality palliative and end-of-life care, and only after that is it possible to assess whether there is actually a need for euthanasia to be legalized. It was stated that a law about euthanasia should not be enacted but instead a law that grants the right for proper palliative care for everyone to be enacted should be a priority. The Finnish parliament worried that if a law about euthanasia would be enacted before this, euthanasia might replace the shortcomings that are found in the end-of-life care in today's Finland.[115] Sanna Marin, the prime minister of Finland, is in favor of legalizing euthanasia and she has stated that the will of the people who are suffering from an incurable illness and who wish to have the right to choose about their own life and death should be respected. She further stated that good palliative care and the chance to get euthanasia do not rule each other out.[116]

The statement that euthanasia is incompatible with good palliative care is common. The European Association for Palliative Care has declared that euthanasia should not be included in the practice of palliative care. Still, in those jurisdictions where euthanasia is legal the palliative care practice comes up against a dilemma of how people who receive palliative care can access euthanasia. For example, in Belgium euthanasia has been accepted as being included in palliative care. In the same year when euthanasia was made legal in Belgium also a law on palliative care was passed. This law made palliative care a basic right for patients and it included measures to

[113] *ibid.*, 132.
[114] Lacewell (1987), *supra nota* 17.
[115] Mäki (2020), *supra nota* 84, 94.
[116] Nurmi, L. (2019). *Aatteen Nainen.* Retrieved from https://www.aamulehti.fi/kotimaa/art-2000007457233.html, 23.03.2021.

get better access to palliative care. The Belgian Euthanasia Act does not require the patient to have a palliative care consultation, but it does require the physician to inform the patient of all possible options of treatment, palliative care being one of them. Because the patient has a right to refuse treatment, they do not have to try palliative care.[117]

One type of palliative care is palliative sedation which is a medical practice where the patient's level of consciousness is lowered to prevent untreatable suffering at the end of the patient's life. Palliative sedation can only be used if death is expected within the next one or two weeks and therefore it is not an appropriate to way to prevent suffering for patients suffering with conditions that are not in the terminal phase but that cause incurable suffering nevertheless.[118] Article 1 of section 2 of the Dutch Termination of Life Act states that when invoking exemption from criminal liability for euthanasia the physician and the patient must be convinced that there is no other reasonable solution to the situation of the patient.[119] Palliative sedation is not seen as being "another reasonable solution" as is meant in the aforementioned article. Therefore, a refusal of palliative sedation does not preclude the possibility to request euthanasia.[120] The most important thing is that the patient is aware of all their options and is able to make an informed decision on their own.

Euthanasia and palliative care should not rule each other out or be considered as contradictory practices. Instead, they should be used alongside each other with euthanasia being included in palliative care.[121] Palliative care and euthanasia do actually have some common values, the most notable one being that of reducing human suffering. Another shared value is the patient having control at the end of their life.[122] Being able to choose the circumstances of one's death is fundamental to both palliative care and the euthanasia legalization. A study done in Belgium shows that palliative care is in many cases involved in euthanasia procedures in consultations about requests for euthanasia as well as in the performance of euthanasia. This is legitimate and even beneficial in the context of legal euthanasia because palliative care professionals are appropriate experts in end-of-life care.[123] Having both the choice of euthanasia and palliative

[117] Dierickx, S., *et al*. (2018). Involvement of palliative care in euthanasia practice in a context of legalized euthanasia: A population-based mortality follow-back study. *Palliative Medicine*, 32(1), 115.
[118] Legemaate, Bolt (2018), *supra nota* 59, 462.
[119] *ibid.*, 453.
[120] *ibid.,* 462.
[121] Dierickx *et al.* (2018), *supra nota* 117, 120.
[122] Hurst, Mauron (2006), *supra nota* 108, 107.
[123] Dierickx *et al.* (2018), *supra nota* 117, 120.

care available will also strengthen an individual's right of self-determinations as there is more than one alternative available for them to choose from when dealing with end-of-life issues.

Some patients reject palliative sedation because they want to be conscious until the end. There have been cases where a patient has requested both palliative sedation and euthanasia as a combined request where the request of palliative sedation was coupled with a request of euthanasia if palliative sedation would take too long or not be sufficient enough to prevent suffering.[124] For this reason it would be valuable to have both euthanasia and palliative care as an option for patients so that a choice between the two can be made. It would also be important to make sure that neither one of the options will be excluded regardless of what the patient chooses.

