TALLINN UNIVERSITY OF TECHNOLOGY
School of Business and Governance
Department of Law

Aisha Gadirova

CAN THE RIGHT TO LIFE BE EQUIVALENT TO THE RIGHT TO DEATH?

Bachelor's thesis

Programme: LAW; Specialization: European Union and International Law

Supervisor: Vlad Vernygora, MA, LL.M

Tallinn 2022

I declare that I have compiled the paper independently and
all works, important standpoints and data by other authors
have been properly referenced and the same paper
has not been previously been presented for grading.
The document length is 11572 words from the introduction to the end of conclusion.

Aisha Gadirova……
(signature, date)
Student code: 194429HAJB
Student e-mail address: ayshagadirova@gmail.com

Supervisor: Vlad Vernygora, MA, LL.M:
The paper conforms to requirements in force

……

(signature, date)

Chairman of the Defence Committee: Thomas Hoffmann, PhD:
Permitted to the defence

……

(name, signature, date)

TABLE OF CONTENTS

ABSTRACT

The preexisting discourse on euthanasia heavily emphasizes the necessity of choice and bodily autonomy, as well as the respectful recognition of one's humanity. It humbles the notion of a merely individualistic life, whilst regarding a life with dignity as a must, rather than an option. One must consider proportionally the specificity and uniqueness of each individual pursuing and/or demanding their right to die.

Given that death may come at any time in any manner, one can question whether humans must have the choice to take control of nature through the interruption of a long-accepted cycle. However, this thesis shall not focus on the morality of assisted suicide, but rather dissect how such a rule will integrate into a world that is yet to fully uphold and implement one's right to life and dignity.

The discourse on the right to die has stalled for the past decade or so, and with gradual legislative changes, it is more crucial than ever to establish the means through which the right to die is interpreted and enforced. More so, to establish how it shall function with the established-universal right to life.

This paper aims at testing the possibility to integrate a Right to Death into international law while maintaining the human right to life and dignity. It shall focus on detecting the prospectively normative equivalence between the Right to Life and the Right for Death, without the infringement of either rights whilst they coexist. In a world where the right to life is yet to be fully implemented, is it plausible that humans may gain the right to die?

Keywords: Euthanasia, physician-assisted suicide, right to die, autonomy, right to life.

INTRODUCTION

Mercy killings, euthanasia, assisted suicide, and the like are not foreign practices in human history. Recorded instances of mercy killings go as far back as 1538 when the famous French surgeon Ambroise Pare wrote of witnessing a fatally wounded soldier kill himself as he discovered that he would not survive his wounds[1]. The concept is not a realization of modern thinking, and neither is it particularly revolutionary to those suffering.

In 1800, two well-known German physicians – Carl Georg Theodor Kortum[2] and Christian Ludwig Mursinna[3], vocalized public support for easing the suffering of terminally ill[4] patients. Despite the restrictions through moral, religious, and traditional reasons, those who bore witness to the pain and suffering of dying patients, do not forsake any remedy possible to the pain; once a remedy is impossible, the end to the pain is considered. The Canadian Supreme Court had underlined that "an individual's response to a grievous and irremediable medical condition is a matter critical to their dignity and autonomy"; in the 1997 case Carter V. Canada, therefore, recognizing that a right to die and the willingness to die, centers around the enforcement of human dignity and the entitlement to a life without suffering. It is a well-established principle, that people have a right to life, liberty, and security of person[5], neither of which shall be violated when granted the right to die. It is when these conventions ensuring the right to life and dignity come into play, that it is crucial to admit that forcing an individual to live, when they have deemed themselves unwilling to, may be a violation of an individual's right to self-determination and bodily autonomy.

Autonomy has long been associated with the concepts of freedom (for example, in contract law) and the right to personal liberty. Autonomy and liberty indicate that a person has the right to hold specific beliefs, make decisions, and act based on their own personal values and beliefs. Autonomy, whether defined as a right, capacity, discretion, or condition to make self-affecting decisions without the influence of others, has become increasingly important in many aspects of life. Thus, the law protects our personal choices of where to live and marry, whether or not to

[1] Michael Stolberg, "Two Pioneers of Euthanasia around 1800," Hastings Center Report 38, no. 1 (2008): 19-2
[2] A physician in the town of Stolberg near Aachen, who published series of short essays in leading German medical periodical - Hufeland Journal der praktischen Arzt Kunde, 1765-1824
[3] A professor of surgery and the head surgeon at the Charite hospital in Berlin, 1744-1823
[4] An individual who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 24 months or less after the date of the certification.
[5] Universal Declaration of Human Rights

have children, sexual orientation, personal identity, and many more. The protection is frequently offered under the guise of personal privacy. Some say that the underlying concern behind the preservation of free speech and religious freedom is autonomy[6]. Some constitutions explicitly defend autonomy: the German Basic Law, for example, states that the right to the free development of one's personality safeguards the inner domain of one's personality, which is in essence only subject to the individual's free determination[7]. Though autonomy is an indisputable aspect of the right to die, the cost at which such autonomy comes must be evaluated. The risk of the wide access to such autonomy and the impact to the value of human life is a major concern. At this point, not many countries have an established right to die; therefore, the full extent of the impact is yet to be seen as more cultural variations of the right are enforced. How does human life maintain its right to life, whilst normalizing a legal means to death?

Within the sphere of law, autonomy has been closely attached to the idea of freedom, as well as the right to personal liberty. Generally, the access to autonomous decision-making is not always restricted through lack of access to end-of-life procedure; in certain countries suicide is still a crime. Research has revealed that suicide is still considered a crime in 20 countries, with punishments through fines of thousands of pounds and up to three years in prison[8]. In other means, disregarding the right to die is also possible through laws that forbid the respect of do-not-resuscitate wishes. In the Netherlands, for example, one may acquire a do-not-resuscitate medallion, which indicates that the wearer does not want to be resuscitated in a medical emergency[9], which is a normalized practice in the country.

This is in no means a criticism of cultures or values, which may yet not include such concepts; however, the respect of such wishes and requests allows for people to maintain control over their lives, as opposed to having such decisions being made for them. On the other hand, it is important to recognize that even the right to life is not an absolute right[10], contrary to common belief. In reality, it is a very limited right. The right to life is susceptible to the continuous validity of the imposition of the death sentence under certain circumstances, as well as the use of lethal force by state agents where such force is necessary and proportionate. Furthermore, notwithstanding the growing acceptance of positive obligations under the right to life, any such

[6] John H. Garvey, What Are Freedoms For? Harvard University Press, Cambridge, Mass., 1996, p. 23
[7] Art. 2 (1) of the German Basic Law.
[8] Decriminalising Suicide: SAVING LIVES, REDUCING STIGMA; United for Global Mental Health
[9] Euthanasia, assisted suicide and non-resuscitation on request, Government of the Netherlands
[10] Wicks, E.. (2012). The Meaning of 'Life': Dignity and the Right to Life in International Human Rights Treaties. Human Rights Law Review. 12. 199-219. 10.1093/hrlr/ngs002.

obligations are subject to an implied limit of what is fair in the circumstances. Individual autonomy, freedom from pain and suffering, and scarce public resources are all considerations capable of eliminating any obligation on the state, caretaker, and or/families to take actions to maintain a life.

Therefore, there is no necessity for a right to die, with no bounds or limitations, but rather a normalization and legalization of the notion that individuals may take it upon themselves to decide on the termination of their lives. As the right to life, shall remain as is, a right to die must exist in a linked, yet independent capacity to the right to life. To prevent any avertable clashing and contradictions, the equivalence of the rights and their imminent universality must be thoroughly examined and compared, so as to detect the potentiality that these rights may coexist in a functional manner, without the violation of either right shall be discussed and explored in this paper.

In 2019, the world would be astounded while false stories of a dutch teenager, Noa Pothoven, spread of her alleged death in an End-of-life clinic. Pothoven had reached out to a clinic, but was turned away, as she was considered too young and presumably curabable. Later, she would die in her sleep, following a hunger strike. This story had spread on most social media and news platforms, sparking a debate on the morality of allowing a minor to die through such means, though the rejection of her plea did not save her life. Through this case, it is clear that the discourse on this matter is primarily moral, given that most laws either heavily restrict access to the procedures or prohibit them altogether.

