Bialystok Legal Studies
Białostockie Studia Prawnicze
2023 vol. 28 no. 3

sciendo

DOI: 10.15290/bsp.2023.28.03.08

Received: 27.12.2022
Accepted: 15.06.2023

Ewa Michałkiewicz-Kądziela
University of Szczecin, Poland
ewa.michalkiewicz-kadziela@usz.edu.pl
ORCID ID: https://orcid.org/0000–0002-5396–1820

Goran Šimić
University 'Vitez', Bosnia and Herzegovina
drgoransimic@gmail.com
ORCID ID: https://orcid.org/0000–0002-5339–1143

The Right to Dignified Death: A Comparative Legal Discussion of Euthanasia and Assisted Termination of Life

Abstract: The discussion of legal aspects of euthanasia and assisted termination of life has been going on for many years. It touches upon complex topics such as legal, moral, health, religious or societal issues. In terms of human rights, it focuses primarily on juxtaposing the right to life with other rights, such as the right to privacy, the right to decide for oneself, or freedom from torture and inhumane treatment. At the level of international law, the European Court of Human Rights has not decided to establish uniform standards for the protection of the right to life regarding euthanasia and assisted termination of life, allowing the application of the principle of freedom of assessment by the signatory states of the Convention for the Protection of Human Rights and Fundamental Freedoms. The consequence of this is the establishment by individual countries of non-uniform legal regulations, which leads to a differentiation in the legal situation of their citizens. The purpose of this article is to determine whether it is possible to derive a universal right to dignified death, and what the consequences of a lack of an international standard on legal regulations in the field of euthanasia and assisted termination of life are for the protection of human rights.
Keywords: assisted termination of life, euthanasia, human rights, right to dignified death, right to life

Introduction

Human life is destined to end. Amid all the uncertainties of human existence, this is the only sure thing. Irrespective of beliefs, religions or scientific approaches, this one life in human form (the only life in eternity, according to monotheistic reli-

gions) will never repeat again. But this is not the only view on that question. There are millions of people around the world who do believe in other options for human life, so it would be pretentious to say that we can claim with certainty that humans only live once in human form and then their lives end. It would be fairer to say that these beliefs strongly depend on the cultural, religious and ideological backgrounds of different groups of people and their communities (or states), rather than on certain and incontestable scientific evidence.

However, while human life is glorified and protected, its inevitable 'other side' is regarded as something 'not worthy', or even blasphemous, always presented in a negative context. This is related to the cultural perception of death in the category of loss, which is something negative. In addition, there are distressing historical associations related to the activities undertaken by the Nazis, which means that to this day, euthanasia and the termination of life is perceived not as a kind and compassionate act, but rather as murder.[1] In a world that strongly protects individual human rights (among them the right to life and freedom and the right to protection against any form of torture and inhumane treatment), this is a strange phenomenon. Although declared secular, most of today's European countries are still under the strong influence of traditional (not necessarily religious) beliefs and their understanding of human life and how one should live one's life. The struggle for the creation of societies where human beings are free to make their own choices (while respecting others') is still an unfinished process. While some rights are protected and strongly promoted, others are neglected and 'stigmatized' for no reason. The right to a dignified death is not a threat to any other member of society, nor to society as a whole, and that is supposed to be the threshold for our human right and its application. Furthermore, the existing legal regulation of this phenomenon offers a picture of fundamental discrimination in most European countries. The phenomenon is called euthanasia, assisted suicide or other names, but the correct term for it would be 'dignified death'. Thus, in its essence, it offers nothing offensive or unacceptable to any society or its members. Some still think that human beings cannot have full freedom to live their lives but must still be 'enslaved' to predefined, non-changeable rules. To them, decriminalization of abortion, prostitution or the use of cannabis has a similar context to the question of dignified dying – even more so here, as we are dealing with losing the 'monopoly on death' of human beings.

The purpose of this article is to determine whether it is possible to derive a universal right to dignified death, and what the consequences of a lack of an international legal standard for euthanasia and termination of life are for the protection of human rights. For this purpose, two research methods were mainly used: the method of investigation of the law in force and the legal comparative method. The historical

1 Y.A. Picón-Jaimes, Euthanasia and Assisted Suicide: An In-Depth of Relevant History Aspects, 'Annals of Medicine & Surgery' 2022, vol. 75, DOI: 10.1016/j.amsu.2022.103380.

method was also used as an aid. The use of these research methods made it possible for the investigators to analyse judgments of the European Court of Human Rights (ECtHR), to compare legal regulations of various Member States, and to identify the consequences of a lack of a uniform standard in the field of the regulation of euthanasia and termination of life.

