

## EUTHANASIA: THE RIGHT TO DIE BETWEEN GOD'S WILL AND THE WILL OF A MAN\*\*

### *Abstract*

In recent decades, euthanasia has been an extremely current but also controversial issue from a legal, moral, ethical, and religious point of view. Supporters of its legalization emphasize the human right to a dignified death and the need to act humanely and respect the person's desire to choose death over life in suffering and pain. On the other hand, the opponents of euthanasia point out that the right to life, guaranteed and protected by law, basically opposes the legalization of the right to death, which as such does not exist in international legal documents. Also, the more religious opponents point out that God's will is birth, as well as dying, and that any interference in that process is inadmissible.

The paper will give a brief overview of the European countries which laws allow some form of euthanasia, and a more detailed overview of the legislation in Belgium, as a country with the most relaxed approach to voluntary euthanasia today, where this practice is extended from physical to mental illness and includes children of all ages and felons. We will give a special overview of the case of *Mortier v. Belgium*. It is necessary to answer the question whether euthanasia is justified and valid in some cases from the aspect of humanity and compassion, and how these cases should

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be regulated, especially bearing in mind the proposal to decriminalize euthanasia by the new Civil Code of Serbia, which is currently being drafted.

**Keywords:** Euthanasia, mercy killing, physician-assisted suicide, medically assisted death, the Preliminary draft of the Civil Code of the Republic of Serbia, *Mortier v. Belgium*.

## EUTANAZIJA: PRAVO NA SMRT IZMEĐU BOŽJE VOLJE I VOLJE ČOVEKA

### Sažetak

Poslednjih decenija, eutanazija je bila izuzetno aktuelno, ali i kontroverzno pitanje sa pravnog, moralnog, etičkog i verskog stanovišta. Pristalice njene legalizacije ističu ljudsko pravo na dostojanstvenu smrt, potrebu da se postupa humano i poštuje želja osobe da u patnji i bolu izabere smrt umesto života. S druge strane, protivnici eutanazije ističu da se pravo na život, garantovano i zaštićeno zakonom, u osnovi protivi legalizaciji prava na smrt, koje kao takvo ne postoji u međunarodno-pravnim dokumentima. Takođe, religiozniji protivnici ističu da je božja volja rođenje, kao i umiranje, te da je svako mešanje u taj proces nedopustivo.

U radu će biti dat kratak pregled evropskih zemalja čiji zakoni dozvoljavaju neki oblik eutanazije, kao i detaljniji pregled zakonodavstva u Belgiji, zemlji sa najširim pristupom dobrovoljnoj eutanaziji danas, proširujući je od fizičke do psihičke nemoći, kao i na decu bez starosne granice i prestupnike, sa posebnim osvrtom na slučaj *Mortier protiv Belgije*. Neophodno je odgovoriti na pitanje da li je eutanazija u pojedinim slučajevima opravdana i svrsishodna sa aspekta humanosti i saosećanja, te kako ovi slučajevi treba da budu regulisani, posebno imajući u vidu predlog da se eutanazija dekriminalizuje novim Građanskim zakonikom Srbije, koji je trenutno u izradi.

**Gljučne reči:** eutanazija, ubistvo iz milosrđa, samoubistvo uz pomoć lekara, smrt uz pomoć lekara, Prednacrt Građanskog zakonika Republike Srbije, *Mortier protiv Belgije*.

## 1. Introduction

Issues of surrogacy, in vitro fertilization, children’s right to know their origins (especially in a situation where the donor is unknown), organ donation and euthanasia, and also the abuse of certain medical devices and treatments, are all issues that directly and indirectly affect the beginning, extension and the end of human life (Čović & Stjepanović, 2022, p. 1433). Therefore, they open up bioethical, moral, but also theological dilemmas, since the questions of life and death are primary religious topics (Čović, 2023).

The ethical, moral and legal debate regarding euthanasia is as old as humanity. Cruel treatment of old and sick people can be found through history among the Spartans, Australian Aborigines and American Indians who left old and weak parents and relatives in nature without water and food in purpose, to be killed by wild animals (Milenković, 1940, p. 24; quoted according to Petrović, 2010, pp. 22, 23). Proponents of euthanasia were Marcus Tullius Cicero (106-43 BC), Pliny the Younger (62-113 AD), for whom suicide was a brave act, Plato, who believed that the incurably ill should be allowed to die, and the Stoics, who glorified suicide as the most reasonable way to leave this life (Petrović, 2010, p. 24). On the other hand, Aristotle believed that suicide was harmful for both family and society (Petrović, 2010, p. 24). Emmanuel Kant (1724-1804) was a great opponent of euthanasia, stating that “the act of suicide destroys the object of morality in oneself”. Those who believed that death is better than pain and life with an incurable disease were Thomas More (1478-1535), Michel Montaigne (1533-1592), Charles Montesquieu (1689-1755), Voltaire (1694-1778), Honore Mirabeau (1749-1791), as well as Friedrich Nietzsche, who had certain fascist ideas about the death of all “social parasites” (Petrović, 2010, pp. 29-31).

