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The Right to Life and the Right to Die—Legal and Ethical Considerations Based on the Jurisprudence of the European Court of Human Rights

Abstract: The right to die is a strongly debated issue in both law and ethics. While the European Convention on Human Rights does not explicitly guarantee it, the European Court of Human Rights (ECtHR) examines it in the context of the right to life, the prohibition of torture, and the right to privacy. This paper analyses the ECtHR case-law on euthanasia, assisted suicide, and the withdrawal of life-sustaining treatment, presenting arguments from both applicants and the ECtHR. It also explores the state's role in protecting life and the absence of a clear obligation to guarantee the right to die. Special attention is given to access to legal procedures for euthanasia requests and medications for assisted suicide, as well as the resulting positive obligations of the state.

Keywords: euthanasia, assisted suicide, ECtHR case-law, the right to death

Introduction

The right to life, regulated in Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention), is the most fundamental of all guaranteed rights. Undoubtedly, human life is a primary value protected by law, as without ensuring the right to life, the effectiveness of any other subjective right is difficult to uphold. Without guaranteeing the protection of life and existence, one cannot fully enjoy rights such as the right to liberty or the right to respect for private and family life. Article 2 of the Convention states that “every-one’s right to life shall be protected by law” and also enumerates situations in which “deprivation of life shall not be regarded as inflicted in contravention of this Article.”¹

While the existence and significance of the right to life are beyond dispute, determining its precise scope remains problematic. This issue arises particularly in the context of the concept of the right to die. Questions emerge as to whether the Convention guarantees a right to die at all. If so, does it stem from Article 2 of the Convention, or perhaps from Article 3, which establishes the prohibition of torture

¹ Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, (consolidated text Journal of Laws of 1993, item 284).

and inhuman treatment, or from Article 8, which guarantees the right to respect for private and family life?

This article attempts to answer the questions posed above. To this end, an analysis has been conducted of the case-law of the European Court of Human Rights (hereinafter: ECtHR) related to the concept of the right to die. The selected rulings primarily address cases concerning active euthanasia, passive euthanasia, and assisted suicide.

1. Active Euthanasia

First, it is necessary to define and distinguish active euthanasia from passive euthanasia. One of the proposed distinctions states that active euthanasia occurs when an external action directly causes a patient's death, such as administering a lethal substance. In contrast, passive euthanasia takes place when life is allowed to end by withholding or withdrawing medical interventions that were previously initiated by a physician. According to this distinction, removing a respirator from a patient is considered passive euthanasia, while administering even a small dose of poison to a weakened patient qualifies as active euthanasia. The key factors differentiating the two include the causal role of the action and the patient's treatment history, specifically, whether a medical measure was initially introduced to counteract the progression of the illness and is later withdrawn.²

Legal regulations regarding active euthanasia vary around the world. Currently, European countries stand out in terms of access to active euthanasia—in the Netherlands, Belgium, and Luxembourg, active euthanasia is legal, although even within these countries the regulations differ significantly. For example, in the Netherlands, both active euthanasia and physician-assisted suicide are legal, while Belgium only regulates active euthanasia. The Netherlands allows patients from age 12 to 18 to request active euthanasia, while Belgium does not have provisions for minors. In Belgium, a second doctor must be consulted if the patient is not terminally ill, unlike the Netherlands, where a second consultation is not required for non-terminal cases.³

By contrast, active euthanasia is entirely illegal in Poland. In this context, it is worth mentioning the offence of euthanatic homicide under Article 150 of the Polish Penal Code.⁴ This provision states that killing a person at their request and out of compassion is punishable by imprisonment for a period ranging from 3

² Bernward Gesang, "Passive and Active Euthanasia: What Is the Difference?," *Medicine, Health Care Philosophy* 11, no. 2 (2008): 177–78, <https://doi.org/10.1007/s11019-007-9087-x>.

³ Luc Deliens and Gerrit Van der Wal, "The Euthanasia Law in Belgium and the Netherlands," *The Lancet* 362, no. 9391 (2003): 1239–40, [https://doi.org/10.1016/S0140-6736\(03\)14520-5](https://doi.org/10.1016/S0140-6736(03)14520-5).

⁴ Ustawa z dnia 6 czerwca 1997 r.—Kodeks karny (consolidated text Journal of Laws of 1997, item 553 as amended).

months to 5 years. However, in exceptional cases, the court may apply extraordinary mitigation of punishment or even refrain from imposing a sentence. This variation in the legality of active euthanasia among European countries, including Member States of the Council of Europe, clearly demonstrates that no European consensus has emerged on this issue.

In the case of *Mortier v. Belgium*, the ECtHR had, for the first time, the opportunity to examine a case concerning active euthanasia and the nature of states' obligations under Article 2 of the Convention, taking into account domestic law permitting euthanasia.⁵ The case was introduced by a son of a person who died by euthanasia. The applicant's mother, G.T., had suffered from chronic depression for 40 years. G.T. sought euthanasia due to her long-term mental suffering and the failure of all other treatment options. After consultations with multiple doctors, including psychiatrists, her request was ultimately approved under Belgium's Euthanasia Act. G.T. informed her daughter and the applicant, Mr. Mortier, of her intention to undergo euthanasia but did not wish to involve them further in the process, which resulted in Mr. Mortier learning about his mother's death only a day after the procedure had been carried out.

