

# EUTHANASIA, PROS AND CONS IN THE JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

*Mihaela SIMION\**

## **Abstract**

*Is it possible that under the European Convention on Human Rights to have the right to decide when to end our life? The issue has been the subject of several cases dealt with by the European Court of Justice in Strasbourg, which tried to reconcile the obligation to protect the life, provided for in Article 2 of the Convention, with the right of the individual to dispose of it, guaranteed by Article 8, underlining, in all situations, the wide margin of appreciation of States concerning the regulation of human euthanasia.*

*This paper aims to analyse, in addition to the jurisprudence of the European Court of Human Rights, the legal, ethical and scientific arguments that can be invoked in favour of or against euthanasia or assisted suicide.*

**Key Words:** *right, life, human euthanasia, assisted suicide.*

**JEL Classification:** [K38]

## **1. Introduction**

Legalizing euthanasia and assisted suicide is one of the most controversial subjects in the contemporary society. The problem jolts the traditional conceptions according to which life is the most precious right of man protected as such by internal and international regulations such as: the Constitutions, the Universal Declaration of Human Rights or the European Convention on Human Rights, which in Article 2 states that “the right to life of any person shall be protected by law. Death cannot be caused to someone intentionally, except in the execution of a sentence pronounced by a court if the offense is sanctioned with this punishment by law”.

The term euthanasia comes from Greek, meaning “beautiful death”. According to the DEX, the term euthanasia has the meaning of painless death, a method used by the doctor in order to provoke an early, painless death to an incurable patient so as to curb a long and heavy suffering. Likewise, the medically assisted suicide is the patient’s suppression of his own life, but with the help of a doctor who, for example, prescribes the lethal dose of medication.

Euthanasia can be active or passive. Active euthanasia refers to the deliberate end of a patient’s life by a doctor who believes that death is beneficial to the patient, while passive euthanasia involves a doctor’s omission, namely withdrawal of the necessary treatment for further life, stopping nutrition, etc.

Most countries in the world prohibit euthanasia or assisted suicide, with some notable exceptions such as Belgium, the Netherlands, Luxembourg, Switzerland, Canada, Colombia, India, South Korea, Japan or some American

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\* Assistant Professor, PhD, “1 Decembrie 1918” University of Alba Iulia.

states (Washington, Oregon, California, Vermont and Montana). In Europe, euthanasia is permitted in only three countries: Belgium, the Netherlands and Luxembourg, while assisted suicide is legal in Switzerland, where, in fact, an intense “suicide tourism” is practiced. It is also worth mentioning that more and more States that ban active euthanasia legalize the possibility of discontinuing the medical treatment indispensable to life, at the patient’s request, namely passive euthanasia (e.g. France).

## **2. Arguments that can be invoked in favour of euthanasia and assisted suicide**

- *the person’s right to choose*, an absolute right that derives from the right to privacy regulated by the European Convention on Human Rights, which should also involve the right to choose the moment of death, considered as the “last human right”. Ever since the eighteenth century, the Scottish philosopher David Hume claimed in his essay about suicide that in a free society people should have the right to choose how they want to die. This right should, however, be tempered by the obligation not to harm another person.

- *stopping the suffering of terminally ill patients and offering a quiet, dignified death*. Ever since antiquity, stoic thinkers like Seneca have said: “If the old age is going to shake my judgment, if it does not leave my true life, but only the existence, I will go out of this dilapidated and ruinous dwelling”. There are important differences between the ways everyone sees the concept of living and dying in dignity. The most common humiliations that would justify euthanasia are: physical suffering, the person becomes a burden for others, the inability to cope with daily activities, spending the last period of life in a hospital or a home for elderly.

- *stopping the patient’s humiliation and dependence on those around him*, the patient’s relatives would not have to endure the difficult moments in which they see their relatives waiting for a slow and painful death.

- *keeping the patient’s life only with the help of medical equipment is immoral*, when the patient is in a vegetative state.

## **3. Arguments that can be invoked against the legalization of euthanasia or assisted suicide**

The ethical and religious principles that can be invoked to support this point of view are:

- *the sacredness of life*, an argument based on the religious values that consider life to be sacred and inviolable.