Among the ancient Slavs, there was also a custom of killing old and debilitated people, but as a result of the influence of Christianity, both suicide and euthanasia became inadmissible, because according to Christian teaching, both acts stand in direct opposition to God’s will (Petrović, 2010, pp. 24-28). Thomas Aquinas (1225-1274), in his *Summa Theologiae* (1265-1274), addresses the question of whether “one is allowed to kill oneself to escape the present life’s miseries” and concludes that to kill oneself is altogether unlawful for three reasons (quest. 64, art. 5):

“First, because everything loves itself, it is thus proper for everything to keep itself in being and resist decay as far as it can. Therefore, to kill oneself is contrary to natural inclination, and contrary to the charity according to which everyone ought to love himself. Hence self-killing is always a mortal sin, inasmuch as it stands against natural law... Second, because everything that is a part belongs to a whole, every man is part of a community, and as such is of the community.

Therefore, he who kills himself injures the community... Third, because life is a gift divinely given to man, and subject to the power of Him 'who kills and makes to live'. Therefore, he who deprives himself of life sins against God... To God alone belongs the power over death and life..." (Aquinas, 1947).

According to the teachings of the Catholic Church, the act of euthanasia is a "crime against life" and a "crime against God" (*Declaration on Euthanasia*. Sacred Congregation for the Doctrine of the Faith, 1980). On the other hand, some liberal Protestant denominations have offered religious arguments and support for limited forms of euthanasia (*Scholarly Community Encyclopedia*). Muslims are against euthanasia and for a Muslim "supplicating for death is not appropriate" (Translation of Sahih Muslim, Book 35; quoted according to *Scholarly Community Encyclopedia*). In Hinduism, "by helping to end a painful life a person is performing a good deed and so fulfilling their moral obligations, but on the other hand, by helping to end a life, even one filled with suffering, a person is disturbing the timing of the cycle of death and rebirth, and those involved in the euthanasia will take on the remaining karma of the patient" (Nimbalkar, 2007, p. 57). In Judaism, "Jewish voices in favor of (active) euthanasia are rather exceptional and uncommon, and emphasis on the supreme value of human life and thus on its preservation is central in Judaism" (Baeke *et al.*, 2011, p. 791); however, in recent years we are witnessing increasing support for certain passive euthanasia options (*Scholarly Community Encyclopedia*). The position of the Russian Church is as follows: the church cannot accept the deliberate killing of sick people, even when it is the patient's wish. Euthanasia is considered murder or suicide, depending on whether the patient himself participates in it.

"Acknowledging the legitimacy of euthanasia would lead to a reduction in dignity and a perversion of the professional duty of the doctor, who is called to preserve, not end, life... The right to die can easily turn into a threat to the life of a patient when there are not enough funds for his treatment (*The Basis of the Social Concept of the Russian Orthodox Church*, 2000).

Representatives of the Serbian Orthodox Church remind that "every illness is given to a man as a blessing... A period in which he can and should make peace with people and with God, and that physical suffering, no matter how difficult it may be, represents only a moment in relation to eternity...the subject of euthanasia appears as an immoral issue that demonstrates a complete denial of God" (Lončar & Pajkanović, 2019).

Proponents of euthanasia believe that every person has the right to dispose of his/her life and decide on the manner and moment of his/her death. In the legislation of the 19<sup>th</sup> century, suicide and attempted suicide were not punishable, while Anglo-American law considered attempted suicide as a criminal offense

(Petrović, 2010, p. 32). Recently, in a growing number of countries in the West, active voluntary euthanasia has been legalized with the national statutes in these nation-states specifying circumstances under which this practice is allowed. In 2002, the Netherlands became the first country to formally give legal validity to euthanasia. Since then, in Europe, Belgium, the Netherlands, Luxembourg, Spain and Portugal have enacted legislation legalizing euthanasia. In several States in the United States of America assisted suicide is legal, and in Canada, its legal voluntary form is called medical assistance in dying (MAiD) (Bélanger & Deschamps, 2018). All six states of Australia and New Zealand have laws that legalise voluntary assisted dying (Hewitt, 2022). Colombia is the first country in Latin America which allows assisted suicide (Taylor, 2022).<sup>1</sup>

Professor of theology Pozaić states: “Just as the change in the way we give birth was one of the greatest achievements of the first half of the 20<sup>th</sup> century, the change in the way we die could mark the second half of the same century. However, it is not yet clear if that change is ‘for the better or for the worse’. The change for the worse will happen if the mentality of euthanasia - the culture of death, prevails; the change for the better, if the hospice mentality - the culture of life, wins” (Pozaić, 1993; quoted according to Jerotić, 2008, p. 333). Professor Jerotić states that “this could be achieved by building and maintaining a new type of hospital in which both the medical staff and the patients would cultivate the so-called hospice mentality, which implies complete respect for the patient’s whole being, and that means allowing him to die fully aware, to be free from humiliating pain, and to be able to have his loved ones by his side and share intimate conversations with them (Jerotić, 2008, p. 333).<sup>2</sup>

## 2. Definition and types of euthanasia

Euthanasia, a “gentle and easy death”, from Greek *euthanasia* (*eu* - “good” and *thanatos* “death”), is the practice of intentionally ending life to eliminate pain and suffering (Online Etymology Dictionary).