The Netherlands, Canada, and New Zeleand have followed each other in steps of opening a road towards a legalization of euthanasia, as well as its intergration into human way of life. Considerably in this discussion what is new is the nature of assistance being brought into suicide, as opposed its morality and/or legality. These countries have implemented the right to die to different extents and with varying levels of restrictions. Differences ranging from physician's refusal rights to the age of individuals who make aim to practice this right; all reflect cultural, traditional, and legal factors unique to the country of jurisprudence.

The first chapter will aim to understand the link between the fundamental right in the European Convention of Human Rights and analyze the equivalence of the right to life in relation to a right to death. Essentially, answering the question – what is the significance of Article 2 and 8 in the pursuit towards and right to death?

The second chapter on the right to die, aims to analyze the validity, proportionality, and risks of an enforced right to die. Thus, answering the question of whether a right to die can be equivalent to the right to death? Is it proportional to end someone's life to end their suffering?

The third chapter shall evaluate the impact a right to die would have on the perceived value of human life and the risk groups of such developments, using statistics previously gathered. Aiming to answer the questions - How does a shift in the evaluation of human value impact the overall necessity of civil rights progress? Who are the impacted groups and how will such changes affect them?

The fourth and final chapter prior to the conclusion will provide a comparative analysis on existing practices of the right to die through end-of-life acts and euthanasia laws, which serve as examples and directional frameworks for future developments in the field, as well as evaluate the differences in systems. The question in this chapter is – What can we learn and gain from existing, as well as past practices of the right to die?

Using the contemporary examples of the Netherlands and New Zealand, this paper will use legal texts from the mentioned countries, to analyze the direct legislative approaches taken by the countries and evaluate the implications of the directional differences through statistical analysis of the resulting developments. By comparing the two countries, it is possible to evaluate the significance of different approaches based on identity and the key factors that contribute to public opinion, as well as enforcement of the right to die. Also, through analysis of the interpretation and impact of articles of the European Convention of Human Rights, the link to international law is established and evaluated. The link is further is examined through past case law and patient testimonies.

Overall, the goal is to determine the applicability of a right to die regarding euthanasia laws, past precedents, and the proportionality of the right to die regarding international law. Therefore, this paper shall explore the detectable normative equivalence between the Right to Life and the Right for Death, in which one fundamental right shall coexist with the other with a broadening of the scope of international law.

1. THE RIGHT TO LIFE

1.1. Article 2 of the European Convention of Human Rights – The Right to Life

In relation to euthanasia, it is argued that the applications and meanings of Articles 2 and 8 of the European Convention of Human Rights, a right to life and a right to respect for private and family life, have garnered the most considerable interest and judgments.

Following a paper written by Amanda Engström[11], she concluded that Article 2 of the Convention does not include and cannot develop to include a human right to die with assistance. Engström determines this through a comparative analysis of the basis the Right to Life established in the convention; however, one cannot confirm that the article exists in a capacity which prohibits a right to die.

A right to die is to be established on the bases of bodily autonomy, and dignity. Whether or not there will be barriers to the expression of such concepts must depend on the practice through which such the right is enforced.

The Netherlands is a clear example of the thoroughness requiered to integrate assisted suicide in a system, whilst maintaining that human error is inevitable. However such throughness might be an obstacle to autonomy, which is a primary principle used in favor of assisted suicide. When an individual is in pursuit of said procedure, they must receive the authorisation of a medical specialist who examines the status of said individual. If they are deemed curable, they shall not be allowed to continue the procedure.

Article 2 of the convention reads as follows:

“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: (a) in defense of any person from unlawful violence; (b) in order to effect a

[11] Engström, A. (2020). A Human Right to Die? : The Legality of Euthanasia under the European Convention on Human Rights (Dissertation).

lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

The article guarantees a universal right to life for everyone, whilst allowing for an exception for the ocassianal/legal death penalty. Although the article deems a deprivation of life to be unlawful, it does so by emphasizing that this shall not be done intentionally. Whether or not the article prohibits an individual's autonomous decision to take their own life is not clear, as the article or the convention do not reference such a particular willful deprivation of life. However, it definitely cannot include it as concluded by the research paper written by Engström.

What this chapter aims to show is that article 2 serves as means of the protection of individual lives, separate from personal demand for a right to die. One may pursue such a right for various reasons, as well as through varying means, which might be far more respectful of human dignity than the rights granted by article 2.

The vague nature of the article in regards to self-induced death need not discourage a consideration of one's liberty to their life. If a right to life can be protected by law, and as death is an unavoidable aspect of life, is it truly just to gatekeeper the right to die?

Within the Guide on Article 2 of the European Convention on Human Rights, the obligations of the state are "to protect by law the right to life, and the prohibition of intentional deprivation of life, delimited by a list of exceptions"; exception which could be interpreted as the intentional, yet selective deprivation of life. The right within its scope, is already limited to those punished through legal means.

There are many aspects of modern life which do not exclude the potential or even willful 'sacrifice' of life. People in varying degrees are entitled to make risky decisions which may harm one's life. These decision are respected and even admired at times, for example, in many cultures, men are respected for volunteering to protect their countries, whilst many risk their lives in preferred activities (skiing, cliff jumping, etc) - none of these circumstance generally incite disdain, whilst an individual choosing to end their lives is generally a taboo concept.

It is, of course, questionable whether choosing to die, and risking your life can be equated to one another; however, it cannot be merely ignored that people's autonomy is not limited to euthanasia. Everyday, people make choices which may result in the end of their lives - conscious choices, which may or may not result in death.

Furthermore, it has been consistently confirmed through varying cases, that Article 2 of the ECHR does not include the right to die. This being additional to the work of Engström. For example, in R (on the application of Pretty) v Director of Public Prosecutions, in the United Kingdom, the House of Lords held that neither common law nor statute nor the European Convention for the Protection of Human Rights and Fundamental Freedoms 31 recognizes the right to die[12]. In similar circumstances, the United States Supreme Court would reject the notion that the right to die with assistance is derived from liberty, encompassing autonomy and self-determination, on the grounds that there is a lack of historical precedence of such right[13]. In a case from the Hungarian Constitutional Court, the Constitutional Court ruled that a person's choice to end his or her life with medical assistance does not amount to a person's right to self-determination[14]. However, in a case involving a patient's option for active euthanasia in considerations of personal autonomy, the Canadian Supreme Court has ruled that a personal right to end life with assistance should yield to the state's interests in the dying process[15].

In the varying directions that these decisions have gone, it is also crucial to maintain that traditions, culture, and faith, will play an active role in any legal proceeding and/or cases which may arise in regards to this subject. Despite the secularity of the courts in question, it is undoubtable that these rulings are greatly made in regards to past precedents, which are lacking in terms of the right to die. Not much development can come forth if the right to die is regarded in consistent comparison to the right to life.

1.2. Article 8 of the European Convention of Human Rights

Though it is certain that the right to life does not offer refuge to those that seek the right to die, the same cannot be said of Article 8 - The Right to respect for private and family life. The article reads as follows

“Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the

[12] R. (Pretty) v. the Director of Public Prosecutions, (2001) U.K.H.L. 61.
[13] Washington V. Glucksberg, 117 S. CT. 2258 (1997)
[14] Decision No. 22/2003 (IV 28). For detailed discussion, see e.g. Petra Bárd: «Hungarian Constitutional Court Decision on Euthanasia –A Half-Hearted Ruling: Case Study of the Decision No. 22/2003 (IV. 28.) of the Hungarian Constitutional Court», Revue of Constitutional Justice in Eastern Europe No. 4 (2004) pp. 105-120.
[15] Carter v Canada (AG)

prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

In past case law, the article has referenced situations in which ending of life was sought in a person's alleged best interest. Article 8 of the ECHR protects, *inter alia*, the right to respect for private life and as defined by the Court, the concept of 'private life' is a broad term which is not receptive to exhaustive definitions[16]. However, it has been used in regards to an individual's physical and social identity.

The article serves as a means to legally respecting the choices of an individual who wishes to die. This right is not absolute, and as all other rights are limited in its cope; as expected of the right to die in the future. Given that the intent of potential limitations is to protect from potential malfeasance, interferences with the article 8 are permitted if not arbitrary in nature[17].