According to research made by Cohen-Almagor, many hospitals and research centers show that most patients hang onto life no matter what. Even in some of the most painful and tragic situations patients still mostly choose life over death. Once physicians are able to control pain most of the people who have shown willingness to die change their minds because in many cases the wish to die is caused out of fear of suffering. These facts leave us with a small number of people who want to decide the moment of their death; patients whose physical and mental suffering cannot be adequately alleviated by palliative care. For those patients it is important to have the possibility to have the choice of euthanasia because medicine should serve all patients and euthanasia should be thought to be a medical procedure. For the vast majority, palliative care is the choice as end-of-life care but at the same time there are patients who do not benefit from palliative care and they should also have euthanasia as an option when nothing else alleviates their suffering.[125]

6.3. Does Legalizing Euthanasia Interfere with the Right to Life?

One worry that exists is that could the legalizing of euthanasia interfere with the right to life. As has been stated earlier in this paper, the ECHR Article 2 guarantees everyone with the right to life and that right is protected by law.[126] The ECtHR has stated in its case law that Article 2 does not take interest in the quality of living or what a person might choose to do with their life.[127]

[124] *ibid.*, 462.
[125] Cohen-Almagor, R. (2009). Euthanasia Policy and Practice in Belgium: Critical Observations and Suggestions for Improvement. *Issues in Law and Medicine*, 24(3), 214.
[126] European Convention on Human Rights, *supra nota* 27, Art. 8(2).
[127] Leenen (2002), *supra nota* 22.

Article 2 only establishes positive obligations to the Member States to protect an individual whose life is at risk, and in some cases states may have an obligation to protect individuals against themselves. [128] The mere existence of the right to life as one of the most fundamental human rights does not imply that euthanasia could not be legalized or that legalizing euthanasia would violate the right to life. As a matter of fact, in Pretty v. UK it was stated by the ECtHR that it is mostly up to the states to determine how the right to life is protected and it would be up to the states to assess what are the risks and likelihood of abuse when loosening the prohibition on end-of-life issues. The ECtHR has in some way given its blessing to legalizing euthanasia as long as the regulation includes strict rules and guidelines, and that the patient has unbearable suffering with no alternative to relieve the pain.[129]

It is important to acknowledge that making euthanasia legal does not diminish the importance of the right to life nor does it make that right any less valuable. When euthanasia is being legalized the states obviously still have an obligation to protect the right to life in the same matter as they have done so far. When euthanasia is legislated with strict guidelines that in itself will protect the individuals at risk and also in certain cases the individuals from themselves. Minors and individuals who are not capable to make informed decisions will not be able to request euthanasia. Thus, the weaker are protected. Individuals suffering from only psychological illnesses, psychological pain or depression will not be able to request euthanasia. Individuals who have the capability to make informed decisions and who are requesting euthanasia will be psychologically evaluated and their decision-making capability will be examined as well as the state and severeness of their illness. Thus, people are being protected from themselves by them not being able to request or receive euthanasia by hastily made decisions.

6.4. Risk of abuse

Having proper legislation in place will minimize the risk of abuse of euthanasia and it will also ensure that every patient who asks for euthanasia will know their rights and what they are entitled to. Euthanasia must be regulated properly in the national law to effectively prevent and eliminate abuse of euthanasia.[130] Murder is unlawful but there are still people committing murders. People know what the consequences for murdering people are. Laws are meant as a deterrence for crime and lawmakers seek to optimize the control of crime by setting in place a

[128] Zannoni (2020), *supra nota* 47, 191-192.
[129] Leenen (2002*) supra nota* 22*,* 259.
[130] Simion (2019), *supra nota* 41, 182.

penalty system that assigns criminal punishments in order to deter people from committing crimes.[131] Hence, having consequences for misusing euthanasia is important and having clear premises for when euthanasia is allowed and when not is important. But even with the most perfect legislation there will always be misuse. But it has to be determined whether the risk of abuse will be so great that legislating euthanasia will do more harm than good.

Risk of abuse will always exist. There is no denying that. Nevertheless, with the right tools the risks can be minimized remarkably. One of the most important tools would be an evaluation body that will evaluate each case and authorize euthanasia after that evaluation is thoroughly done. The minimizing of risks of abuse of euthanasia would be more difficult if an evaluation body that will be notified only after euthanasia is performed would be set up. A body that will in advance evaluate the requests for euthanasia and grant the permissions would be more likely to be able to actually prevent the misuse of euthanasia. An evaluation body that receives the notification after euthanasia has already been performed would only be able to impose sanctions if necessary, but the act of euthanasia would have already been done. It is important to make sure that all the premises that need to be fulfilled and steps that need to be taken in order to perform euthanasia legally are completed before euthanasia is performed. For this reason, having an evaluation body that will grant the permissions for euthanasia could be one of the most beneficial tools for minimizing the risks of abuse of euthanasia.