1. Standards of international law in ECtHR case law

The case law of the European Court of Human Rights addressing the ending of a life is extremely rich. It applies not only to euthanasia itself, but also to assisted suicide. As a general rule, the decisions of the Court in this respect can be divided thematically into three types: decisions on non-exemptions for assisting a person to terminate their own life (e.g. Sanles Sanles v. Spain, Pretty v. United Kingdom),[2] decisions on the lack of assistance from states in termination of life (e.g. Haas v. Switzerland, Koch v. Germany),[3] and decisions on allowing cessation of artificial nutrition and fluid administration (e.g. Ada Rossi v. Italy, Lambert and others v. France).[4]

The first group of judgments refers to a situation in which a person who wants to terminate their own life is unable to do so on their own due to circumstances caused by illness, e.g. paralysis. Therefore, they must use the help of a third party who will administer appropriate medications or disconnect such a person from life support. The main axis of the dispute is centred around the provisions of national law, which in many European countries criminalize assistance in termination of life, defining it as aiding or inciting someone to take their own life.

Another set of judgments refers to a situation where there are no physical limitations and a person who wants to end their life can do it themselves. The only obstacle is the lack of availability of the appropriate substance thanks to which such a person could terminate their life in a painless and effective way. Substances that can be used by people who want to end their lives are prescription drugs and are intended to improve a patient's health or to cure them. On the other hand, i.e. when drugs should harm the patient or lead to his or her death, many legal systems provide for criminal liability for the doctor who prescribes such substances.

2 Judgment of the ECtHR of 26 October 2000 on the case of Sanles Sanles v. Spain, application no. 13216/05; Judgment of the ECtHR of 29 April 2002 on the case of Pretty v. United Kingdom, application no. 2346/02.

3 Judgment of the ECtHR of 20 January 2011 on the case of Haas v. Switzerland, application no. 31322/07; Judgment of the ECtHR of 19 July 2012 on the case of Koch v. Germany, application no. 497/09.

4 Judgment of the ECtHR of 16 December 2008 on the case of Ada Rossi and others v. Italy, application nos. 55185/08, 55483/08, 55516/08, 55519/08, 56010/08, 56278/08, 58420/08 and 58424/08; Judgment of the ECtHR of 5 June 2015 on the case of Lambert and others v. France, application no. 46043/14.

The last group of ECtHR judgments touches upon issues related to the shortening of life of people in a vegetative state who are kept alive with the use of special apparatus. They are therefore people without consciousness, and the decision to end their lives rests with family members or doctors. Often it is a derivative of the patient's wish which he or she expressed in the past while still healthy.

Even though each of the described groups of judgments concerns a completely different factual situation, all the complainants invoke similar violations of their rights and use similar arguments. It should be noted that the most frequently cited allegations in complaints regarding euthanasia and assisted termination of life are violations of the following rights protected by the Convention for the Protection of Human Rights and Fundamental Freedoms: the right to life (Article 2), prohibition of inhumane and degrading treatment (Article 3), the right to freedom and security (Article 5), the right to a fair trial (Article 6), the right to private life (Article 8), freedom of conscience (Article 9) and, finally, prohibition of discrimination (Article 14).[5]

The most frequently appearing argumentation of the complainants in favour of the right to euthanasia or assisted termination of life is the claim that the right to life is not only positive and binds the state to ensure the protection of the lives of its citizens, but also has a negative character, which manifests itself in the person withdrawing from the protective obligation of countries and allowing them to choose a convenient time to leave.[6] Very often, complainants associate this argument with their personal freedom, which requires state authorities to refrain from actions that undermine the right to decide about oneself. Moreover, the applicants point out that forcing them to live in unimaginable suffering is not only a form of inhumane and degrading treatment, but also a violation of human dignity.[7] The complaints also include the theme of freedom of conscience, which is quoted in respect to the need to interpret the law in isolation from the dominant religion in a given country. Another common argument is a reference to the right to privacy. The complainants treat the issue of ending life as a sphere of private life in which state authorities should not interfere, and state authorities main task is to create such conditions that dignified termination of life becomes possible. Finally, the applicants refer to the prohibition of discrimination, pointing to the fact that the state does not interfere with 'ordinary' termination of life (suicide) of physically able persons. However, it restricts in an unauthorized way the possibility of ending one's life by people who are physically unable to do so, e.g. paralyzed persons.

In response to these arguments, the European Court of Human Rights points out that, firstly, it does not feel competent to decide when the protection of human life

5 Convention for the Protection of Human Rights and Fundamental Freedoms, https://www.echr.coe.int/documents/convention_eng.pdf (25.11.2022).