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<sup>1</sup> In 1997, the act of euthanasia was approved by the Colombian Constitutional court, “but assisted suicide did never fall under the scope of this decision” (World Federation Right to Die Societies, 2022).

<sup>2</sup> Hospice care is a type of health care that focuses on the palliation of a terminally ill patient’s pain and symptoms and attending to their emotional and spiritual needs at the end of life, prioritizing comfort and quality of life by reducing pain and suffering and provides an alternative to therapies focused on life-prolonging measures that may be arduous, likely to cause more symptoms, or are not aligned with a person’s goals (Marshall & Hale, 2017).

Voluntary euthanasia is carried out with the patient's consent; non-voluntary euthanasia includes cases where the patient's consent is unavailable, such as the euthanasia of children; involuntary euthanasia is performed against the will of the patient (Center for Health Ethics, School of Medicine University of Missouri).<sup>3</sup>

Voluntary, non-voluntary, and involuntary types can be further divided into passive or active euthanasia. Passive euthanasia involves the withdrawal of treatment, for example, turning off the machine that keeps a person alive, and also withholding treatment, for example not having an operation that will prolong life for a short time (BBC, 2014). Active euthanasia involves the use of lethal substances or force (such as lethal injection) and is the most controversial form of euthanasia in various debates and sometimes called "aggressive" euthanasia (Center for Health Ethics, School of Medicine University of Missouri).

In the literature, we also encounter the terms 'mercy killing', which means active, non-voluntary or involuntary euthanasia given by others (some people call this type 'killing the patient without his or her express consent') and 'medically assisted death' or 'physician-assisted suicide', when a physician assists the patient by providing the patient with, for example, sufficient medication for the patient to kill himself (Center for Health Ethics, School of Medicine University of Missouri).<sup>4</sup> Some authors analyze the terminology in this case, warning that "it is worth taking caution with regard to the harms that might be introduced in attempts to distance suicide from medically assisted dying, particularly with reference to exacerbating stigma surrounding suicide and undoing the work of those seeking to prevent it by opening up a space to talk about the desire to end one's life" (Friesen, 2020, p. 40). This comes as a response to certain arguments that in these cases it is not a question of suicide because the patient's primary goal is not

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<sup>3</sup> Killing a patient against their will (involuntary, aggressive/active, inflicted by another) is universally condemned. During the late 1930s and early 1940s, in Germany, Adolf Hitler implemented a program to exterminate children with developmental disabilities (with or without parental consent) under the guise of improving the Aryan "race" and reducing the cost to society. Today everyone thinks that this type of euthanasia in the service of the eugenics program was morally wrong (Center for Health Ethics, School of Medicine University of Missouri).

<sup>4</sup> Physician-assisted suicide is legal in ten US states: Colorado, California, the District of Columbia, Hawaii, Maine, New Jersey, New Mexico, Oregon, Vermont and Washington. In Montana it is an option given by court decision. Individuals must have a terminal illness as well as a prognosis of six months or less to live and physicians cannot be prosecuted for prescribing medications to hasten death (*CNN Editorial Research*, 2022). Official state data shows that in California, according to the state Department of Public Health's 2020 annual report, 2,858 people received prescriptions and 1,816 people died after taking the prescribed drugs between June 9, 2016, and December 31, 2020, and in Washington, D.C. according to the 2020 annual report, since 2009, prescriptions have been written for 2,008 people, and 1,874 deaths have been reported after taking the drug (*CNN Editorial Research*, 2022).

to end his or her life, but to “find dignity in the already imminent departure from this world... they shorten the agony of their last hours, and not kill themselves; cancer (or some other common baseline) kills them” (The website of *Death with Dignity*; quoted according to Friesen, 2020, p. 32).

### 3. Europe

In the field of human rights law, Art. 6 (1) of the International Covenant on Civil and Political Rights provides that “Every human being has the inherent right to life” (International Covenant on Civil and Political Rights, 1966). This right shall be protected by law. No one shall be arbitrarily deprived of his life.<sup>5</sup> The European Convention on Human Right also guarantees the Right to life in the Art. 2 (European Convention on Human Rights, 1950).<sup>6</sup>

The opponents of euthanasia point out that voluntary consent cannot and does not guarantee that the deprivation of life is not arbitrary; the legalization of euthanasia is arbitrary deprivation of life, contrary to established provisions of international law; it is a violation of the *jus cogens* norm (the right to life), contrary to the international legal obligation of states to take all necessary measures to protect human life (Van Aardt, 2022). The right to life is a natural, inalienable, absolutely basic human right and a *jus cogens* norm, which cannot be waived by law. However, the expressed free will of a conscious and reasonable person to choose euthanasia in the final phase of his or her life does not represent a waiver of the right to life, but on the contrary - the use of that right which is exclusively his/hers. Or in other words - by not allowing euthanasia, the right to life transforms into an obligation to live.

Each person has an unquestionable right to dispose of his/her own life; therefore, attempted suicide and suicide are not subject to legal responsibility. The

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<sup>5</sup> “Each state party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Art. 2 of the International Covenant on Civil and Political Rights).