In Haas v Switzerland (2007), the court would decide that Article 8 of the convention expressly states that the 'right to decide on one's own death' is protected as a manifestation of the individual's private life. Coupled with that, it specified the circumstances in which this right must 'give way' to the State's commitment under Article 2 convention, thus resolving the conflict between obligations arisings from Articles 8 and 2. The substantive perspective on the balance of interests at stake would leave room for a procedural review in subsequent rulings, as most cases in regards to the right to die in any manner must be judged on a case by case basis, and with the case law at hand, cannot be left to me precedential review. It may not be new for people to wish to end their suffering, but an establishment of a right to die will be a foreign concept for much longer, and the trivialization and/or simplification of the right would be highly dangerous.

The right to die will have to exist in a capacity where it may coexist with the right to life, established in the second article of the ECHR, whilst maintaining a managed healthy distance from one another. A violation or exercise of one right, shall not be an infringement on the other. Moreover, for the right to life to remain indisputable, a right to die must exist on the basis that an individual right to life, privacy of life, and self-determination, shall accompany the right to die, not contradict it. Neither of the mentioned rights shall exists in a juxtaposed state, as one shall not cheapen or weaken the other, but rather with a respect for an individual's right to choose the

[16] X & Y v The Netherlands App no 8978/80 (ECtHR, 26 March 1985) para 22, and, more recently: Niemietz v Germany App no 13710/88 (ECtHR, 16 December 1992) para 29; Peck v the United Kingdom App no 44647/98 (ECtHR, 28 January 2003) para 57.
[17] Marckx v Belgium App no 6833/74 (ECtHR, 13 June 1979) para 31; Kroon and Others v the Netherlands App no 18535/91 (ECtHR, 27 October 1994) para 31.

timing and circumstances of their death, a person's right to life is further strengthened and solidified to broaden in scope of personal autonomy.

A right to life must guarantee beyond sheer existence, and with a right to die, it is possible to ensure a life with dignity and more importantly, with choices. By keeping someone alive officially, their right to life is not respected per say, but rather forcefully implemented upon them, which in turn violates their rights to privacy, autonomy, and self-determination.

By allowing people to remain in control, with limitations, their autonomy is widened in scope, and through governance it is ensured that their right to life is properly enforced.

2. THE RIGHT TO DIE

Justifications for active euthanasia have generally leaned heaviliy on the ethical and moral justifications derived from a necessity for the procedure. Considerations of patient autonomy, dignity, and respect have been held at high regard for the implementation of frameworks allowing individuals to end their lives. Naturally, quality of life, beneficence, and the responsibilities of physicians toward their patients must also be considered.

It is important to begin with a categorization procedures which may end a patients life: active, passive, and physician assisted euthanasia. Active and passive euthanasia may be viewed from a more grey perspective, in sense that it is more perceived as suicide; while physician assisted euthanasia is more questionabe as it is a direct act intended to cause a patient's death by another individual. It is where a distinction arises between this as a mere medical procedure or homicide. In no way is this a confirmation that physician assisted euthanasia can be treated as homicide; however, it does mean that depending on the scope of local guidelines and laws, a physicians active involvement in ending the life of a patient may easily be prosecuted as a homicide. It is when laws specificy and evolve that physician assisted euthanasia is not a crime.

2.1. What Must be Outlawed and What Comes into Force

It is crucial to give the Right to Die a proper direction, as well as definition. To many, it is the action or omission taken with the intent of bringing about death of a terminally or incurably ill patient in order to end their pain and suffering. But what pain and suffering make the cut? In what sense, can legal jurisprudence adequately decide when suffering is ‘sufficiently’ unbearable to the individual?

Beginning from doctrines of criminal law, the administration of drugs or lethal injections with the objective to cause the death of a patient, supplying a lethal pill or advising about methods that lead to death, administration of palliative drugs in doses capable to hasten the death of the patient, non-treatment of treatable condition, withholding or withdrawing of life supporting systems, and the regime of do-not-resuscitate orders, fall within the scope of euthanasia[18].

[18] Besirevic, Violeta. (2016). Mission (Im)Possible: Defending the Right to Die.

This paper will proceed with the mentioned scope of euthanasia, as the definition for the Right to Die. Violeta Besirevic in her paper "Mission (Im)Possible: Defending the Right to Die", has also made no distinction between euthanasia and the requests for acknowledging the right to die. Instead, given that the right to die is a modern euphamism for euthanasia and the right to access it; primarily to respect the involvement of medical professions in the discourse.

The International Bioethics Committee mentioned end-of-life concerns in its Report on the Possibility of Elaborating a Universal Instrument on Bioethics, stating that the meaning and significance of life and death are intricately connected to culture and tradition[19]. However, the fundamental focus of human rights documents linked to bioethics, on the other hand, is on dignity and autonomy, which many people look to for direction in end-of-life decision-making, in both competent and incompetent patients. When scientific and technological advances expanded the types of therapeutic treatments available and gave physicians the power to sustain or prolong the lives of patients in a state that the patients might not want to endure, the question of how to secure patient autonomy when the patient is no longer capable of making healthcare decisions became salient.

In certain communities, the main strategy for preventing life-sustaining treatment from being imposed indiscriminately was to provide individuals with planning tools that valued their autonomy and allowed them to control life sustenance in the event of future incompetence by utilizing their current, presumably undamaged mental capacity. Therefore, respect for the patient's autonomy demanded the acknowledgement that such planning instruments would increase the general quality of life, generally referred to as advance directives, which could include a living will, durable power of attorney, or a proxy designation.

Other cultures, particularly those where familial or religious values dominate decision-making, were less enthusiastic about promoting advance directives in law or clinical practice. There is a relative distinction in the means through which certain cultures prepare for death, more so through legacies, rather than self-management. When there are established proper ways to perform post-mortem duties, the advance planning may seem disrespectful and even insulting to life. A Malaysian study showed that many people agree that planning for future medical

[19]International Bioethics Committee (IBC). 2003. Report of the IBC on the Possibility of Elaborating a Universal Instrument on Bioethics. Paris.

management is important, but most believe that formal written advance directives are unnecessary, which have had largely been attributed to religious beliefs[20].

As the scope of euthanasia is specified based on local customs and laws, we see differences (Noted in Table 1) in the application of euthanasia laws. Despite the examples being based on Western Democracies, the cultural and governmental impact on such laws is indisputable. For example, certain countries place a strict age limit of 18 years old, whilst others permit the exercise of the right to die for those as young as 12. Neither law need criticism or immediate moderation; the country which allows euthanasia for those as young as 12, is the Netherlands – a country which has expanded and bettered their systemic enforcement of the right to die for decades. Culturally and legally, it is no longer a foreign prospect for such topics to be discussed, and no longer is every aspect of the topic open to interpretation. The same cannot be said for Azerbaijan, for example. Religion and cultural background are significant factors in shaping euthanasia attitudes[21]. Islam emphasizes the importance of human life and the responsibility of everyone to take care of his or her own body. Euthanasia is regarded a sanctity breach in Islam, since Muslims believe that only God has the right to call the soul back. As a result, euthanasia is regarded as the same as suicide and is an unforgivable sin, and people who seek euthanasia, as well as those who assist them, are deemed sinners. As a result of such beliefs, even gradual secularization may not suffice to shift the wave of support for euthanasia, it becomes much more than a legal or moral quandary, but a crime committed against God.

With such a burden, it might take significantly more than principles of autonomy and self-determination to create an alluring view of a right to die. Given that such cultures do not prioritize a right to life, but more an obligation to live; it is sufficient to claim that only with proportional implementation such laws, which gradually expand upon regulations is a far safer approach.

The purpose of this is to understand that cultural difference represents a massive wave of discomfort and discontent for a right to die. For some the question is that of having a right to die, when life is not yours to give and there lies the conundrum that such change comes not with secularization, but with cultural evolution.