6 Pretty v. United Kingdom, *op. cit*.

7 D. Benatar, Should There Be a Legal Right to Die? 'Current Oncology' 2010, vol. 17, no. 5, pp. 2–3.

begins and ends. It also recognizes that the right to life cannot be of a negative nature, and therefore in no case can it exempt state authorities from the obligation to protect life, as this would lead to a dangerous practice in which the absolute protection currently granted to the right to life would be weakened. The Court agrees with the applicants that the issue of taking one's own life is covered by the right to privacy, from which the right to decide about oneself should also be derived. Nevertheless, drawing the right to death from the protection of privacy is unacceptable, because one right cannot exclude the other, especially when the right to life constitutes realization of human dignity. Moreover, the Court emphasizes that it is not its role to decide on the legal possibilities of deprivation of life by euthanasia or assisted termination of life; due to great moral and ethical doubts, it was decided to grant a margin of appreciation in this matter to the states subject to the provisions of the Convention.

2. National regulations

Allowing the differentiation of legal situations in all Member States of the Council of Europe leads to the fact that the rules around access to euthanasia and assisted termination of life are not uniform. Based on the introduced legal regulations in this respect, a certain classification of countries can be made. It should be noted that there are countries where both forms of ending life are prohibited by law, and these regulations are included in the provisions of the criminal code. Euthanasia and assisted termination of life are prohibited in some countries, but there are exceptions to this prohibition, such as taking someone's life due to unselfish reasons (or assisting in such activity). The last category of states is those that allow one to end one's life independently or with the help of other people, without any criminal consequences for the latter.

2.1. Bosnia and Herzegovina

Being by no means internally organized by the legal and social standards of the European democracies, Bosnia and Herzegovina (BiH) offers a complicated context for the subject of this article. In contract to the European legal system tradition where one (state) criminal code protects the most important values of the society, there are five criminal codes in force in BiH today (2023). If we exclude one of them (the Criminal Code of the Socialist Federal Republic of Yugoslavia (1977)), applicable only in cases of war crimes, we are still left with four criminal codes. To make the situation even stranger, we can also exclude the Criminal Code of Bosnia and Herzegovina (2003),[8] since it does not regulate this matter at all. In that respect, we are left with the

8 'Official Gazette of Bosnia and Herzegovina', No. 03/03.

Criminal Code of the Federation of BiH (2003),[9] the Criminal Code of the Republika Srpska (2017)[10] and the Criminal Code of Brčko District of BiH (2003).[11]

The criminal codes of Brčko District and the Federation of BiH, apart from the name of the criminal offence (participation in suicide v. inducing suicide and assisting suicide), regulate this question identically. In its basic form, the law stipulates that those who induce others to commit suicide or assist them in committing suicide, and that suicide is committed, will be punished by a prison sentence of three months to five years. Qualified forms of this criminal offence stipulate that the sentence will be more severe if the crime is committed against a minor or a person with reduced accountability (one to ten years of imprisonment) or a child or an insane person (five to forty-five years of imprisonment). In addition, the law regulates that carers who act cruelly or inhumanely toward persons under their care, and where this person commits suicide, will also be punished (six months to five years of imprisonment).

The Criminal Code of Republika Srpska takes a more detailed approach. The name of the criminal offence is inducing suicide and assisting suicide. In its basic form, the criminal offence is committed by those who induce another person to commit suicide or assists them in doing so, and regardless of whether it is committed or attempted, this offence shall be punished by a prison sentence of six months to five years. The same regulation is applied to carers who act cruelly or inhumanely toward persons under their care and where the person commits suicide. Qualified forms of this criminal offence stipulate that a sentence will be harsher if the crime is committed against a minor or a person with reduced accountability (two to ten years of imprisonment) or a child or an insane person (five to twenty years of imprisonment). On the other hand, those who commit this crime in a privileged way by helping another person in the suicide that was committed where there were special extenuating circumstances will be punished with a fine or a prison sentence of up to three years. Finally, the law stipulates that if suicide was only attempted, the court can punish the perpetrator more lightly.

Apart from the obvious legal differences in assisting in termination of life in Bosnia and Herzegovina, some remarks can be made. Two of the three laws in force take a traditional approach to this question. While the successful termination of one's own life (suicide) cannot be prescribed as a criminal offence, since a deceased human being cannot be held criminally liable under present criminal standards, it is important to see that legislators in BiH do not criminalize an intentional attempt at terminating one's own life, although assisting it is punishable (in two laws if the suicide is committed, in one even if it is attempted). The only logical conclusion to this is that so-

9 'Official Gazette of the Federation of Bosnia and Herzegovina', No. 36/03.

10 'Official Gazette of Republika Srpska', No. 64/17.