<sup>6</sup> “1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: a. in defence of any person from unlawful violence; b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; c. in action lawfully taken for the purpose of quelling a riot or insurrection.”

issue of the possibility, the conditions and the means of transferring that right to another person is still unclear and legally undefined (Jerotić, 2008, p. 332).

The European Court of Human Rights (ECHR) in the case of *Pretty v. The United Kingdom* (2002) held that, according to the European Convention on Human Rights, “right to life cannot, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die”. Diane Pretty was suffering from motor neurone disease – an incurable degenerative disease affecting muscles. She was paralysed from the neck down, could barely speak and was fed by a tube. She wanted her husband to provide her with assistance in suicide, but under the UK law this act would make her husband criminally liable. The European Court of Human Rights found no violation of articles 2 (right to life), 3 (prohibition of torture), 8 (right to respect for private and family life), 9 (freedom of thought, conscience and religion) and 14 (prohibition of discrimination) of the European Convention on Human Rights. The Court concluded that Art. 2 of the European Convention does not include the right to die, whether at the hands of a third person or with assistance of a public authority. As regards Pretty’s right to respect for private life under Art. 8, the Court considered that in this case the interference was justified as “necessary in a democratic society” in order to protect other’s rights.

Considering that since 2002 this decision of the ECHR was devalued in some way by later *lex specialis* regulations on euthanasia adopted by the individual European Union member states, it can be argued that it remained without the expected legal effect.

In most European countries euthanasia is prohibited, and in some countries only passive euthanasia is allowed, under the strict circumstances, where those suffering from an incurable disease can decide not to be administered life-prolonging treatments, such as artificial nutrition or hydration (Germany, Austria, Finland, Norway, Sweden) (Hurst & Bello, 2022). Active voluntary euthanasia is legal in the Netherlands<sup>7</sup>, Belgium<sup>8</sup>, Luxembourg<sup>9</sup>, Spain<sup>10</sup> and Portugal.<sup>11</sup>

On 9 October 2022, the Portuguese Parliament voted for the third time on a bill to legalise euthanasia, but Portugal’s Constitutional Court rejected the bill

<sup>7</sup> Euthanasia in the Netherlands is regulated by the Termination of Life on Request and Assisted Suicide (Review Procedures) Act which was passed in 2001 and took effect in 2002.

<sup>8</sup> The Belgian parliament legalised euthanasia on 28 May 2002.

<sup>9</sup> On 19 March 2009 Luxembourg became the third European Union country, after the Netherlands and Belgium, to decriminalise euthanasia (Ministre de la santé, 2009).

<sup>10</sup> The law came into force on 25 June 2021, three months after its publication (Bill No. 46-7).

<sup>11</sup> Portuguese parliament approves euthanasia for people suffering with terminal illnesses on May 12 2023.

for the second time. The court stated in its explanation that there is an “unbearable vagueness” in the text, after which the bill was sent back to the Parliament (The Brussels Times with Belga, 2023). The new version of the proposal states that “euthanasia is authorised only in cases where medically assisted suicide is impossible due to a physical disability of the patient” (The Guardian, 2023). Finally, on 16 May 2023, Portugal’s conservative President Marcelo Rebelo de Sousa signed into law a bill decriminalising euthanasia, after Parliament overturned the last of his four vetoes (Reuters, 2023). The head of the Catholic Church, Pope Francis, condemned the law, saying “I am very sad today... It is another step on the long list of countries with euthanasia” (DW, 2023).

On 17 May 2014 the Federal Constitutional Court in Germany legalized passive euthanasia, and on 26 February 2020, the Federal Constitutional Court ruled the provision which penalized assisted suicide services unconstitutional and thus void, with explanation that the provision violated the fundamental right to personal self-determination (Judgment of the Second Senate of 26 February 2020). The decision states that the General Right to Personality (Art. 2(1) in conjunction with Art. 1(1) of the Basic Law, Grundgesetz – GG) includes the right to self-determined death. This right includes the freedom to take one’s own life and, depending on the case, to have recourse to the assistance voluntarily provided by third parties for that purpose. Two years later, a court in the German city of Münster ruled that seriously ill people do not have the right to acquire medication that would allow them to end their lives (DW, 2022).

In 2022, in the Italian Parliament, a majority of members approved the draft law No. 3101 on medically assisted death (Ricci *et al.*, 2022, p. 4546). With the ordinance No. 207 of 2018, the Italian Constitutional Court upheld the objection of unconstitutionality, recognizing that the Art. 580 of the Criminal Code conflicted with the provisions of Arts 2, 13 and 32 of the Italian Constitution, which protect the freedom of self-determination of the patient in the choice of treatment (Ricci *et al.*, 2022, p. 4546).<sup>12</sup> Judgment No. 242/2019 affirms the partial legitimacy of medically assisted death, which can be practiced under certain conditions.<sup>13</sup>

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<sup>12</sup> The Constitutional Court had been asked to rule on the case of Marco Cappato, an Italian politician investigated for the offence provided for in Art. 580 of the Italian Criminal Code (“incitement or aid to suicide”). In 2017, Marco Cappato helped Fabiano Antoniani, a person suffering from tetraplegia and blindness, to commit assisted suicide by taking him to a euthanasia clinic in Switzerland. On 14 February 2018 the Court of Assizes of Milan raised the question of the constitutionality of Art. 580 of the Criminal Code (Ricci *et al.*, 2022, p. 4546).