[20] For more see Htut, Y. & Shahrul, K.. The Views of Older Malaysians on Advanced Directive and Advanced Care Planning: A Qualitative Study. Asia Pac J Public Health 2007; 19: 58– 66.
[21] Kamath S, Bhate P, Mathew G, Sashidharan S, Daniel AB. Attitudes Toward Euthanasia Among Doctors in a Tertiary Care Hospital in South India: A Cross Sectional study. Indian J Palliat Care. 2011;17(3):197–201

This point at which the potential applicability of a right to die is challenged, in what sense, can any jurisprudence adequately decide when suffering is 'sufficiently' unbearable to the individual? If the purpose of end-of-life acts and procedure is to end the suffering of those who wish it, is it important that said suffering be measured?

It seems unjust that people may only gain the right to autonomous decision-making over their bodies, when they prove that they are at a point of no return. In a sense, it reminds of using sexual assault as the only justification for abortions; however, people should have the right to make choices for themselves without unbearable suffering and loss of dignity. A testimony that particularly resonates with this idea is from Carter v. Canada:

"I do not want my life to end violently. I do not want my mode of death to be traumatic for my family members. ("Editorial: Court sides with compassion | National Post") I want the legal right to die peacefully, at the time of my own choosing, in the embrace of my family and friends"[22].

The significance of this claim from Gloria Taylor, the patient diagnosed with a fatal neurodegenerative disease, made before the Canadian Supreme Court is that it reveals the true need for a right to die – to allow induvial to die at their own pace rather than the pace of their illnesses, be it physical or mental, therefore, ethics is not so much the question.

Is it mere autonomy that makes euthanasia an ethical end to life? Such a question must be considered, given that throughout history, humans have found new and dangerous means of selectively diminishing the value of life.

Naturally there must be a principal boundary set on euthanasia. As important as autonomy is, we must recognize that life fatigue[23] could be a major issue with how the youth is developing. According to Hippocrates, "the purpose of medicine is to do away with the sufferings of the sick, to lessen the violence of disease and to refuse to treat those who are overmastered by their

[22] Carter v. Canada (Attorney General), 2015 SCC 5, para. 12.
[23] Huxtable, Richard & Möller, Maaike (2007). Setting a principled boundary'? Euthanasia as a response to 'life fatigue. *Bioethics* 21 (3):117–126.

disease"[24]. *("Withholding or Withdrawing in Children the Ethical and ...")* If medicine is to fail at this task at the cost and/or expense or modern-day morality, does it truly fulfill its purpose?

A general practitioner in Brongersma supported an old man, who was sick of life, in his suicide. The public prosecutor urged the courts to 'set a principled border,' banning authorized euthanasia in such cases. We shall argue that there is no such line since, while disturbing, this is an illogical extension of pro-voluntary euthanasia argumentation. This man made a conscious decision to end his life, at a point at which he was able to evaluate the probability of increased quality of life, as well as the literal will to live.

This man could choose consciously and thoughtfully how they wished to proceed with the remainder of their lives. Though perhaps this may not be morally acceptable in current societal bounds, if the leading factors of the right to die are that of autonomy and self-determination, then this man autonomously chose to end his life at this moment in time. Therefore, the considerations must aim to consider the needs of the patients, given that physicians have the right to refuse, and many do so.

[24] Quoted in Jecker, N.S.. Knowing When to Stop: The Limits of Medicine. *Hastings Cent Rep* 1991; 21: 5– 8.

3. THE VALUE OF HUMAN LIFE

3.1. How does a shift in the evaluation of human value impact the overall necessity of legislative change?

One particularly alarming aspect of a right to die, is that once exercised, there is no turning back. There is no reversal to the end of a life, and at that point whether or not the individual gave full, informed consent is of little consequence, given that they are gone. With this result, the establishment of a right to die, must consider the risks and potential consequences, whilst simultaneously determining whether they are worth it.

There are many risks associated with an enforced right to die, ranging from economic, social, moral, religious, criminal, as well as health related. Firstly, the scope of the right to die is crucial. If the right to autonomous decision making and self-determination take precedent, does it mean that anyone would always have access to the practice of their right to die? Probably not, because even today, countries which have legalized euthanasia heavily regulated the process and requiere patients to meet a precise eligibility crtieria before they can pursue their right to die. This applies to both instances where an individual is terminally ill, or when they no longer wish to live.
At the very base of this procedure lie boundaries and restrictions to the autonomy of patients, through government officials, as well as doctor's evaluations.

Essentially, what is the true cost of 'playing god?'

3.2. Who are the impacted groups and how will such changes affect them?

With modern day developments, there always lies a cost, at times unseen and unheard, but never missing. The current political, social, and systemic conditions do not guarantee equal and equitable treatment for all people. Therefore, following development in a right which permit self-determined death, it is possible that some unexpected consequences may arise, caused by the current functions of the modern world. Though these risks and impacts are unwanted and in no way positive, they do not diminish the value of the right to die. The harm from such a right

would not come from the exercise of the right, but rather from societal and/or traditional factors which contribute to individual lives.

A good example of similar consequences is the US Supreme Court case, Roe V. Wade. The case was crucial in confirming the freedom of a woman to make her own pregnancy decisions merits the highest level of constitutional protection. However, the abortion rate for black women is almost five times that for white women[25], and there are disparities more so among Hispanic women as well. Pro-lifers tend to use these arguments to their advantage, in that the legalization of abortion leads to a wide disparity of women of color having abortions, then white women, thus aiming to target this audience within a pro-life narrative, while ignoring any social and political barriers these women may have to health care, contraception, and/or housing. The ignorance of the core issues results in an incorrect understanding of the core of the issue. The access to-and necessity of abortions is not merely determined by such statistics, but rather by the principles of bodily autonomy and self-determination. Individuals must have autonomy to make choices regarding their lives and bodies, which makes the right to die even more so crucial.

Despite this, risks of abuse must be managed, nevertheless. It is important to note, that the risks in this chapter are not a guarantee or meant to be a warning of the right to die.

The New Zealand End of Life Act requires that an individual "suffers from a terminal illness that is likely to end the person's life within 6 months"[26], unlike the criteria in the Netherlands which is a bit more relaxed for those who may pursue an end-of-life procedure. With the limitations in New Zealand, it is less likely that individuals will be susceptible to pressure to end their lives to prevent being burdens to their families when being ill and/or nearing the end of their lives. The elderly is a particular concern about such developments, as people near the end of their lives and find themselves in need of constant care which may be demeaning, expensive, and/or inaccessible. The pressure to relieve susceptible burden from their families or themselves may place people at risk of pursuing assisted dying. This does not mean that the pursuit will be successful, or that conditions cannot be ameliorated; however, a dangerous precedent may be established depending on the culture where the practice is being enforced.

[25] Guttmacher Institute
[26] End of Life Choice Act 2019

In the countries where euthanasia has been legalized, there has not been a concerning increase in people dying and/or pursuing such procedures at alarming rates. As a right to die can be normalized without the normalization of the pursuit of death itself.

3.3. The risk-of-abuse argument

It is a well-established principle within constitutional law, that individual rights and liberty are limited to the extent that they do not violate or infringe upon the rights of others. In 1689, John Locke emphasized one of the main modern understandings of the non-aggression principle (NAP) in his "Second Treatise on Government," writing, "Being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions."[27]

A popular quote communicated the earliest known instance in 1882, by John B. Finch, in which he stated "The right to swing my fist ends where the other man's nose begins". This expresses a well understood principle that one's personal freedom is not limitless, and shall be restricted to ensure their own wellbeing, safety, rights, as well as another's. The question remains whether the limitations placed on euthanasia and actions which end someone's life, are in complaince with this principle. Naturally, an individual's wish to die, may be exercized in many ways - not limited to government sanctions forms of euthanasia; therefore, to what extent is it necessary to even establish a right to die.

To begin with, an individual must not be made to suffer needlessly. While the Universal Declaration of Human Rights (UDHR), as well a the American Declaration of the Rights and Duties of Man (ADRDM), both drafted in 1948 are the first international documents identifying a right to life, it is the ECHR, that is the first to seek collective means of enforcement of this right. A recognition and acknowledgement of a right to life has become a crucial aspect of law-making and governance, and naturally, a means to determining whether a right to die may coexist with the universal right to die. Multiple countries have decided that yes, the rights may coexist and complement one another. The risk-of-abuse argument is a means to limit the scope of the right to die and to determine the risks of as done in Canada, New Zealand, and the Netherlands. These countries have selected limitation to prevent abuse and/or exploitation in the event of the practice of the right to die.