11 'Official Gazette of Brčko District of BiH', No. 19/20.

ciety decided to legally tolerate this behaviour and leave possible sanctions to other spheres (religion, etc.). By doing so, society at least decided to respect and tolerate this behaviour, where those who consider themselves religious, or culturally or traditionally obliged to behave in certain way, might be punished in some other way (by not being allowed to be buried in a 'sacred place', etc.). Those only bound by (human) laws will not suffer any legal consequence. This approach is acceptable, but in its essence it is discriminatory to persons who are not physically able to terminate their life. While those capable of doing so will not suffer any legal consequence even if they fail in their attempts, those not capable of performing such an act will not be allowed any legally acceptable assistance.

One final note must be made with regard to the regulation of the Criminal Code of Republika Srpska. This code, by prescribing fines and short prison sentences in cases where someone helps another in committing suicide with the existence of special mitigating circumstances, opens a door (if only a small one) for a different approach from other codes in BiH. Although not prescribing what those special mitigating circumstances might be, an answer to that question could be found in criminal law theory and praxis, where it is for the court to make a final decision in every individual case. Generally, those circumstances could be described as the motives from which the act was committed, like compassion or love for the person assisted, excluding motives like profit or other forms of dishonourable motivations. Contrary to similar regulations in other countries (such as Croatia), criminal code laws in BiH do not recognize euthanasia performed on request out of compassion.

2.2. Poland

Polish legal regulations do not prohibit committing suicide, and persons attempting such an act do not incur any criminal liability. However, assisting a suicide at the request of a person and under the influence of sympathy for them is recognized as a crime under the Criminal Code.[12] The Polish legal system, however, does not treat euthanasia as ordinary murder, but classifies it as a privileged murder, therefore it is possible in some cases for the court to apply an extraordinary mitigation of punishment, and even to refrain from imposing it.[13]

Anyone can commit a crime of euthanasia; however, it is indicated that most often the perpetrators are family members, as well as doctors. To be able to talk about this crime, its features must be realised. Therefore, the request for help in ending one's life must be articulated fully consciously and immediately before com-

12 Act of 6 June 1997 – Criminal Code (consolidated text Dz.U., Journal of Laws 2022, items 1138, 1726, 1855).

13 A. Barczak-Oplustil (ed.), Komentarz do kodeksu karnego, https://sip.legalis.pl/document-view.seam?documentId=mjxw62zogi3danbrgq2diojomfrxilrtg4ytonrsgm3diltqmfyc4nrtg43dqmzugu&refSource=guide (26.11.2022).

mitting the act; it cannot be based on an instruction issued some time ago. In addition, the perpetrator must be moved by compassion for the suffering of the person deprived of life.[14]

Therefore, Polish criminal law does not recognize euthanasia as a categorical violation of the right to life of another person. The introduction of exceptions in the legal provisions, which even make it possible to refrain from imposing a penalty, means that a court in certain exceptional situations may recognize the rightness of the action taken by the perpetrator, justified by relevant circumstances, e.g. the suffering of a terminally ill person.

2.3. Switzerland

Euthanasia is prohibited by law in Switzerland, and although Article 114 of the Swiss Criminal Code does not use this concept, it introduces the institution of murder at the request of the victim.[15] As in the Polish legal system, this act is punished more leniently than ordinary murder, but it remains illegal. In turn, Article 115 criminalizes assisted suicide, but only if the motive is selfish, and therefore altruistic acts are not punishable. This means that it is necessary to undertake explanatory proceedings in every situation where assistance in suicide is found, which results from the need to determine the motives of the helper.[16] A doctor or a person who does not have medical knowledge can be a person helping to end one's life.[17]

Swiss law does not say whether there should be any indications for committing suicide, such as a severe and incurable disease leading to death. This means that assisted suicide can be committed under Swiss law for any reason.[18] However, it is not clear that this is the case. Due to the strong opposition of public medical facilities, assisted termination of life is usually carried out in specially adapted centres run by private associations such as Dignitas or Exit. Most often, patients then have the option of passing away in private rooms by drinking a lethal dose of a drug or taking it in the form of pills.[19] Both associations only help the suffering and seriously ill to pass away.

14 *Ibidem*.

15 M.G. Gaignard, S. Hurst, A Qualitative Study on Existential Suffering and Assisted Suicide in Switzerland, 'BMC Medical Ethics' 2019, vol. 20, no. 34, https://bmcmedethics.biomedcentral.com/articles/10.1186/s12910–019-0367–9 (25.11.2022).

16 *Ibidem*.