[131] Robinson, P.H. (2003). The Role of Deterrence in the Formulation of Criminal Law Rules: At Its Worst When Doing Its Best. *Georgetown Law Journal*, 91(5), 950.

7. LEGAL CONDITIONS TO INCLUDE IN THE EUTHANASIA LEGISLATION FOR FINLAND

Similarly, to the situation in Belgium, Finland is lacking in case law regarding euthanasia. The euthanasia legislation in Belgium contains many detailed and specific provisions and the Finnish legislation on euthanasia should follow this same model and make the legislation as specific as possible. This would lessen the possibility of misuse of the legislation and make it clear for the professionals and the patients what steps have to be taken before executing euthanasia. Furthermore, euthanasia should be made legal by adding exemptions to the Finnish criminal code, similarly to the Dutch and Belgian euthanasia acts, where euthanasia is legal as long as it is performed by a medical professional, all the requirements are met, and due care is being practiced.

When legislating euthanasia in Finland it is important to pay special attention to the terms used and the wording of the text in order to avoid too much room for interpretations that will be contrary to what was originally meant by the text. The citizen's initiative and the conditions that were included in it to allow euthanasia could be used as a base for the euthanasia legislation with some changes and additions made to it to make it more specific. The changes might also make it more likely for the euthanasia legislation to be passed in the Finnish Parliament. The citizen's initiative held the premise that a doctor can perform euthanasia when certain conditions are fulfilled, and the initiative contained several conditions under which a doctor is allowed to perform euthanasia.[132] These premises could be included in the legislation for euthanasia, and they are somewhat similar to those found in the Belgian Act.

The citizen's initiative stated that the patient must be suffering with unbearable physical or psychological pain that cannot be relieved medically or even with the best palliative or end-of-life care. The patient requesting euthanasia has to be incurably ill with a disease that will result in their death in the near future even without getting euthanasia. Additionally, from a medical point of view the state of the patient has to be hopeless without any possibility of recovery. The doctor must have informed the patient of all information regarding their condition, the prognosis, prospect of recovery and of all the possible treatments that are available. The doctor and the patient have to both agree that euthanasia is the only beneficial option that is left. In addition, the

[132] Kansalaisaloite KAA 2/2017 vp, *Eutanasia-aloite hyvän kuoleman puolesta.* (2016). Retrieved from https://www.eduskunta.fi/FI/vaski/EduskuntaAloite/Documents/KAA_2+2017.pdf, 01.04.2021.

opinion of an independent doctor has to be asked for and the independent doctor should visit the patient in person[133] in order to make a complete and accurate evaluation of the patient's situation

The initiative stated as a premise that the "patient has to be suffering with excruciating physical and/or psychological symptoms and pain."[134] However, this is one of the most important conditions that should be changed since euthanasia should not be allowed for patients who are only suffering psychologically as long as there exists complexity in assessing the criteria of due care in psychiatric patients. Also, for most psychiatric illnesses or disorders with the right treatment and medication a recovery is possible. People can learn to manage their mental illnesses and they will be able to live safe, dignified and happy lives with psychiatric illnesses.[135] Hence, for the time being only physical suffering should be considered as a legitimate justification for getting euthanasia. The doctor performing euthanasia has to be convinced that the patient does not have a psychological illness that will decline the patient's ability to make an informed decision. What is more, clinical depression should be treated before making a decision on euthanasia.[136]

Another important condition that the citizen's initiative failed to mention was that euthanasia can only be performed by a medical professional. Although this can be presumed from the wordings of the initiative, it would be vital to add a clear clause which states that when a doctor is performing euthanasia, they do not commit a crime as long as due care has been exercised and all the conditions in the legislation have been followed. The role of the doctor is important and the doctor performing euthanasia has to perform euthanasia according to due care and stay with the patient until they have died. No doctor or medical professional has to perform euthanasia. If a doctor refuses to perform euthanasia they should direct the patient to another doctor who is willing to perform euthanasia.[137]

The patient has to be legally and cognitively competent as well as of age when requesting euthanasia. The request has to be made by the patient themselves and the request has to be considered, repeated and most importantly made by the own free will of the patient. The decision cannot be made as a result of external pressure. A minor should not be able to make a request for euthanasia and neither the parents nor the legal guardians of a minor patient will be able to make