- *the legalization of euthanasia in serious medical cases would make this practice a routine*, as is the case in Switzerland today, where specialized clinics have become true “death bands”, in return for the greatest profit. The price of assisted suicide is not at all negligible, starting at 8,000 euros and increasing according to the patient’s financial situation.

- the desire to be euthanized may be *the result of depression or misinterpretation of the diagnosis*.

- euthanasia or assisted suicide *contradicts classical medical ethics*, given that the Hippocratic Oath, the one that future doctors make at the end of the faculty, includes the following commitment: “I will never prescribe a substance with deadly effects, even if I am asked, nor will I give any advice in this regard”.

- as a consequence, euthanasia could *compromise the relationship between the doctor and the patient as well as the relationships between dependents and their relatives*, which might press them not to become a burden<sup>1</sup>.

#### 4. Jurisprudence of the European Court of Human Rights

Since at European level there is no uniformity in the regulation of the right to euthanasia or assisted suicide, the European Court of Human Rights has over time resolved emblematic causes that allowed us to notice its opinion on the phenomenon of euthanasia and assisted suicide. (Sudre, F., 2016; Bîrsan, C., 2005; Rouvillois, Fr., 2016)

The first and most relevant case brought before the Court was the *case of Pretty against the United Kingdom*<sup>2</sup>. In this case, the applicant suffered from a degenerative and incurable illness, as a result of which her health deteriorated rapidly, being completely paralyzed, unable to express coherently and being fed through a tube. Yet, her intellectual qualities were intact. Without being able to commit suicide alone, she demanded the British authorities’ consent that her husband would help her with this act. The refusal of the English authorities was challenged before the national Courts, and then before the European Court of Human Rights.

In her application, Diane Pretty invokes the violation of Article 2 of the Convention, arguing that it is the right of every individual to decide if he/she wants to live. Therefore, the correlative right to the right to life, the right to death, is equally guaranteed, and so the State would have the obligation to amend its domestic law in order to allow her to exercise that faculty. Moreover, on the basis of Article 3 (prohibition of torture), the applicant argued that the British State should not only refrain from applying inhuman and degrading treatment, but it must take measures to protect persons within the jurisdiction of such treatments. The only measure that could protect the petitioner would have been, in her view, to make a commitment from the part of the Public Prosecutor’s Director (PPD) not to prosecute her husband in case he helps his wife to commit suicide.

The applicant further argues that Article 8 of the Convention confers her right to self-determination and that the refusal of the Public Prosecutor’s Director (PPD) to accept the commitment requested by her and the lack of a legal provision authorizing the assisted suicide creates a breach of the right to express her beliefs,

<sup>1</sup> <https://medlife.ro/argumente-pro-si-contra-eutanasiei-si-sinuciderii-asistate.html>.

<sup>2</sup> ECHR, *Pretty v United Kingdom*, 29 April 2002.

as guaranteed by Article 9.

Finally, by invoking Article 14, the applicant maintains that the ban on assisted suicide is a discrimination against individuals who can commit suicide without help.

In replying to the arguments put forward by the applicant, the Court emphasized the fact that its entire case-law constantly underlined the State's obligation to protect life and was therefore not convinced that the "right to life", as guaranteed by Article 2, could be interpreted as guaranteeing a diametrically opposed right and, moreover, could not create a right to self-determination in the sense of giving each individual the right to choose death rather than life.

Accordingly, the Court claims that it cannot be interpreted from Article 2 of the European Convention a right to die, either with the assistance of a third party or with the assistance of a public authority. Consequently, a violation of these provisions could not be ruled out.

With regard to Article 3, the Court notes that, in the present case, the Government did not apply to the petitioner the least minor treatment. Article 3 enshrines, in the first place, a ban on the use of force. It does not in any way give the individual a right to ask the State for permission or even the facilitation of death. To admit the positive obligation which, according to the petitioner, impinges upon the State, it would be to oblige the latter to advocate for acts intended to interrupt life, an obligation which cannot be deduced from Article 3.