17 S. Burkhardt, R. La Harpe, T.W. Harding, J. Sobel, Euthanasia and Assisted Suicide: Comparison of Legal Aspects in Switzerland and Other Countries, 'Medicine, Science and the Law' 2006, vol. 46, no. 4, p. 287.

18 M. Sayid, Euthanasia: A Comparison of the Criminal Laws of Germany, Switzerland and the United States, 'Boston College International Comparative Law Review' 1983, no. 6, p. 542.

19 G. Bosshard, Switzerland, (in:) J. Griffiths, H. Weyers, M. Adams, Euthanasia and Law in Europe, Portland 2008, p. 46 ff.

Nevertheless, for many years, Swiss legislation has been criticized for allowing the assisted termination of life to be also carried out by foreigners.[20]

2.4. Belgium

Belgium is the first country in the world to introduce legal euthanasia into its legislation. The law decriminalizing this act – the Belgian Euthanasia Act – entered into force in 2002 as a result of changes adopted a year earlier by the Belgian Parliament.[21] The provisions contained in it regulate the procedure of euthanasia in a very detailed way. In the original version of the Euthanasia Act, only an adult could apply for euthanasia; however, in 2014, an amendment was introduced that abolished the lower age limit,[22] so now children or their parents and legal guardians can also apply for the end of their lives.[23] However, the doctor can perform euthanasia in strictly defined cases: 'the patient is incurably ill, in a state of constant physical or mental suffering, which cannot be alleviated, as a result of an accident or a serious and incurable disease'.[24] The Act imposes an obligation to consult a second doctor in each case and that the patient is informed about the possibility of choosing other options, including different types of therapy. Even if the patient qualifies for euthanasia, there is an obligation to wait at least a month, so that the decision is well thought out.

The officially released statistical data show that the number of euthanasia instances shows a growing trend,[25] and in 2021 the number of procedures performed was record-breaking.[26] The greatest controversy, however, is caused by the fact that euthanasia is available without a minimum age limit and for people whose disease does not necessarily lead to death.[27]

20 S. Gauthier, J. Mausbach, T. Reisch, C. Bartsch, Suicide Tourism: A Pilot Study on the Swiss Phenomenon, 'Journal of Medical Ethics' 2015, no. 41, p. 611 ff.

21 Belgian Euthanasia Act of 28 May 2002, http://www.ethical-perspectives.be/viewpic.php?TABLE=EP&ID=59 (28.11.2022).

22 Act of 28 February 2014 amending the Act of 28 May 2002 on euthanasia in order to extend it to minors, Moniteur Belge, 12 March 2014, p. 21053.

23 L. Bovens, Child Euthanasia: Should We Just Not Talk about It? 'Journal of Medical Ethics' 2015, vol. 41, no. 8, pp. 630–634.

24 Belgian Euthanasia Act, *op. cit*.

25 Number of registered euthanasia instances in Belgium from 2002 to 2020, https://www.statista.com/statistics/1098051/number-of-euthanasia-instances-registered-in-belgium/ (20.11.2022).

26 Communiqué de presse de la Commission fédérale de Contrôle et d'Évaluation de l'Euthanasie – 31 mars 2022, https://organesdeconcertation.sante.belgique.be/sites/default/files/documents/cfcee_chiffres-2021_communiquepresse-total.pdf (20.11.2022).

27 S. Van Zeebroeck, Kill First, Ask Questions Later: The Rule of Law and the Belgian Euthanasia Act, 'Statute Law Review' 2018, vol. 39, no. 3, p. 246.

3. Contemporary discussion of the right to dignified death

Based on the juxtaposition of the theses of the judgments of the European Court of Human Rights and the legal practices applied by the signatory states of the Council of Europe, it becomes possible to start a discussion on the existence of the right to die with dignity. The European Court of Human Rights strongly opposes the existence of the right to die in the legal space. It points out that it would be a complete denial of the right to life, which is absolute. In addition, it would impose an obligation on state authorities to assist in termination of life which is impossible to fulfil and to reconcile with the right to life. Such a practice would lead to a degradation of the value of life, because of which it would cease to be adequately protected, which would mean a moral collapse of democratic states.[28]

However, it should be pointed out that the line of judicial decisions adopted by the European Court of Human Rights may in fact lead to a very dangerous absolutization of the protection of life. It is undisputed that euthanasia and assisted termination of life should be considered in terms of the right to life, but on the other hand, it is also necessary to take into account the dignity of a person, his or her right to decide about him- or herself, and the right to privacy. In this juxtaposition, it is impossible to say that the right to life should always be absolute, as this would be a threat to all other human rights, and often also to human dignity.