[133] *ibid.*
[134] *ibid.*
[135] Davidson, L., Roe, D. (2007). Recovery from versus recovery in serious mental illness: One strategy for lessening confusion plaguing recovery. *Journal of Mental Health*, 16(4), 468.
[136] Kansalaisaloite KAA 2/2017 vp (2016), *supra nota* 117.
[137] *ibid.*

then request on behalf of their child. No one can or should be allowed to make a decision on euthanasia on behalf of someone else.[138] There is too much complexity on the issue of giving minors the ability to request euthanasia and too many differing opinions on what the actual capabilities of minors regarding informed consent and autonomy are[139] to justify minors being able to request euthanasia.

The most important issue that has to be taken into account is consent and how the legitimacy and genuineness of consent can be established. Clear guidelines and premises for giving consent has to be created before euthanasia can be legalized in Finland. However, this should not be too difficult to achieve because there exist procedures that allow the competent refusal from demanding or unwanted medical treatment as was mentioned earlier. Making sure that the patient is cognitively competent and able to make such a decision is a complicated matter, especially when discussing euthanasia due to the stressful situation of being diagnosed with an incurable illness, but with the right evaluation procedures it is possible.

To avoid situations where the consent of the patient might be questioned the perfect solution would be that everyone would have an existing legally binding advanced directive that states one's desires if they get left in a situation where it is known that the last moments of their life will be painful and agonizing. But this is of course not possible nor attainable. The next best thing is that when one is left in a situation like this and they ask for euthanasia, their mental state, severeness of the illness and possibilities of being cured has to be carefully examined by psychiatrics and by at least two doctors who are independent of one another and one of them being independent from the patient.

Physicians have very powerful roles in their recommendations and the effect that those recommendations have on the choices of treatment patient make. Doctors need to be careful and aware of the way their recommendations can influence the patients. Doctors need to use their influence for the best purposes of the patient, and they need to be especially aware of the influence they have when there is a long-standing relationship with a patient.[140] What is more, a doctor should always discuss all different treatment options and they should avoid recommending euthanasia. First instinct of a doctor should be to offer palliative care and pain relief when there is no cure. The discussion on euthanasia should be started by the patient and it

[138] *ibid.*
[139] Cuman, Gastmans (2017), *supra nota* 76, 845.
[140] Cohen-Almagor (2009), *supra nota* 125, 213.

should be requested by the patient independently, and after that first request the doctor still has to inform the patient of all other treatment options and possibilities as well as the prognosis. After this, the request should be repeated by the patient within a reasonable timeframe.

The patient must give the request for euthanasia both orally and in writing. The oral request should be repeated before the written document will be drafted. Similar to the Belgian Euthanasia Act, the document must be drawn up, dated and signed by the patient themselves. If the patient is unable to do so, the document will be drafted by the person that the patient will designate. That person has to be of age, and they cannot have any material interest in the death of the patient.[141] The written document should contain the reasons why the patient is requesting euthanasia. Both the doctor's and the independent doctor's evaluation of the patient's condition and chances of recovery as well as a psychologist statement of the patient's mental state has to be included as well. The patient can at any time withdraw the request for euthanasia but the patient being hesitant should result in a refusal for getting euthanasia. A doctor should always be certain that the request for euthanasia is lasting and permanent by its very nature.

In Spain where the law to allow euthanasia was just passed, the request for euthanasia has to be approved by two different medical professionals and also by an evaluation body.[142] In Belgium when a physician has practiced euthanasia they have to notify the Federal Control and Evaluation Commission on Euthanasia.[143] This notification is done after one has performed euthanasia, but it would be more useful to have an evaluation body that will grant the permission for euthanasia, similar to what will be done in Spain.

Finland should also set up an evaluation body for euthanasia and that body would be the one to grant the final permission for euthanasia. The written document discussed earlier should be sent to the body of evaluation and they will make the final decision on whether euthanasia should be allowed or not. Therefore, the misuse of euthanasia would be minimized as there is a legally set up body that will examine each request for euthanasia individually in advance of performing euthanasia. In order to legalize euthanasia in Finland one of the preconditions should be that an evaluation body for euthanasia is set up. That body should consist of medical personnel that are competent to evaluate end-of-life issues and also of people with legal background who are able to verify the legitimacy of the written request for euthanasia. It is more valuable to have a body

[141] The Belgian Act on Euthanasia of May, 28th 2002. (2003), *supra nota* 68.
[142] BBC. (2021). *Spain passes law allowing euthanasia.* Retrieved from https://www.bbc.com/news/world-europe-56446631, 01.04.2021.
[143] Nys (2017) *supra nota* 71, 8.

that will evaluate the requests for euthanasia and then grant the permissions for euthanasia than having a body where all performed cases of euthanasia will be notified after the euthanasia is performed.