Regarding the alleged violation of Article 8, the Court holds that the petitioner was prevented from exercising her choice of avoiding what, in her eyes, would constitute an unworthy and embarrassing end of life. In this respect, the Court could not rule out the fact that it was a violation of the right of the person concerned to respect her private life, but also considered that States should have the right to control by law the acts that would harm the lives and security of others.

The Court also considers that the general nature of the prohibition of assisted suicide is not disproportionate and that it is not arbitrary for national law to reflect the importance of the right to life by forbidding assisted suicide.

Nor is there anything disproportionate in the PPD's refusal to anticipate its commitment to exonerate Mr Pretty of any pursuit.

Due to the fact that the interference in question is justified and necessary in a democratic society for the protection of the rights of others, the Court decides that Article 8 has not been violated.

Also, there has been no violation of Article 9, the accusations made by the petitioner do not relate to a form of manifestation of religion or belief in a cult, but the petitioner's arguments reflect her adherence to the principle of personal autonomy, which is merely a reformulation of the alleged accusation under Article 8.

With respect to Article 14, there is an objective and reasonable justification for the Court on the lack of a legal distinction between persons who are physically

capable of committing suicide and those who cannot do it without help. The delimitation of the two categories is often very narrow and attempting to enforce an exception in the law on people deemed not to be able to commit suicide would seriously shake the protection of life. Therefore, there has been no violation of Article 14.

From the content of the reasoning of this first decision by which the European Court of Justice ruled on the existence or rather the inexistence of a right to die, an extremely important conclusion is drawn on this issue and which will then reappear in the similar cases solved by the Strasbourg Court. We are considering the situation of patients in a terminal phase, who have the opportunity to refuse to apply a treatment that extends their lives. In this case, trained doctors are required to follow the wishes of the adult patient and in the full capacity of the mental faculties, even if they consider that this is not in his interest. In such situation, the Court held that the principle of sacred character of human life must yield to the principle of self-determination.

Twelve years later, the issue of euthanasia came again to the debate of judges at the European Court of Human Rights precisely on the above-mentioned issue. It was the case of a French citizen, Vincent Lambert<sup>3</sup>, who after a motorcycle accident remained tetraplegic, in a vegetative state and constantly dependent on those around him. He could breathe alone, but feeding and hydration was accomplished through a gastric tube. Because of his state and following a Leonetti law on patients' rights and the end-of-life issues, Vincent's doctor decided to discontinue his nutrition and hydration, which would result in patient's death. This decision was challenged by Vincent's family (the parents, a sister and a stepfather), while the wife and other brothers opposed this appeal.

The State Council of the French Republic, judging the appeal and analysing the case thoroughly, considered that the doctor's decision was lawful, arguing that the use of the gastric tube was an unreasonable therapeutic thrill and that "although the gesture of stopping a treatment (...) has as result the death, the intent behind the gesture is not to kill, but to restore the dead to its natural character and to bring relief. This aspect is especially important for the care staff, whose role is not to cause a person's death"<sup>4</sup>.

Following the solution of the national Courts, the applicants addressed the European Court of Human Rights with a request on behalf of the patient and another request in their own name. In the application filed on behalf of Vincent, the applicants denounced the decision by which his diet and hydration were to be stopped, contrary to his right to life (Article 2 of the Convention), to the prohibition of inhuman and degrading treatment (Article 3 of the Convention), and his right to physical integrity (Article 8 of the Convention). They also invoked a violation of Article 3 of the Convention because, since October 2012, Vincent

<sup>3</sup> ECHR, *Lambert and others v. France*, 5 June 2015.

<sup>4</sup> *Idem*.

Lambert had been deprived of physical therapy and re-education of swallowing. As in the case before the French Courts, Vincent's wife, as well as some of his brothers, opposed the introduction of this request to the ECHR, claiming that Vincent would have expressed himself to the effect that he would not have wanted to live in the conditions he was in at that moment.