It should be noted that the definition of the right to life has also changed over time. Currently, it covers not only the very aspect of protecting human existence, but also increasingly refers to the quality of life.[29] It is not without reason that new elements appear in the concept of the right to life, such as the right to food or the right to clean drinking water. They are a manifestation of the realization of human dignity. Besides, the motif of a life with dignity also appears in the Charter of Fundamental Rights of the European Union, an act that most fully reflects the modern interpretation of human rights.

Therefore, the adoption of the absolute right to life will eliminate the right to die in peace and with dignity. This is obviously an unacceptable interpretation, which would often cause additional suffering to people who are incurably ill, who suffer greatly or who are in a state of agony. Therefore, one should agree with the objection presented by legal scholars and commentators that the absolutization of the right to life would result in the subjective 'treatment of the human being as a means to an end, i.e. protection of life as a social value',[30] and this would certainly lead to a violation of human dignity.

28 N. Scodling, Right to Die? 'Brain' 2010, vol. 134, no. 1, p. 320.

29 E. Wicks, The Meaning of 'Life': Dignity and the Right to Life in International Human Rights Treaties, 'Human Rights Law Review' 2012, vol. 12, no. 2, p. 199.

30 A. Barczak-Oplustil (ed.), Komentarz…, *op. cit*.

This extremely difficult conflict of two fundamental values means that European countries that have decided to decriminalize euthanasia or assisted termination of life must find a 'golden mean' that will bring balance in this aspect. In practice, however, this turns out to be extremely difficult, and many contentious issues and legislative deficiencies are discovered only at the stage of applying the law, not on its adoption. This was the case, for example, in Mortier v. Belgium, in which the applicants alleged that the Belgian state lacked adequate control procedures when the euthanasia of their mother was carried out.[31] In this judgment, the European Court of Human Rights toned down its previous statements on the right to life and noted that the right to privacy and human integrity do not stand in the way of the right to life, therefore it is permissible to decriminalize euthanasia and assisted termination of life if the legislator so decides. Nevertheless, in such a case, the state should construct such opportunity for performing both procedures so that there is the best possible protection of human life against possible abuse. Authorities should concern both the period related to the decision on euthanasia and its implementation, and the period after euthanasia, when it would be possible to control its correctness.

The allegations raised in this case also lay the ground for a further debate about human privacy in terms of making a decision to end one's life. One of the arguments put forward by Ms Mortier's son was that the clinic where his mother had herself euthanized had not informed the patient's family of this fact. The clinic referred to the patient's right to privacy: the decision concerned her personally and she was entitled to take it individually. In turn, the patient's son pointed out that such an important decision should be subject to family consultations, and at least the clinic should be obliged to inform the family about the death of a loved one. This conflict before the ECtHR shows another extremely important aspect related to euthanasia and assisted termination of life, i.e. how private and personal should the decision to end one's own life be?

Every human being has the right to protect their life, but at the same time they are entitled to the freedom to dispose of it.[32] This means that, as a rule, they should make important decisions in this regard on their own. Of course, due to the value of human life, it is morally advisable to support a person in staying alive,[33] but that could be said about many decriminalized social behaviours (like abortion or prostitution). However, the issue of euthanasia and assisted termination of life is not as morally clear, due to the physical or mental suffering that accompanies a person who wants to

31 Judgment of the ECtHR of 4 October 2022 on the case of Mortier v. Belgium, application no. 78017/17.

32 T.L. Beauchamp, The Right to Die as the Triumph of Autonomy, 'Journal of Medicine and Philosophy' 2006, vol. 3, no. 6, pp. 643–654.

33 J.D. Bordeau, M. Somerville, Euthanasia and Assisted Suicide: A Physician's and Ethicist's Perspective, 'Medicolegal and Bioethics' 2014, no. 4, pp. 4–5.

end their life in this way (if such a thing as 'morality' should be taken into consideration at all).[34] Therefore, it seems that in this case, the decision should be left only to the person concerned, while ensuring that he or she is aware of the consequences of his/her choice. A slightly more contentious topic is making such decisions about minors, which is legally allowed in some European countries, such as Belgium or Spain. The whole problem is that the child will not always be able to understand the information provided to them, and often they will also be formally and factually unable to decide.[35]

The issue of informing the family about the decision made by the patient is also a contentious topic. If euthanasia is treated as a medical procedure, then in this case the patient has the full right to prohibit the doctor from disclosing information to anyone about his/her health status and permissions for medical procedures. This is dictated by the right to privacy and the protection of medical confidentiality, which serves to build trust between the patient and the doctor. It is assumed that the only justification for departing from secrecy is the public good and the interest of the judiciary.[36] In other cases, a patient's written statement about the confidentiality of their medical data should be undisputed. On the other hand, attention should be paid to the family's right to protect their family life.[37] The death of one of the family members is undoubtedly one of the events protected by this law. So while the decision regarding euthanasia should be made independently and consciously by the person who wants to undergo it, the family should be informed about the death of a loved one, as is the case with natural deaths in hospitals.