<sup>13</sup> 1. Suicide assistance must be purely material. 2. Suicidal intent must be freely and independently formed in the mind of the person who intends to end his or her life. 3. The person must be on life-support and suffering from an irreversible disease causing intolerable physical or psychological suffering. 4. Despite severe physical or psychological illnesses, the subject must

Assisted suicide has been legal in Switzerland since 1942 but active euthanasia is not allowed, and pursuant to Art. 115 of the Swiss penal code, assisting suicide is a crime only if the motive is selfish (Swiss Criminal Code, 1937).

On 7 October 2020, the Dying with Dignity Bill passed its second reading so we can say that Ireland now is closer towards the legalisation of assisted dying (Dying with Dignity Bill, 2020).

On January 2016 both houses of French Parliament approved a measure that would allow doctors to keep terminal patients sedated until death, while forbidding euthanasia and assisted suicide (Act n° 2016-87 of February 2, 2016). After a citizens' convention voted in favor, this year President Emmanuel Macron ordered the government to consider whether euthanasia or assisted dying should perhaps be allowed (Willsher, 2023).

### 3.1. Belgium

The Federal Parliament of Belgium has legalised euthanasia in 2002 and voluntary euthanasia is defined as the intentional termination of life of a patient by a physician, at the patient's explicit request (The Belgian Act on Euthanasia of May, 28<sup>th</sup> 2002). In December 2013, the Belgian Senate voted for extending its euthanasia law to terminally ill children (News Europe, 2013). Conditions imposed on children seeking euthanasia are: "the patient must be conscious of their decision and understand the meaning of euthanasia", "the request must have been approved by the child's parents and medical team", "their illness must be terminal" and "they must be in great pain, with no available treatment to alleviate their distress" (News Europe, 2013). Today Belgium is a country with the most relaxed approach to voluntary euthanasia, extending it from physical infirmity to mental infirmity, to children without age limit and felons (Van Zeebroeck, 2018, p. 245). Belgium is currently the only country which has legalized minors to be euthanized without any age limit, while in the Netherlands there is an age limit on minors (12 years)<sup>14</sup> and in Luxembourg, the patient must obtain the authorization of his or her parents or legal guardian if he or she is between the ages of 16 and 18 (Van Zeebroeck, 2018, p. 245). The author Van Zeebroeck cautions the physicians who practice voluntary euthanasia "to be cognizant of the difference between

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be fully capable of making free and informed decisions. 5. The conditions underpinning the feasibility of the suicidal act and the manner in which it is carried out must be verified by a public structure of the National Health Service and must be approved by the competent local ethics committee (Ricci *et al.*, 2022, p. 4547).

<sup>14</sup> The Netherlands is to widen its euthanasia regulations to include the possibility of doctors assisting in the death of terminally ill children aged between one and 12 (*The Guardian*, 2023).

the subjective standard of unbearable physical or mental pain as experienced by patients versus the objective standard of unbearable physical or mental pain to be applied by physicians in their medical diagnosis of their patients” and also to “use law possibilities for ethically necessitated medical reasons rather than abuse it for non-ethical, non-medical reasons” (Van Zeebroeck, 2018, p. 257).

The number of deaths by euthanasia constitutes 2.5 per cent of the total amount of deaths in 2023, according to data of the Belgian government and the increase in deaths by euthanasia is a nationwide trend (CNE.news, 2023). The data on the reasons for which euthanasia was requested are such that we as a society as a whole should be concerned.<sup>15</sup> Medical possibility and ideology seem to be only one step apart.

Maybe the most controversial issue, except a child euthanasia, is that people with psychiatric conditions or dementia are increasingly seeking access to euthanasia. According to some research, 179 reported euthanasia were cases with a psychiatric disorder or dementia as the sole diagnosis, which consisted of mood disorders, dementia, other psychiatric disorders and mood disorders accompanied by another psychiatric disorder (Dierickx *et al.*, 2017). The proportion of euthanasia cases with a psychiatric disorder or dementia diagnosis was 0.5% of all cases reported in the period 2002–2007, increasing from 2008 onwards to 3.0% of all cases reported in 2013, and the majority of cases concerned women (58.1% in dementia to 77.1% in mood disorders) (Dierickx *et al.*, 2017). Between 2002 and 2021, 370 patients received euthanasia for unbearable suffering caused by a psychiatric disorder, or 1.4% of the total number of euthanasia cases (De Hert M. *et al.*, 2022; quoted according to De Hert M. *et al.*, 2023).