[27] "'Your Rights End Where My Right to Life Begins'." Altoonamirror.com

Those who argue against patients having a legal right to euthanasia or assisted suicide often utilize two arguments: the 'slippery slope' argument and the dangers of abuse argument. Both are scare techniques, and their rhetorical power outweighs their logical power. Though this need not mean that, the worries are unfounded, but that they are based on exaggerated fears of the consequences of progression in the field of human rights. Euthanasia is not new, as has been established, but its legality is. Not many countries share the 'veteran' status on euthanasia and assisted-dying as the Netherlands, and not many countries can identify with the recent progression in the legalization of Euthanasia and physician-assisted suicide as the Netherlands; and yet the discourse is continuous.

Slippery slope arguments suggest that if one type of action (such as euthanasia in this case) is allowed, society will inevitably be led ('down the slippery slope') to allow other morally reprehensible activities. Of course, arguing the existence of a slippery slope is simpler than proving it. Opponents of a legal right to die, for example, refer to the Netherlands, where the law allowing euthanasia and doctor-assisted suicide has slowly gotten more permissive. Initially, it was only approved for terminally ill patients, but it was later extended to the chronically ill, those suffering from psychological distress, and incompetent individuals, including children. Though it may be true that Dutch law on euthanasia and doctor-assisted suicide has greatly expanded in accessibility, but this fails to prove that a slippery slope is to be expected.

It is frequently argued that freedom has limitations, which is true. However, because freedom has its bounds does not imply that the right to die is falls within those bounds. These cases have shown that even though cases in assisted suicide rise, as the procedure are legalized, the competency and thoroughness of the procedures are maintained. However, the risk-of-abuse may come from both the patient, as well as their environment.

4. INTRODUCTION OF A COMPARATIVE ANALYSIS

As previously stated, assisted dying and euthanasia are not entirely foreign concepts to mankind. With historical precedents set in regards to the never-ending plow of human existence and struggle, there will always be attempts to ameliorate said struggle. Despite the irreversible nature of assisted dying/euthanasia, it cannot be ignored that those aiming to ease their pain, must have options. Options which are not merely extensions to their pain, or ignorant of the burden of a painful existence, but those that allow those suffering to independently choose whether or not they shall suffer, rather than being condoned to it.

It can also not be ignored, that accessibility to the right must not be limitless. Through proper systemic maintenance and care, it is possible to permit the procedure if the requirements are thoroughly met. Since of 2018, a certain chosen form of euthanasia became legally accessible in - Canada, Belgium, Luxembourg, The Netherlands, and Colombia, and in the US states of Oregon, Washington, Vermont, Montana, Colorado, California, and Washington, DC[28]. It is also decriminalized in Switzerland[29]. Likewise, Hawai'i and Victoria, Australia, have recently passed EAD legislation[30]. Until recently, all forms of euthanasia and/or assisted dying were illegal in New Zealand (NZ).

This chapter will delve into the efficiency, legality, and ethics of – New Zealand and the Netherlands, in particular, to offer insight into the current means of enforcement and management of End-of-Life procedures, as well as make a comparative analysis of their relative functionalities.

[28] Jessica Young, Richard Egan, Simon Walker, Anna Graham-DeMello & Christopher Jackson (2019) The euthanasia debate: synthesising the evidence on New Zealander's attitudes, Kōtuitui: New Zealand Journal of Social Sciences Online, 14:1, 1-21, DOI: 10.1080/1177083X.2018.1532915
[29] Emanuel et al. 2016
[30] Victorian Parliamentary Library & Information Service 2017; Office of the Governor 2018

Table 1. For comparison of listed countries on eligibility criteria for euthanasia

New Zealand	Netherlands	Criteria
At least 18 years old	At least 12 years old (patients between 12-16 years of age require the consent of their parents)	Age
Be a citizen or permanent resident of New Zealand	Possible for foreigners, but legal requirements must be met	Citizenship/Residency requirements
Be suffering from a terminal illness that is likely to end their life within 6 months	"Do not need to have a fatal or terminal condition to be eligible for medical assistance in dying." (“What you need to know about medical assistance in dying ...”)	Life expectancy/Fatality
"Be in an advanced state of irreversible decline in physical capability" (“Global Legal Monitor - loc.gov”)	"The patient is suffering unbearably with no prospect of improvement" (“The applied ethical issue of euthanasia, or mercy - Best ...”)	Health
"Experience unbearable suffering that cannot be relieved in a manner that the person considers tolerable" (“New Zealand Should Vote No on End of Life ... - LifeNews.com”)	-	Life experience and Quality of life
"Be competent to make an informed decision about assisted dying." (“The End of Life Choice Act 2019 | Ministry of Health NZ”)	The patient's request for euthanasia must be absolutely voluntary and persistent (it cannot be granted if under the influence of others, psychological illness, and/ or drugs)	Competence
https://www.health.govt.nz/our-work/life-stages/assisted-dying-service/end-life-choice-act-2019	https://wfrtds.org/dutch-law-on-termination-of-life-on-request-and-assisted-suicide-complete-text/	Links

4.1. New Zealand: Recent, but powerful

The End of Life Choice Act 2019 (the Act) gives people who experience unbearable suffering from a terminal illness the option of legally asking for medical assistance to end their lives[31]. The Act outlines the legal framework for assisted dying, and includes controls, eligibility criteria and safeguards"[32]An emphasis has to be made that though the Act gives the option to request to end their lives, it establishes a strict eligibility criteria, which is necessary, despite the clash with the principle of autonomy so strongly used in favor of end-of-life care.

A particularly outlandish ascept of the euthanasia debate in New Zeleand is the contrast in opinions and support on the basis of language used to speak of the issue. Euthanasia and physician-assisted suicide (EPAS) are increasingly being discussed in the medical, legal and public fields and the general consensus is that public opinion is in favor of EPAS[33]; although support varies by surveys. While some polls reveal support of 80% and above[34], others show result below 60%[35]; the causes of these disparities are not clear. The causes for this discrepancy have not been thoroughly investigated, while there are several elements that could be involved, including the timing and location of the surveys, as well as the clarity and emotive tone of the questions themselves. It is likely that responses are influenced by a lack of understanding of definitions and current regulations. In this context the relevance of the 'slippery-slope' argument is crucial[36]. Language and tone can influence public opinion and support drastically, meaning that the use of sensitive words with negative connotations such as "kill", "suicide", and even "euthanasia", can harm the likeliness of proper understanding the core of the issue. This influence is particularly visible in New Zealand where support has varied depending on the phrasing. Naturally, a rhetoric which discusses whether individuals may legally 'kill themselves' attracts a different reaction than one which supports 'voluntary assisted dying'.

[31] The Act came into force 12 months after the public referendum held at the 2020 General Election. Assisted dying became legally available on 7 November 2021.
[32] The End of Life Choice Act 2019. Accessible at: https://www.health.govt.nz/our-work/life-stages/assisted-dying-service/end-life-choice-act-2019
[33]Emanuel JE, Onwuteaka-Philipsen BD, Urwin JW, Cohen J. Attitudes and practices of euthanasia and physician-assisted suicide in the United States, Canada, and Europe. JAMA 2016; 316: 79–90.
[34] Euthanasia Snap SMS Survey (press release). Australia: Roy Morgan; 2017
[35] Euthanasia Issues Poll (press release). New Zealand: Curia Market Research; 2019
[36] Marcoux I, Mishara BL, Durand C. Confusion between euthanasia and other end-of-life decisions: influences on public opinion poll results. Can J Public Health 2007; 98: 235–9.

4.1.1. End of Life Choice Act 2019

The Act came into force following a public referendum held at the 2020 General Election. Assisted dying became legally avilable on 7 November 2021[37]. According to part 1, article 3, the purpose of the Act is to:

1) "To give persons who have a terminal illness and who meet certain criteria the option of lawfully requestin g medical assistance to end their lives; and

2) to establish a lawful process for assisting eligible persons who exercise that option"[38]

The use of the term - terminal illness, is quite crucial in this text, as it establishes a very clear boundary for who may exercise their right to die. Unlike the Netherlands which gradually diversified the eligibility criteria, to use the right to die one must prove that they are likely to die within 6 months. Though assisted dying is always aimed at those experiencing unbearable suffering, this Act establishes a very high threshold for one to be able to die through assisted means. There is certainty that this approach is better for the public, more so than accessibility to the procedure for more individuals. Naturally, they will die must not be confused with the competent considerations and evaluation of a deteriorating quality of life.