The lack of uniform standards in the case of euthanasia and termination of life is also the reason for allegations of violation of the prohibition of discrimination. It should be pointed out that all situations of shortening someone's life in healthcare facilities consist either in taking appropriate action, e.g. administering a lethal dose of a drug, disconnecting from apparatus, or refraining from certain actions, e.g. resuscitation. The former, based on the performance of certain activities in many European countries, is subject to criminal liability, and the latter is legally allowed if a patient who has been ill for a long time does not consent to having their life saved.

34 J. Jakhar, S. Ambreen, S. Prasad, Right to Life or Right to Die in Advanced Dementia: Physician-Assisted Dying, 'Frontier Psychiatry' 2021, vol. 11/622446; L. Mehlum, C. Schmahl, A. Berens, et al., Euthanasia and Assisted Suicide in Patients with Personality Disorders: A Review of Current Practice and Challenges, 'Borderline Personality Disorder and Emotional Disregulation' 2020, vol. 7, no. 15.

35 J. Haberko, Udzielenie informacji o stanie zdrowia dziecka a poszanowanie prawa do samostanowienia i prywatności małoletniego pacjenta, 'Białostockie Studia Prawnicze' 2020, vol. 25, no. 2, p. 127.

36 A. Wnukiewicz-Kozłowska, The Right to Privacy and Medical Confidentiality: Some Remarks in Light of ECtHR Case Law, 'Białostockie Studia Prawnicze' 2020, vol. 25, no. 2, p. 189.

37 S.I. Fraser, J.W. Walters, Death – Whose Decision? Euthanasia and the Terminally Ill, 'Journal of Medical Ethics' 2000, vol. 26, no. 2, p. 124.

This means that the legislators of many European countries differentiate between these two aspects, even though both the action and the omission by the medical staff in both cases lead to the death of the patient. Therefore, it seems incomprehensible why the first case is criminalized and the second one is accepted by states.

In addition, the allegation of discrimination also appears in the case of differences in the treatment of citizens in individual European countries. The fact that it is possible to legally perform euthanasia or assisted termination of life in one country puts other citizens of countries where such a possibility does not exist in a position where they are discriminated against. This leads to the development of so-called 'suicide tourism', which further deepens differences and may also be a cause of a violation of human dignity. Firstly, it should be noted that having an end-of-life procedure in another country is often very expensive, and therefore not all people will be able to afford such an expense. Secondly, travelling to another country, often in very poor health, leads to more suffering than is already caused by the disease. Finally, there are cases where terminally ill people decide to pass away early because they fear that if they wait to do so, they will no longer be able to travel to another country.

The juxtaposition of the arguments of the ECtHR and the interpretation of the right to life with the human right to decide when it is convenient to die appears to be an insoluble conflict that always leads to the dominance of one right at the expense of the other. Perhaps, however, instead of pushing the right to death, a better solution would be to focus on the freedom to die. Freedoms, as a rule, do not impose an obligation on states to act positively, but rather to refrain from interfering with a specific human freedom. On the other hand, it seems that the necessary actions of the state in terms of the protection of life would be guaranteed by the very right to life in such a situation. If not, then it is certainly possible to promote an obligation of the state to ensure the right to dignified death to its citizens. Taking into consideration similar regulations that used to be prohibited and were then allowed (alcohol, prostitution or soft drugs), it is obvious that it is in the power of the state (as an expression of the power of its citizens) to regulate questions of life and death in any way accepted and appreciated by the citizens themselves.

Conclusions

From the perspective of contemporary European criminal law terminology, even the term 'suicide' or 'self-murder' is wrong in its essence. Murder, being defined as 'taking someone else's life', is not meant to include termination of one's 'own' life. Being a residue from the far past, it is time for this phenomenon of human life and society to be reconsidered. It should be looked at not through the lens of being something 'modern' and 'liberal', but from the perspective of humanity, which meant little in our societies during the times these legal constructs were created. In that sense, the term 'termination of life' is appropriate.