### 3.1.1. The case *Mortier v. Belgium*

In the case *Mortier v. Belgium* (application No. 78017/17; ECHR 301 (2022)), which concerned a euthanasia of a 64-year-old woman with treatment-resistant depression and a personality disorder, the appellant, her son, learned of his mother’s euthanasia the day after it was performed and claimed a violation of the right to life and his right to respect for private and family life, guaranteed by the European Convention on Human Rights. This was the first case in which the Court had been called upon to examine the compliance with the Convention of an act

<sup>15</sup> Of the 2.966 cases in 2022, only 513 people were euthanised without the expectation of death in the foreseeable future, or 17.3% of the total number of cases and most of these people (239) carried several diseases with them. There were 41 people whose request was based on a cognitive disorder, 24 who wanted euthanasia because of a psychiatric disorder and some of these requests came from people with a long-term but non-deadly illness, such as arthritis (CNE.news, 2023). In the 20 years since euthanasia was legalized, there have been almost 30,000 euthanasias (Narod.HR, 2022)

of euthanasia. Mortier's mother was physically healthy, and her psychiatrist, who had been treating her for more than 20 years, expressed doubt that she met the requirements of Belgium's euthanasia law. Despite this, she was euthanized by the oncologist with no psychiatric qualifications.

The Court was required to take account, in examining a possible violation of the Art. 2 (the right to life) and the Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the right to respect for private life, and the personal autonomy which it encompassed). The right of an individual to decide how and when his or her life should end was one aspect of the right to respect for private life. The decriminalisation of euthanasia was intended to give individuals a free choice to avoid what in their view might be an undignified and distressing end to life. While it was not possible to derive a right to die from the Art. 2, the right to life enshrined in that provision could not be interpreted as *per se* prohibiting the conditional decriminalisation of euthanasia. In order to be compatible with the Art. 2, the decriminalisation of euthanasia had to be accompanied by the provision of suitable and sufficient safeguards to prevent abuse and thus ensure respect for the right to life. In this connection, the United Nations Human Rights Committee had held that euthanasia did not in itself constitute an interference with the right to life if it was accompanied by robust legal and institutional safeguards to ensure that medical professionals were complying with free, informed, explicit and unambiguous decision of their patient, in order to protect patients from pressure and abuse.

The decriminalisation of euthanasia was subject to conditions strictly regulated by law, which provided for a number of substantive and procedural safeguards.<sup>16</sup> The Court ruled that the euthanasia of the patient had been performed

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<sup>16</sup> "The law provided for additional safeguards where death would not otherwise occur in the short term, such as where the requesting patient alleged mental suffering. At least one month had to elapse between the patient's written request and the act of euthanasia, thus ensuring that the request was the result of a considered and constant wish. The main doctor was also required to consult a second doctor, who again had to be satisfied that the suffering was constant and intolerable and could not be alleviated and that the request had been made of the patient's own free will, in a considered and constant manner. The second doctor had to be independent, in relation to both the patient and the principal doctor, and had to be competent as regards the pathology concerned. As regards the donation of EUR 2,500 made by the applicant's mother to the association LEIF working for a dignified end to life for all, a few weeks before she died, this had occurred several months after the informal request for euthanasia and fifteen days after the formal request and it could not be considered, in the circumstances of the case, to indicate a conflict of interest. There wasn't anything in the case file to suggest that the applicant's mother had made such a donation in order to obtain the doctors' consent to euthanasia. In the present case, a large number of doctors, including those who assumed responsibility for euthanasia requests, had received training provided by the LEIF association, but the fact that the doctors consulted were members of the same association did not suffice, in the absence of other evidence, to prove

in accordance with the Belgian Euthanasia Law, but the Court found that the a posteriori control of euthanasia, entrusted by law to a federal Commission, was inadequate.<sup>17</sup> In its decision, the Court states that “with regard to the non-involvement of the applicant in the euthanasia process, the Court is called upon to decide on the conflict between various conflicting interests, i.e. the applicant’s desire to accompany his mother in the last moments of her life and his mother’s right to respect her wishes and her personal autonomy. The law on euthanasia obliged doctors to discuss a patient’s request for euthanasia with his or her relatives only if that was the patient’s wish, but if this is not the case, they would not be able to contact the relatives, in accordance with their duty of confidentiality and medical secrecy. In these circumstances, related to the long-term break in the relationship between the applicant and his mother, the doctors took all reasonable steps, in accordance with the law, their duty of confidentiality and medical secrecy, as well as ethical guidelines, to ensure that she contacted her children regarding her request for euthanasia. The legislator cannot be criticized for obliging doctors to respect the wishes of the applicant in this matter or for imposing on them the obligation to maintain confidentiality and medical secrecy.”

“Tom Mortier’s case exposes the lie that euthanasia is good for society. International law has never established the so-called ‘right to die’. On the contrary, it firmly affirms the right to life – especially for the most vulnerable among us,” said Robert Clarke, lead counsel for Tom Mortier at the European Court of Human Rights in case of *Mortier v. Belgium*.

The doctor who performed euthanasia wrote that “all attempts at treatment were exhausted. Unbearable psychological suffering “could no longer be cured”. He also stated that the patient was “terrified that euthanasia will not happen” and “extremely happy that her suffering will finally end”. However, it is evident from her diary that the period of her depression was marked by the sadness that she would

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a lack of independence.” (*Mortier v. Belgium*; application no. 78017/17).