Within the limits of this paper, and current laws, an individual needs to meet a criterion to exercise a right to die. Naturally, it is possible that the threshold for the criteria will change in the coming years and possibly, New Zealand itself might follow in the footsteps of the Netherlands. This may not be the inherent goal of the Right to Die, meaning to relax all restrictions an exercise of self-determined death, but that with societal and legal changes, it is expected that a future with a recognized right to die is foreseeable as these countries establish frameworks to allow for the systemic practice of the right. The Act recognizes the potential risks of the right to die, but still respects the autonomy and self-determination of individuals to their own deaths. The recognition of a certain type of suffering does not mean the system is ignorant of others, but that it has taken the initial steps to the recognition of the right to die. Given that a right to die is not an encouragement of death, but an acceptance of its inevitable nature, coupled with the added elements of autonomy; it is likely that New Zealand End-Of-Life care may reach a similar stage as that of the Netherlands.

[37] The End of Life Choice Act 2019. (2021). Ministry of Health NZ.
[38] The End of Life Choice Act 2019

Without unfavorable results from the Act, opinion may shift to normalization of a right to die, thus integrating the right fully into effect, whilst maintaining its coexistence with the right to life. In no way to either infringe on one another, and similarly, the rights to choose and self-determination are granted to both patients, as well as physicians.

4.2. The Netherlands

Both euthanasia and physician-assisted suicide have been legal in the Netherlands since 2002, and they are both subject to the same due care rules. Physicians (in the Netherlands and elsewhere) are increasingly faced with problems, including whether to delay (or refrain from) treatment, due to an aging population, societal shifts, and the increased capacity of medical science to prolong life. Nontreatment decisions are also a contentious issue in the Netherlands (as they are in the United Kingdom, the United States, and other countries), particularly when it comes to incompetent patients (severely handicapped neonates, comatose patients, individuals with severe dementia, and others). However, unlike most other countries where medically assisted deaths are permissible, the Netherlands' euthanasia statute does not require that a patient be near death. Though this is not by default negative, it does raise certain red flags that most people around the world may not be comfortable with.

The law's instructions are brief and broad;apart from formal consent — a patient's request must be "informed," "voluntary," and "well-considered" the doctor must be certain that two conditions are fulfilled: the patient is suffering "unbearable" and there is "no reasonable alternative" to lessen it. The redeemable aspect is that suffering should not be limited to physical pain; such a narrative is exclusionary of many forms of invisible suffering, which may offer not alternatives for higher quality of life. Therefore, an individual who is forced to endure immense mental pain must not be made to suffer needlessly due to a lack of recognition of this suffering.

When juxtaposed with conditions in New Zealand, which requires a patient to be terminally ill with a 6-month life expectancy, it is not to say that this is preferable to the other, but rather that their juxtaposition provides a much-needed perspective on the various means through which individuals may practice a right to die. What is crucial in this system is that the law gives considerable weight to professional judgment. As the world's leader in this, the Netherlands has realized that although legalizing euthanasia may answer one ethical quandary, it simultaneously

opens the door to other ones, the most crucial of which is where the practice's boundaries should be defined. A group of academics and jurists raised concerns about the 'sippery slope' – the idea that a measure intended to help late-stage cancer patients has expanded to include people who might otherwise live for many years, from people with muscular dystrophy to seniors with dementia and even mentally ill youth. Earlier in this paper, the 'slippery-slope' argument was deemed inconstant with the reality of end-of-life procedures, therefore it would be incorrect to refer to such developments in euthanasia as a 'slippery-slope' merely because the accessibility has been expanded.

However, in 2007, following the expansion of the range of eligible conditions for euthanasia, as well as a change in meaning to term "unbearable suffering" the number of Dutch people being euthanised began to rise rapidly, from under 2,000 in 2007 to almost 6,600 in 2017[39]. So, individuals who previously had their requested denied were now permitted to partake in the procedure. With these developments, it remains that the primary questions regarding Dutch end of life laws, is concerns two issues with strong relevance to euthanasia: dementia and autonomy[40].

The underlying issue with advance directives, is the implication that the subordination of an irrational human being to their prior rational self, effectively separates a single person into two opposing individuals, one before their illness takes over and one after. Leaving the physical to select version whose wishes shall be performed. Many professionals believe that no one can be reassured that they have accurately evaluated what patients would want as their illness worsens because they have seen patients adapt to circumstances, they once thought to find unbearable. Humans are resilient in many ways and right to die is not an ignorance of that fact; however, resilience must not be enforced on a person, and neither should dying be unquestionable.

Autonomy being the second question, its value regarding human rights and dignity is undisputable; however, the extent of this autonomy is limited. It arises when there is a conflict between an individual's right to life and society's duty to protect human lives, at times even from themselves. For the younger generation, autonomy is the forefront for how things must be governed and regardless of extent, individuals must have the final say on their lives, as well as

[39] De Bellaigue, C. (2019, 25 november). *Death on demand: has euthanasia gone too far?* The Guardian. Geraadpleegd op 7 mei 2022
[40] *Death on demand: has euthanasia gone too far?* The Guardian.

their deaths; this perception of autonomy extends to many other highly debated topics. Physicians who supported euthanasia law in 2002, and believed in the need for the practice, with years have become wary of the relaxation of the eligibility criteria. Some have stopped administering fatal doses altogether, due to the emotional burden of killing someone with a decent life expectancy.

One hand, there are individuals who make conscious choices to end their lives, whatever the reason; and on the other, there is concern for those left behind – physicians, families, and the like. Some families have been grateful to having this right and have seen their loved ones find peace, whilst others have fundamentally disagreed with the wishes of the individual.

Within the confines of Danish euthanasia law, the questions lie on the acceptability of such an increased scope of accessibility. It is certain that the amount of people who die through euthanasia has risen with official data, the number of euthanasia cases has climbed steadily since 2006, reaching 6361 in 2019. Although these cases account for a small percentage of all deaths, they have increased from just under 2% in 2002 to just over 4% in 2019[41]. It's also unclear whether there are regional tendencies across the country, or what causes might be causing them. Thus, further requiring deeper analysis and research into the occurrences.

With a lower threshold, it is expected that the numbers in cases will increase; however, investigative action must be continuous to understand the conditions which lead to individuals to making this choice.

4.3. Comparative Analysis and Findings

Considering that the Netherlands was the first country in the world to legalise euthanasia and physician-assisted suicide[42], the statistical results and legislative developments are important in understanding the tendencies in which such practices evolve. Not to claim that each country will develop in the same way, but that the conditions today in said country allow for the opportunity to study what may have gone wrong to prevent repetition.

[41] *A critical look at the rising euthanasia rates in the Netherlands*. (2021, 15 januari). Healthcare-in-Europe

[42] Hagens M, Pasman HRW, van der Heide A, Onwuteaka-Philipsen BD. Intentionally ending one's own life in the presence or absence of a medical condition: A nationwide mortality follow-back study. *SSM Popul Health*. 2021;15:100871. Published 2021 Jul 15. doi:10.1016/j.ssmph.2021.100871

The caution required can be compared to that of aviation. Safety and risk assessments within this field aim to learn from machine and human errors to continuously improve the procedure for flight operations. The consistent risk assessment allows for the implementation of preventative measures, as opposed to emphasizing mitigating solutions. When the potential consequences may cost people their lives due to lack of regulation, care, and/or ignorance, these risks must be prevented by learning from case law, as well as euthanasia cases.