The Court rejected the applicants' request on behalf of the patient, since the applicants were not entitled to plead in the name and on behalf of Vincent Lambert, invoking the violation of Article 2, Article 3 and Article 8 of the Convention. The Court also rejected Rachel Lambert's request to represent her husband as a third-party intervener. However, despite its findings on admissibility, the Court examined all the substantive issues raised by the present case from the perspective of Article 2 of the Convention, since these issues were invoked by the applicants themselves and in their own name.

The European Court of Human Rights disagreed with the applicants' claims, arguing that there was no violation of Article 2 of the Convention. In its judgment, the Court explained that: "in the medical field, the refusal to accept a particular treatment could inevitably lead to a fatal outcome, but the imposition of medical treatment without the consent of the patient, if he is an adult and in the fullness of the mental faculties, would be equivalent to a prejudice to the physical integrity of the person concerned, which may call into question the protected rights of Article 8 paragraph 1 of the Convention. As admitted in the internal case-law, a person can claim the right to exercise his choice of dying, by refusing to agree to a treatment that could have the effect of prolonging his life. The dignity and freedom of a person is the very essence of the Convention. Without denying in any way the principle of sacred character of life protected by the Convention, the Court considers that the notion of quality of life makes sense from the perspective of Article 8. At a time when we are witnessing an increase in the complexity of medicine and life expectancy, many people fear that they will be forced to remain alive until a very advanced age or advanced state of physical or mental degradation, in contrast to the firm perception they have about themselves and their personal identity"<sup>5</sup>.

As regards the assisted suicide, the Court reiterated the fact that there was no consensus among the Member States of the Council of Europe on the right of a person to decide how and when to end his/her life and concluded that the margin of appreciation of States in this area was considerable<sup>6</sup>. Or, in the present case, the Court holds that the provisions of the French law, as interpreted by the State Council, constitute a sufficiently clear legal framework for judging in a precise manner the decision of a doctor in a situation similar to that of the Court.

Fully aware of the importance and complexity of the medical, legal and ethical issues raised in the Lambert case where the European Court recalled that it

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<sup>5</sup> *Idem.*

<sup>6</sup> *Idem.*

was for the domestic authorities to verify the conformity of the decision to stop medical treatment (including the patient's wish) with the domestic law and the European Convention, the role of the Court being limited to examining whether the State complied with the positive obligations under Article 2 of the Convention.

In this case, we can observe the attempt of the European Court of Human Rights to validate a form of human euthanasia in the conditions of a poor quality life, leaving it to the States how it works in such a sensitive issue.

The same broad margin of appreciation of the States was also emphasized in the *case of Haas v. Switzerland*, in which the question was whether the State should have ensured, by virtue of respecting the right to private life, that the patient who, in order to commit suicide, wanted to obtain a substance without medical prescription, by way of derogation from the legal provisions, so that he could end his life without pain and without the risk of failure.

In this case, the applicant alleged violation of Article 8 of the Convention, stating that his right to end his life was violated in Switzerland by the fact that no legal or medical authority had given its consent to obtain the substance necessary for committing a safe suicide, dignified and painless, after several failed attempts. But the European Court of Justice concluded that States had no direct responsibility to help their citizens to commit suicide by offering them lethal drugs. The Court also considered that the risk of inherent abuse in a system that would facilitate assisted suicide could not be underestimated, concluding in favour of the Swiss Government, which had shown that the restriction on obtaining pentobarbital sodium was intended to protect public health and safety and to prevent murder. Therefore, in the present case, the Court found that there had been no violation of Article 8 of the Convention<sup>7</sup>.

On the contrary, a violation of Article 8 of the Convention was retained by the Court in the *case of Gross v. Switzerland* concerning the complaint of an elderly woman who wished to take her life without suffering any clinical trouble and could not obtain permission from the Swiss authorities to receive a lethal dose of a drug to achieve this goal. Thus, the Court held that the Swiss law, although providing for the possibility of obtaining a lethal dose of a medicinal product on prescription, did not contain sufficient information to ensure that the right was clearly delineated. Moreover, the Court held that the uncertain situation must have caused the applicant a considerable suffering, but it did not specify in particular whether the woman should have been allowed to obtain the lethal dose of the medicine for the purpose of suicide<sup>8</sup>.