<sup>17</sup> “The Act had introduced a mechanism of automatic subsequent review by the Board for every act of euthanasia performed. The review had to be particularly rigorous in order to comply with the obligations laid down in Article 2. As regards the composition of the Board, the law provided for the presence of medical practitioners, law professors and professionals used to dealing with patients suffering from incurable diseases, thus undoubtedly guaranteeing the multidisciplinary knowledge and practice of its members. Moreover, the fact that the members of the Board were nominated by a legislative assembly was a guarantee of its independence. In the present case, however, the Board had ascertained, solely on the basis of the anonymous part of the registration document, whether the euthanasia had been carried out in accordance with the law and it had answered in the affirmative... the State had failed to fulfil its procedural positive obligation on account of the lack of independence of the review Board and of the length of the criminal investigation in the present case. Conclusion: violation (unanimously).” (*Mortier v. Belgium*; application no. 78017/17; ECHR 301 (2022)).

not see her grandchildren because she had not been able to repair the relationship with her children, which would mean that depression could have been treated by repairing relationships in the family, but the doctor never tried to direct her towards improving her relationship with her children (U ime obitelji, 2021).

This decision contains significant flaws in the reasoning related to the obligation to maintain confidentiality and medical secrecy, since it is not about keeping information about the patient's illness, but about her decision to end her own life, so her son's belief that the right to life and the right to respect for private and family life was violated, is justified and correct. This is especially important given that this was a woman with treatment-resistant depression and a personality disorder, whose will, attention, thinking and instinct were reduced as a result. Also, the legal regulations that extend euthanasia to people with mental disorders, along with such court decisions that follow them, lead us to the dangerous terrain of legalizing euthanasia in the future in all situations where there is no adequate quality of life, which shows there is a thin line between voluntary and involuntary euthanasia. It is unnecessary to talk about the dangers that arise from it. We should not forget the period in Nazi Germany when, until August 1941, approximately 80,000 patients with schizophrenia, people suffering from epilepsy and paralysis, mentally retarded persons, as well as mentally disturbed criminals were killed (Jerotić, 2008, p. 332).

### ***3.2. The Republic of Serbia***

Art. 25 of the Constitution of the Republic of Serbia stipulates that "human life is inviolable and there is no death penalty in the Republic of Serbia". Also, cloning of human beings is prohibited (the Constitution of the Republic of Serbia, 2006). Art. 26 states that physical and psychological integrity are inviolable: "No one may be subjected to torture, inhuman or degrading treatment or punishment, or subjected to medical or scientific experiments without his freely given consent." Everyone has the right to protect their physical and mental health – that is guaranteed by the Art. 68 of the Constitution of the Republic of Serbia. In this regard, the only basis for euthanasia could be found in the Art. 23 of the Constitution, which states that "Human dignity is inviolable and everyone is obliged to respect and protect it; everyone has the right to free development of his personality, if this does not violate the rights of others guaranteed by the Constitution". Accordingly, prolongation of life contrary to the dignity of a man and his freely expressed will would not be justified, even though the constitution does not explicitly guarantee the right to die.

The legislative concepts in a number of countries treat this kind of ending of a human being's life as an ordinary murder, while the legislation in some

other countries treat it in a privileged way; in countries where euthanasia is legalized, the criminal liability for this act is excluded (Petrović, 2017, p. 170). Euthanasia is illegal in Serbia. Art. 117, “Compassionate Murder” states that “Whoever deprives an adult of his life out of compassion due to the difficult health condition in which that person finds himself, and at his serious and explicit request, will be punished by imprisonment from six months to five years.”<sup>18</sup> Para. 2 of Art. 119 provides a special, lighter form of the criminal offense “assisting in suicide”. We are talking about assisting in suicide out of compassion, the easiest form of this incrimination that exists, and for this type of crime, a prison of three months to three years is provided.

We can say that the Patient’s Rights Act has legalized passive euthanasia, since the law provides the patient’s right to refuse a proposed medical measure, even if it saves or sustains his life, but only on the condition that the patient is capable of reasoning (Art. 17).<sup>19</sup>

The Code of Medical Ethics of the Medical Chamber of Serbia<sup>20</sup> prohibits euthanasia, vaguely and contradictory. Art. 67, with the title “Prohibition of euthanasia”, states that “deliberate shortening of life is contrary to medical ethics; it is forbidden to undertake procedures that actively shorten the life of a dying patient; in the case where delaying the inevitable death for a dying patient would only represent an inhumane prolongation of suffering, the doctor may, in accordance with the freely expressed will of the patient capable of reasoning about refusing further measures to prolong life, limit further treatment only to the effective relief of the patient’s suffering.” The next article of the Code states that “for a patient in the terminal stage of a disease, the doctor should ease the physical and mental suffering and ensure the conditions for a death worthy of a human being”.