In the Netherlands, Doctors have a duty to report any unnatural deaths to municipal pathologists. In cases of euthanasia, the latter then notifies a regional review committee, which generally consist of a a medical doctor, an ethicist and a legal expert. The purpose of this committee is to assess whether the performed procedure met the requirements and fulfilled the necessary quota[43]. Chapter three of the Termination of Life on Request and Assisted Suicide (Review Procedures) Act focuses on this precisely and provides a precise means of evaluation and reporting of such cases. Similarly, Article 21 of the End-of-Life Choice Act 2019, states that "Within 14 working days of a person's death as a result of the administration of medication under section 20, the attending medical practitioner, or the attending nurse practitioner who provided or administered the medication on the instruction of the attending medical practitioner, must send the Registrar a report in the approved form containing the information described in subsection.". Both these acts provide instructions on mandatory reporting of performed euthanasia, ergo allowing for the proper recording and investigation of the practice of the right to die. Given the broadness of Dutch euthanasia laws, this becomes crucial in ensuring that practitioners are acting in compliance with the requirements and any deviations from standard cases are observed and accurately recorded.

Though rare, there have been reported incidents of malpractice and a breach of law in the Netherlands. It concerns a dementia patient who requested to be euthanized when the 'timing was right,' but she expressed refusal when her doctor determined that this was the case[44]. Before she ultimately succumbed to the doctor's deadly injection, the patient had to be drugged and held by her family. Opinions and feelings towards death may change, and it is heavily questionable whether there is a legal point at which a practitioner may dismiss the refusal of a patient. This is

[43] Ministerie van Justitie en Veiligheid. (2017, June 6). Euthanasia, assisted suicide and non-resuscitation on request. Euthanasia | Government.Nl.
[44] Boffey, D. (2018, November 10). *Doctor to face Dutch prosecution for breach of euthanasia law*. The Guardian.

not truly in compliance with Dutch law; however, the physician rationalized such conduct by claiming that she was following her patient's wishes and that the objections before her death were inconsequential because she was no longer competent. This is where we may witness a separate of an individual to a 'before and after', which may cause avoidable death, when it becomes possible to deem a person too incompetent to refuse death. This is not what the laws in these two countries aim to achieve and not what the right to die is representative of.

When considering euthanasia for the elderly, for example, is it sufficient that someone requests to be euthanatized due to old age and exhaustion? A simple answer may be no, but when the purpose of the right to die is to allow for autonomy and self-determination, does the hypocrisy of the rejection of such a request comply with the purpose of the right?

It is true that with a relaxation of euthanasia and assisted suicide law, lives may be put at risks, but this is a means to return to a 'slippery-slope' argument. One cannot claim such a result, when current numbers do not prove this with the lax criteria for receiving the procedure. At this moment in time, in all these jurisdictions which allow for the practice of a right to die in any way, safeguards, criteria, as well as procedures have been put in place to manage the practice, to maintain societal oversight, and to prevent patients from being abused or the procedure from being misused[45].

However, mandatory reporting is not done properly in various countries. For example, in Belgium, almost half of all cases of euthanasia are not reported to the Federal Control and Evaluation Committee[46]. Meanwhile in the Netherlands, nearly 20% of cases of euthanasia go unreported, this considering that the number refer to the tracible cases[47]. This being a primary concern regarding risk assessment, because if cases are not reported, committees may fail to investigate and notice breaches in law and malpractice, which may lead to further concerns. The concern is that a procedure now seen as a last resort will slowly become be less of a last measure and more freely resorted to, even potentially becoming a first choice in some circumstances. This concern, being less of a 'slippery-slope', but more a consideration of human nature and the true cost of exhaustion of living in today's world. These concerns are not so applicable to New

[45] Smets T, Bilsen J, Cohen J, Rurup ML, De Keyser E, Deliens L. The medical practice of euthanasia in Belgium and the Netherlands: legal notification, control and evaluation procedures. *Health Policy.* 2009;90:181–7.
[46] Smets T, Bilsen J, Cohen J, Rurup ML, Mortier F, Deliens L. Reporting of euthanasia in medical practice in Flanders, Belgium: cross sectional analysis of reported and unreported cases. *BMJ.* 2010;341:c5174.
[47] van der Heide A, Onwuteaka–Philipsen BD, Rurup ML, et al. End-of-life practices in the Netherlands under the *Euthanasia Act. N Engl J Med.* 2007;356:1957–65.

Zealand, as the laws do not permit the seeking of euthanasia in most cases, that are otherwise permitted according to Dutch law.

What is observed in such cases is that there is no way to ‘ensure’ that these laws bring peace and comfort to the victims, given the for those that remain, only the first half of the experience is visible. However, to the extent of current knowledge, euthanasia allows for the amelioration of suffering for families, as well as patients who may die with choice, dignity, and in comfort. When the laws and narratives fail to satisfy this crucial characteristic of the right to die, is where the principle fails. The intent of current laws must be to better reporting and ensure people risk assessment for physicians, to ensure professionalism and understanding from both ends.

The comparative analysis in this chapter shows that neither legislative mean directly fails at their intents to relieve patient suffering, though it does not ignore the need for further development in the ethical and moral developments towards a right to die.

CONCLUSION

A right to die aims to provide restitute for patients in their times of immense unbearable suffering. It is with this aim that it furthers the scope of bodily autonomy and self-determination for people regarding all aspects of their lives, notwithstanding the concerns raised and addressed in this paper.

It is not sufficient to say that a right to die is the missing piece of the puzzle that is modern day international law, but that it is a missing factor in the further expansion of the right to life and self-determination. Within this idea, it is crucial to remember that people are not merely entitled to survival, but to a quality life which provides options and freedom. It is the purpose of international to further the pursuit towards a world with peace, prosperity, human rights, and environmental protection. The risk of abuse, malpractice, and pressure shall stand regardless of whether the right to die is enforced, therefore individuals must not be barred from their right to die for such concerns, as observed in the Netherlands and New Zealand.

There simply isn't enough evidence to show that a right to death will cause unwarranted and unwanted death on behalf of the patients at a large scale and with proper systemic management, these risks may be mitigated, as well as prevented – which should be the goal. Under no circumstances must the practice of mandatory reporting fail to enforce physicians, or those who witness the exercise of the right to die, to report individuals who die through requested means. It is when the procedure is trivialized and become a norm that red flags must be raised. Thus, the emphasis with this is that the right to die remains as a last resort to anybody who wishes to seek it, and the last resort does not take away rights that it is intended to grant.

Having the right to die and having such a right be accessible does not equate to the fact that people who are unhappy or with a low quality of life must simply seek this 'escape'. It does not mean that people must give up or that they must give in to the desire to quickly end their suffering once they have this right, because human life is immensely valuable, and this value may not be reduced.

Humans have spent generations trying to establish a right to life and systemic procedures to protect this right. It is with great sacrifice and efforts that the conceptual value of human life has come to include principles of autonomy, liberty, and self-determination. Now is not the point at

which we begin allowing people to legally terminate their own lives, at risk of devaluing the understanding of human life and ignoring the implications of a right to die. What is more important is that the right to die as a choice exists, with safeguards and limitations, but that it is accessible and is an alternative to those who need and/or wish to exercise it.

This does not imply that the causation for potentially increasing numbers in people seeking euthanasia must be dismissed, or that the absolute acceptance and normalization of the practice is acceptable. The causes and events leading to the practice of the right to die must be properly reported and investigated, to allow for the bettering of overall quality of life. Be it political, social, or economic reasons, it must be understood as to why individuals pursue this procedure and how these numbers may be reduced, but the choice must always remain with the individual. The current safeguards aim to evaluate the proportionality of the conditions of the patients and do so rightfully, however, the right to die is not a means of escapism from the issues of today's world. Once a right to die is established, legislative bodies must continue to better the lives of people and the right to life must still be protected at all costs.

Because when we speak of a right to die, we refer to a right to choose, to autonomous decision-making, to bodily autonomy, and to freedom for an individual. This meaning confirms an equivalence of the right to life and death. That they are founded on similar principles, which aim to grant individuals the right to live their own lives within protected circumstances. This paper evaluates this equivalence by comparing current euthanasia laws, and the expectation is that it helps understand the possibility of a coexistence of the two fundamental rights within international law.

LIST OF REFERENCES

1. A Human Right to Die? The Legality of Euthanasia under the European Convention on Human Rights By Amanda Engström

2. Banović B, Turanjanin V. Euthanasia: Murder or Not: A Comparative Approach. *Iran J Public Health*. 2014;43(10):1316-1323.