A question that will be left at the hands of the legislators is what kind of sanctions will be faced if euthanasia has not been performed according to the law. One possibility would be that the euthanasia legislation will include a completely new sanction that will be used when there has been a failure to meet all of the conditions laid out in the legislation or for arbitrarily deciding to perform euthanasia on someone. Doctors who are neglecting their due care responsibilities and who fail to follow the guidelines for euthanasia could face the revoking of their medical license in addition to legal consequences.

CONCLUSION

Not allowing death to take its course in cases where the patient asks for death to be hastened because it is known that sustaining life means a painful and undignified end, goes against the right to self-determination and the right to private life. As the ECtHR has stated in its case law, the right to private life protects the personal choices around the time and circumstances of death and the issues concerning end-of-life fall under the scope of Article 8 of the ECHR. When all the possible medical treatments and means of pain relief have been exhausted and the patients suffering with unbearable and unimaginable pain request euthanasia from their own free will that does mean a dignified end for them and it will allow the right to self-determination be exercised fully.

There is no implication that a right to die exists and that cannot be derived from the right to life and therefore that cannot, and should not, be used as a justification for legalizing active euthanasia. The right to life should be seen only as what it is; the right of having one's life protected by the state without anyone arbitrarily interfering with that right. What is more, euthanasia is an action that is based on the individual will of the patient and it does not take a stand on how valuable life itself is. To that end, the right to self-determination including the right to choose how one wants to spend the last moments of their life and how they want to die are the most legitimate justifications for legalizing euthanasia.

Finland does not have any legislation or case law that deals with end-of-life issues at the moment which is problematic for due process. At the same time, there are no legal obstacles per se that prevent the legislating of euthanasia in Finland. Additionally, the ECHR has stated that euthanasia and other end-of-life issues remain as an issue that the member states can decide on themselves. The biggest concerns about legalizing euthanasia in Finland are how to ensure the genuineness of consent, whether legalizing euthanasia will interfere with the providing of high-quality palliative care and the risk of abuse.

Ensuring the genuineness of consent requires that when making a request for euthanasia the patient must have legal capacity, be cognitively competent and they must have received all the information that is relevant in making a decision on euthanasia. A legal act that grants everyone the right for high-quality palliative care could be drafted at the same time as drafting a legislation on euthanasia which would make euthanasia and palliative care treatments that can be used

alongside each other according to the wishes of the patient. Minimizing the risk of abuse of euthanasia requires proper legislation with strict guidelines and clear sanctions for misuse.

The legal act on euthanasia for Finland should contain strict guidelines that leave no room for interpretation. Most importantly, the circumstances which would make the performance of euthanasia legal in Finland need to include, at the very minimum, the following requirements: the patient has to be suffering from an incurable physical illness with unbearable pain with no possibility for recovery or treatment that can alleviate the pain; the patient must be informed of their situation and of all the treatment options clearly; the patient has to have full mental capability and be able to give informed consent in order to request euthanasia and the request for euthanasia has to be repeated and permanent by its nature; a minor patient or a patient suffering from a psychological illness or depression is not allowed to make a request for euthanasia; and only a doctor is allowed to perform euthanasia. Lastly, an evaluation body that will grant the permission for euthanasia should be set up to minimize the risk of abuse of euthanasia.

On the18th of March the Spain's lower house of parliament approved a law to legalize euthanasia and the law is expected to take effect in in June.[144] Spain was the fourth country to legalize euthanasia in Europe and the French parliament is currently discussing legalizing euthanasia.[145] It remains to be seen whether even more European states will follow in the footsteps of these countries that have already legalized euthanasia and whether Finland will join one of these states and finally give the right to a dignified end and the right to self-determination the respect they deserve.

[144] BBC (2021), *supra nota* 123.
[145] Yle. (2021). *Asenteet eutanasiaa kohtaan Euroopassa lieventymässä, Ranska pohtii kuolinavun laillistamista.* Retrieved from https://yle.fi/uutiset/3-11875922, 12.04.2021.

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