The Preliminary draft of the Civil Code of the Republic of Serbia defines euthanasia as “the right of a person to a consensual, voluntary and dignified termination of life” (Art. 86). So, from here we can conclude that the lawmaker envisioned the legalization of only voluntary euthanasia. Also, the Draft expressly emphasizes that the right to euthanasia can be exercised only exceptionally and if the prescribed humane, psycho-social and medical conditions are met. In the next paragraph, the legislator does not state the conditions for exercising the right to euthanasia, but foresees the passing of a special law that will define this matter more closely. Abuse of this right for the purpose of obtaining material or other

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<sup>18</sup> Criminal code, *Official Gazette RS*, Nos. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

<sup>19</sup> Patient’s Rights Act, *Official Gazette RS*, Nos. 45/2013 and 25/2019 - other laws.

<sup>20</sup> The Code of Medical Ethics of the Medical Chamber of Serbia, *Official Gazette RS*, No. 104/2016.

benefits is a ground for criminal liability (The Preliminary draft of the Civil Code of the Republic of Serbia, 2019).

If Serbia legalizes euthanasia in the future as a solution that is in complete contradiction to the teachings of the Serbian Orthodox Church, whose influence is extremely significant among the majority of the population, the question arises whether and to what extent this legal possibility would come to life and whether the position of church representatives on euthanasia will become more flexible at a certain point, as a result of social and legal changes.

#### 4. Conclusion

Professor Jerotić reminds that “the attitude of many people, including Orthodox Christians, with few exceptions (those with strong faith!) changes radically when they themselves become seriously ill, with pain, without the possibility of recovery” (Jerotić, 2008, p. 332), but also warns that euthanasia was most often abused in the history of the human race which is why “there is no reason to think that it will not happen again in the 21<sup>st</sup> century” (Jerotić, 2008, p. 333). Most of the religions oppose and do not support the act of euthanasia, and representatives of the dominant Shinto religion in Japan take a somewhat different view, where 69% of religious organizations agree with the act of voluntary passive euthanasia, while the prolongation of life by using life-sustaining treatments is a disgraceful act against life (Tanida, 2000; quoted according to: *Scholarly Community Encyclopedia*). The author Tanida concludes that “denial of extraordinary treatment or ‘naturalness of death’ in Catholics or ‘being natural’ in Shinto and Buddhism, as a result have the same consequences - the general tendency in rejection of unnecessary life-sustaining treatments among Japanese religionists” (Tanida, 2000).

I agree that “there are those exceptional, strong, unrestrained, free and who want to die like that” (Petrović, 2010, p. 3), but only under a condition that any legal decision on the legalization of euthanasia is formulated clearly, precisely and, the most important, extremely restrictively, including the cases of the last stages of terminal diseases. I say “clearly, precisely and extremely restrictively” considering also that accelerated digitalization in the years before the pandemic experienced its culmination during the pandemic, so that this trend would continue in the post-Covid period. The United Nations warns that the power of artificial intelligence to serve people is undeniable, but so is its ability to increase violations of human rights related to life, health, education, freedom of movement, the right to privacy and other rights. While people all over the planet are becoming aware of the impact of artificial intelligence on their lives, it seems that we are still not aware of or well

prepared for the news that comes our way when we talk about death. A 3D-printed “suicide capsule” which can only be operated from the inside has passed a legal review in Switzerland, clearing the way for the technology to be put into use in the country’s legal assisted suicide clinics. Users will be able to press a button, blink or gesture to release nitrogen gas that induces a state of hypoxia and eventually, death. It also features an emergency stop button and an escape hatch (Bateman, 2021).

In extremely difficult cases when the patient is faced with severe pain incompatible with a dignified human life, in the last stage of a terminal illness such as a cancer, it is a social duty to, with the cooperation of doctors, lawyers, psychologists, theologian, taking into account possible abuses and doing everything to prevent them from happening, enable a person to leave this life of his own free will. Of course, we should think about the protection of the right to life especially when we talk about a life worthy of a human being, and do everything necessary as jurists to improve the lives of pregnant women, children, adolescents, employees, the elderly, sick people, people with special needs and the disabled. The way to do it is by improving health and educational system, political institutions, judicial bodies and by raising the overall awareness of the population about the importance of building a society and institutions oriented towards protecting the right to life worthy of a human being, which today in many countries exists only on paper of various legal documents.

If we do not try to improve the world around us, or at least not in a quality way and to a sufficient extent, then the following observation by the author Petrović makes sense: “if there are so many people in the world that nobody cares about, namely refugees, homeless, abandoned and forgotten people, then how can the community claim the right over an individual, especially the right over his life, if it shows no obligation towards him. Life, it seems, is exclusively the matter of the individual. Which means his death also is his sole right” (Petrović, 2010, p. 138). “The artificial prolongation of life of the dying person, full of pain and suffering, against their own will, is only a form of false humanism” (Petrović, 2010, p. 198).

In this regard, the proposed change in the matter of legalization of euthanasia made in the Preliminary draft of the Civil Code of the Republic of Serbia is a good starting point for the discussion and cooperation of experts from various fields and an attempt to find the most adequate solution for the legal regulation of this extremely important and sensitive issue in the near future.

All believers agree that our birth and death are God’s will and that they are in his jurisdiction, but despite this, not everyone has the same opinion about euthanasia. It may be possible that in the last moments of life, in extreme suffering and pain, the will of a man to end the agony and leave this life at a certain moment meets God’s will, which is exactly the display of God’s will.

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