Finally, in the *case of Koch v. Germany*, the applicant, a German citizen, applied to the Court, claiming that his wife, suffering from almost complete paralysis and who, for that reason, needed artificial ventilation and constant care,

<sup>7</sup> ECHR, *Haas v Switzerland*, 20 January 2011.

<sup>8</sup> ECHR, *Gross v. Switzerland*, 14 May 2013.

decided to put end of her life through suicide. In November 2004, she asked the German Federal Institute for Medicines an authorization to get a lethal dose of pentobarbital sodium, to allow her to commit suicide at her own home. The Institute refused to grant this authorization, finding that the applicant's willingness to commit suicide in an assisted manner contravened a German law on ensuring the health of the population. The applicant and his wife appealed against that decision. But, on 12 February 2005, the suicide of his wife occurred in Switzerland, assisted by the Dignitas organization. On 3 March 2005, the Institute confirmed its decision and, in April, the applicant filed a lawsuit to find that the decisions of the Institute were unlawful.

Given that the German Courts declared the action inadmissible, the applicant appealed to the Strasbourg Court invoking the violation of his rights under Article 8 of the Convention, in particular the right to a dignified death and that he was therefore forced to travel in Switzerland to allow his wife to commit suicide. The applicant also complained that the German Courts had violated his rights under Article 13 (right to an effective remedy) by not being allowed to lodge an appeal against the Institute's refusal to grant the requested permission to his wife.

Judging the application, the European Court of Justice held that the refusal of the Courts to investigate the substance of the action brought by the applicant on behalf of his wife and on his own behalf led to the violation of the procedural rights of the party concerned in respect of Article 8. Thus, the Court held that the German Courts were competent to examine the merits of the complainant's request and were therefore obliged to carry out a substantive analysis in circumstances where the Member States to the Convention were far from reaching a consensus on regarding the authorization or not of any form of assisted suicide. Unfortunately, in this case too, the Court decided to confine itself to examining the procedural aspect of Article 8 in relation to Article 13 of the Convention, avoiding elegantly ruling on the merits of the application<sup>9</sup>.

### **Conclusion**

Euthanasia and assisted suicide are topical issues that raise many religious, philosophical and moral issues. Faced with these, the European Court of Human Rights, in its succession of judgments presented above, translates to the States the task of deciding on the existence of a European citizen's right to decide the moment of death himself through euthanasia or assisted suicide, constantly highlighting the wide margin of appreciation that States have in this area.

What is clear, however, from this case-law is the need to ensure a balance between guaranteeing the right to life from the perspective of Article 2 of the Convention and the right to self-determination under Article 8 of the same document, namely to ensure the patient's right to refuse a treatment that

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<sup>9</sup> ECHR, *Koch v. Germany*, 31 May 2011.

artificially maintains life.

Not even on this last issue is there a consensus among the Member States of the Council of Europe, even though most States seem to authorize it. However, there is a consensus on the primordial role that the patient's will has in the decisional process, provided that all conditions imposed by the national laws of the States are respected.

The ambiguous and prudent attitude of the Court can also be explained by the strong pressure exercised by public opinion for or against euthanasia or assisted suicide. But as long as thousands of people practice annually "suicide tourism" and pay large amounts of money for this purpose (about 10,000 euros), in countries like Switzerland<sup>10</sup>, the issue cannot be ignored either by European or national Courts or by national legislators.

Given that the most important aim of the law is to always meet social needs and to agree with the dynamics of social relations, in this field also, the aim should not be disrupted by reality, by practice. (Stănilă, 2014) Therefore, this kind of social relationship involving euthanasia or assisted suicide must be properly regulated in national and continental laws, this being the only way to effectively prevent and eliminate abuse in the sensitive field of "the last human right".

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<sup>10</sup> Giulia Donose, *Eutanasia și suicidul asistat, parcursul de la idee la lege în Europa*, <https://blog.avocato.ro/eutanasia-si-suicidul-asistat>.