3. Bartels, Lorana and Otlowski, Margaret, A Right to Die? Euthanasia and the Law in Australia (2010). Journal of Law and Medicine, 17: 532-555, Available at SSRN: https://ssrn.com/abstract=2188732

4. Battin M. Voluntary Euthanasia and the Risks of Abuse: Can We Learn Anything from the Netherlands? Law, Medicine and Health Care. 1992;20(1-2):133-143. doi:10.1111/j.1748-720X.1992.tb01180.x

5. Besirevic, Violeta. (2016). Mission (Im)Possible: Defending the Right to Die.Maximilian Koessler, Euthanasia in the Hadamar Sanatorium and International Law, 43 J. CRIM. L. CRIMINOLOGY & POLICE Sci. 735 (1952-1953).

6. Boffey, D. (2018, November 10). Doctor to face Dutch prosecution for breach of euthanasia law. The Guardian. https://www.theguardian.com/world/2018/nov/09/doctor-to-face-dutch-prosecution-for-breach-of-euthanasia-law

7. Boussard, H. (2007). The 'Normative Spectrum' of an Ethnically-inspired Legal Instrument: The 2005 Universal Declaration on Bioethics and Human Rights. In F. Francioni (Ed.). Biotechnologies and International Human Rights (pp. 97–128). London: Hart Publishing. Retrieved October 29, 2021, from http://dx.doi.org/10.5040/9781472563873.ch-006

8. Chimezule, Obinuchi, Right to Die (Euthanasia) in Nigeria (July 31, 2015). Available at SSRN: https://ssrn.com/abstract=2638369 or http://dx.doi.org/10.2139/ssrn.2638369

9. Cohen-Almagor, Raphael and Cohen-Almagor, Raphael, The Right to Die with Dignity: An Argument in Ethics and Law (October 30, 2008). Health Law & Policy, Vol. 2, No. 1, pp. 2-8, Spring 2008, Available at SSRN: https://ssrn.com/abstract=1292302

10. de Bellaigue, C. (2019, November 25). *Death on demand: has euthanasia gone too far?* The Guardian. https://www.theguardian.com/news/2019/jan/18/death-on-demand-has-euthanasia-gone-too-far-netherlands-assisted-dying

11. East, H. (2013). Euthanasia and Law in Europe. By John Griffiths, Heleen Weyers and Maurice Adams, Portland, Oregon: Hart, 2008. 648 pp. ISBN 978-1-841-13700-1 £62.00 hardback.International Journal of Law in Context, 9(1), 124-126. doi:10.1017/S1744552312000523

12. Euthanasia : legal principles and policy choices[Firenze : European Press Academic Publishing, 2006.] - Permalink: http://digital.casalini.it/8883980379

13. Fernando R. Tesón, International Human Rights and Cultural Relativism, 25 VA. J. INT'L L. 869 (1985), Available at: https://ir.law.fsu.edu/articles/30

14. Ferrante, Chris. "Playing God: The Ethics of Euthanasia." (2013). https://www.semanticscholar.org/paper/Playing-God%3A-The-Ethics-of-Euthanasia-Ferrante/1bb71fa1741b3762255b28e4d4ab14bcef3a0e16

15. Ferreira N. Latest legal and social developments in the euthanasia debate: bad moral consciences and political unrest. Med Law. 2007 Jun;26(2):387-407. PMID: 17639859.

16. Grove G, Hughes I, Lovell M, Best M. Content analysis of euthanasia polls in Australia and New Zealand: words do matter. Intern Med J. 2021 Oct;51(10):1629-1635. doi: 10.1111/imj.15377. PMID: 34008298.

17. Judgements of the European Court of Human Rights based on the European Convention on Human Rights

18. Judit Sandor, Human Rights and Bioethics: Competitors Or Allies - The Role of International Law in Shaping the Contours of a New Discipline, 27 MED. & L. 15 (2008).
19. Letellier, Philippe, Council of Europe Publishing, ed. Euthanasia. Volume I. Ethical and Human Aspects. Strasbourg: Council of Europe; Croton- on-Hudson, NY: Manhattan Publishing Co.; 2003: 13-24.
20. Ministerie van Justitie en Veiligheid. (2017, June 6). Euthanasia assisted suicide and non-resuscitation on request. Euthanasia Government.Nl. https://www.government.nl/topics/euthanasia/euthanasia-assisted-suicide-and-non-resuscitation-on-request
21. Peerenboom, Randall, Human Rights and Rule of Law: What's the Relationship?. Georgetown Journal of International Law, Vol. 36, 2005, UCLA School of Law Research Paper No. 05-31, Available at SSRN: https://ssrn.com/abstract=816024
22. Pereira J. Legalizing euthanasia or assisted suicide: the illusion of safeguards and controls. Curr Oncol. 2011;18(2):e38-e45. doi:10.3747/co.v18i2.883
23. Petrovska, Iryna I., et al. "A Human Right Can Be in Conflict with one or Several Other Human Rights." Utopía y Praxis Latinoamericana 23.82 (2018): 159-169.
24. Pihla Herminen. "The Legality of Active Euthanasia in Relation to Human Rights and Legal Approaches to Active Euthanasia in Different States". L'Europe Unie 15:39-47. https://www.ceeol.com/search/article-detail?id=796748
25. 25. Shelton, Dinah L., An Introduction to the History of International Human Rights Law (August 2007). GWU Legal Studies Research Paper No. 346, GWU Law School Public Law Research Paper No. 346, Available at SSRN: https://ssrn.com/abstract=1010489 or http://dx.doi.org/10.2139/ssrn.1010489
26. Stolberg, Michael. "Two Pioneers of Euthanasia around 1800." The Hastings Center Report, vol. 38, no. 3, 2008, pp. 19–22, http://www.jstor.org/stable/25165328. Accessed 5 Apr. 2022.
27. The Discourses of Autonomy in the International Human Rights Law: Has the Age of a Right to Die Arrived? By Violeta Besirevic
28. Udoh, Gabriel Peter, Human Rights Considerations of Euthanasia (March 13, 2018). Available at SSRN: https://ssrn.com/abstract=3140136 or http://dx.doi.org/10.2139/ssrn.3140136
29. Van Den Akker B, Janssens RMJPA, Have HAMJT. Euthanasia and International Human Rights Law: Prolegomena for an International Debate. Medicine, Science and the Law. 1997;37(4):289-295. doi:10.1177/002580249703700403
30. Van Den Akker, Britt, et al. "Euthanasia and International Human Rights Law: Prolegomena for an International Debate." Medicine, Science and the Law, vol. 37, no. 4, Oct. 1997, pp. 289–295, doi:10.1177/002580249703700403.
31. Violeta Besirevic, Basic Norms of Bioethics: Informed Consent in UNESCO Bioethics Declarations, 3 Annals FAC. L. BELGRADE INT'l ED. 257 (2008).
32. Zdenkowski, G. (1997). The International Covenant on Civil and Political Rights and Euthanasia. The University of New South Wales Law Journal, 20(1), 170–194. https://search.informit.org/doi/10.3316/ielapa.104828503511798
33. Zdenkowski, George. "The International Covenant on Civil and Political Rights and Euthanasia." University of New South Wales Law Journal, The 20.1 (1997): 170-194.

NON-EXCLUSIVE LICENCE

A non-exclusive licence for reproduction and for granting public access to the graduation thesis[48]

I, Aisha Gadirova,

1. Give Tallinn University of Technology a permission (non-exclusive licence) to use free of charge my creation

"Can the Right to Life be equivalent to the Right to Death?"

supervised by Vlad Vernygora,

1.1. to reproduce with the purpose of keeping and publishing electronically, including for the purpose of supplementing the digital collection of TalTech library until the copyright expires;

1.2. to make available to the public through the web environment of Tallinn University of Technology, including through the digital collection of TalTech library until the copyright expires.

2. I am aware that the author will also retain the rights provided in Section 1.

3. I confirm that by granting the non-exclusive licence no infringement is committed to the third persons' intellectual property rights or to the rights arising from the personal data protection act and other legislation.

[48] The non-exclusive licence is not valid during the access restriction period with the exception of the right of the university to reproduce the graduation thesis only for the purposes of preservation.