Reflections on the legitimacy of legalizing euthanasia and termination of life still arouse a lot of emotions, especially since the number of countries that have decriminalized these acts is constantly growing. Some countries' criminal systems also introduce the possibility of extraordinary mitigation of punishment for people who, under the influence of compassion, help another person to take their own life. In addition, it can also be observed that the European Court of Human Rights, once firmly against this issue, is now softening its position. This is mainly because the content of the right to life has been redefined, covering not only the mere fact of staying alive, but also the level of human quality of life. The obligation to protect life, which is only the fulfilment of an order addressed to the state, could in some cases lead to prolonged suffering and inhumane treatment. Therefore, in the contemporary debate, the absolutization of the right to life is increasingly abandoned in favour of the protection of dignity. Based on this, it can be stated that what is happening is not so much a derivation of the right to a dignified death, but rather an ideological orientation toward a freedom of dignified death. Nevertheless, the lack of uniform standards that would be helpful in introducing appropriate legal regulations at the national level leads to the fact that human dignity, the right to privacy, freedom of self-determination, equality and non-discrimination may be violated in some cases, even in countries that allow euthanasia and termination of life.

REFERENCES

Barczak-Oplustil A. (ed.), Komentarz do kodeksu karnego, https://sip.legalis.pl/document-view.seam?documentId=mjxw62zogi3danbrgq2diojomfrxilrtg4ytonrsgm3diltqmfyc4nrtg43dqmzugu&refSource=guide.

Beauchamp T.L., The Right to Die as the Triumph of Autonomy, 'Journal of Medicine and Philosophy' 2006, vol. 3, no. 6, pp. 643–654.

Benatar D., Should There Be a Legal Right to Die? 'Current Oncology' 2010, vol. 17, no. 5, pp. 291–310.

Bordeau J.D., Somerville M., Euthanasia and Assisted Suicide: A Physician's and Ethicist's Perspective, 'Medicolegal and Bioethics' 2014, no. 4, 1–12.

Bosshard G., Switzerland, (in:) J. Griffiths, H. Weyers, M. Adams, Euthanasia and Law in Europe, Portland 2008, pp. 29–50.

Bovens L., Child Euthanasia: Should We Just Not Talk about It? 'Journal of Medical Ethics' 2015, vol. 41, no. 8, pp. 630–634.

Burkhardt S., La Harpe R., Harding T.W., Sobel J., Euthanasia and Assisted Suicide: Comparison of Legal Aspects in Switzerland and Other Countries, 'Medicine, Science and the Law' 2006, vol. 46, no. 4, pp. 287–294.

Fraser S.I., Walters J.W., Death – Whose Decision? Euthanasia and the Terminally Ill, 'Journal of Medical Ethics' 2000, vol. 26, no. 2, pp. 121–125.

Gaignard M.G., Hurst S., A Qualitative Study on Existential Suffering and Assisted Suicide in Switzerland, 'BMC Medical Ethics' 2019, vol. 20, no. 34, pp. 1–8.

Gauthier S., Mausbach J., Reisch T., Bartsch C., Suicide Tourism: A Pilot Study on the Swiss Phenomenon, 'Journal of Medical Ethics' 2015, no. 41, pp. 611–617.

Haberko J., Udzielenie informacji o stanie zdrowia dziecka a poszanowanie prawa do samostanowienia i prywatności małoletniego pacjenta, 'Białostockie Studia Prawnicze' 2020, vol. 25, no. 2, pp. 123–140.

Jakhar J., Ambreen S., Prasad S., Right to Life or Right to Die in Advanced Dementia: Physician-Assisted Dying. 'Frontier Psychiatry' 2021, vol. 11/622446, pp. 1–8.

Mehlum L., Schmahl C., Berens A. et al., Euthanasia and Assisted Suicide in Patients with Personality Disorders: A Review of Current Practice and Challenges. 'Borderline Personality Disorder and Emotional Disregulation' 2020, vol. 7, no. 15, pp. 1–7.

Picón-Jaimes Y.A., Euthanasia and Assisted Suicide: An In-Depth of Relevant History Aspects, 'Annals of Medicine and Surgery' 2022, vol. 75, pp. 1–6.

Sayid M., Euthanasia: A Comparison of the Criminal Laws of Germany, Switzerland and the United States, 'Boston College International Comparative Law Review' 1983, no. 6, pp. 533–562.

Scodling N., Right to Die? 'Brain' 2010, vol. 134, no. 1, pp. 1–3.

Van Zeebroeck S., Kill First, Ask Questions Later: The Rule of Law and the Belgian Euthanasia Act, 'Statute Law Review' 2018, vol. 39, no. 3, pp. 244–257.

Wicks E., The Meaning of 'Life': Dignity and the Right to Life in International Human Rights Treaties, 'Human Rights Law Review' 2012, vol. 12, no. 2, pp. 199–219.

Wnukiewicz-Kozłowska A., The Right to Privacy and Medical Confidentiality: Some Remarks in Light of ECtHR Case Law, 'Białostockie Studia Prawnicze' 2020, vol. 25, no. 2, pp. 185–197.