The applicant raised allegations under Articles 2 and 8 of the Convention, complaining that the statutory framework did not afford an effective safeguard for protecting vulnerable individuals' right to life, as his mother was able to change doctors until she found one willing to perform euthanasia. Mr. Mortier also highlighted a conflict of interest, as the doctor who carried out the procedure only agreed to do so after receiving a €2,500 donation to the LEIF association, which he chaired. The applicant also argued that the Euthanasia Act had not been properly followed, as his mother was not in a hopeless medical situation, her suffering could have been alleviated, and the consulted doctors were not independent. Additionally, no discussion took place with her regular medical team, rendering safeguards insufficient. Finally, Mr. Mortier argued that the investigation into his mother's euthanasia lacked independence and was ineffective.

The Government of Belgium argued that the applicant's mother's right to life had been respected, emphasizing the state's wide margin of appreciation in end-of-life matters, as there was no consensus among the Member States on the issue of euthanasia. The Government contended that conditional decriminalization of euthanasia was permissible under the ECtHR's case-law, provided strict conditions and oversight mechanisms were in place. The Government maintained that Belgium's Euthanasia Act ensured voluntary euthanasia with safeguards, confidentiality obligations for doctors, an independent review process, and no prosecutorial immunity, while also asserting that the LEIF association served the public interest and that the reopened 2019 investigation was effective, preventing any procedural violation of Article 2.

⁵ Judgement of the ECtHR of October 4, 2022, *Mortier v. Belgium*, application no. 78017/17.

The ECtHR emphasized that end-of-life matters, particularly euthanasia, raise complex legal, social, moral and ethical issues, with significant differences in how Member States approach them. Therefore, while these states have a margin of appreciation in striking a balance between the right to life with personal autonomy, this discretion is not unlimited, and the ECtHR retains the authority to review compliance with Article 2.⁶

After examining whether Belgium's Euthanasia Act provided effective safeguards and whether the applicant's mother's euthanasia complied with Article 2, the ECtHR found that there was no violation of the right to life as the Act ensured voluntary decisions with procedural safeguards, especially in cases of mental suffering. The euthanasia process in this case followed legal requirements, with independent medical assessments. On the other hand, the ECtHR found that the State had failed to fulfil its procedural positive obligation on account of the lack of independence of the Board—the federal administrative body that was in charge of reviewing and assessing euthanasic procedures—and of the length of the criminal investigation in the present case, resulting in the violation of Article 2 of the Convention. Lastly, the ECtHR found no violation of Article 8 of the Convention in regard to the applicant's claims, particularly concerning the conduct of the doctors involved in the euthanasia. It acknowledged the doctors' professional obligations, including their duty of confidentiality and medical secrecy, as well as their efforts to persuade the applicant's mother to inform her children about her intention to undergo euthanasia. Despite these efforts being unsuccessful, the ECtHR concluded that the balance between the applicant's right to family life and the mother's autonomy was properly struck by the national legislation, and no breach of Article 8 occurred.

Most importantly, in the judgment under review, the ECtHR emphasized that it is not possible to derive a right to die from Article 2 of the Convention, yet the right to life guaranteed by this article should not be understood as prohibiting the conditional decriminalization of euthanasia.⁷ Furthermore, the ECtHR also highlighted that the decriminalization of euthanasia in accordance with Article 2 of the Convention must be accompanied by adequate and sufficient safeguards to prevent abuses and ensure respect for the right to life. To this end, the ECtHR referred to the views of the United Nations Human Rights Committee, stressing that these safeguards should ensure that doctors adhere to the patient's clear, unequivocal, voluntary, and informed decision, thus protecting them from pressure and abuse.⁸

Another case examined by the ECtHR concerning, *inter alia*, active euthanasia was the case of *Dániel Karsai v. Hungary*.⁹ Mr. Karsai was an outstanding lawyer specializing in constitutional law and human rights. At the age of 47, in 2024, he

⁶ Judgement of the ECtHR of October 4, 2022, *Mortier v. Belgium*, §§ 142–43.

⁷ Judgement of the ECtHR of October 4, 2022, *Mortier v. Belgium*, § 138.

⁸ Judgement of the ECtHR of October 4, 2022, *Mortier v. Belgium*, § 139.

⁹ Judgement of the ECtHR of September 9, 2024, *Dániel Karsai v. Hungary*, application no. 32312/23.

passed away due to amyotrophic lateral sclerosis (ALS). ALS is a progressive neurodegenerative disease that leads to the gradual loss of motor functions and ultimately results in fatal respiratory paralysis. Despite intact sensory and cognitive abilities, there is no effective treatment, and care focuses on symptom management, with death typically occurring within three to five years. The applicant first showed symptoms of the disease in 2021, and his condition rapidly deteriorated in 2023, resulting in his death on 28 September 2024.¹⁰

Mr. Karsai lodged a complaint with the ECtHR under Article 8 of the Convention, arguing that Hungarian law did not allow him to end his life with assistance, in breach of his right to private life. In this case, ending life with assistance was defined as physician-assisted dying (hereinafter: PAD), which includes assisted suicide and voluntary euthanasia when carried out in a regulated and medically supervised setting, as well as the refusal (by the patient) or withdrawal (at the patient's request) of life-sustaining or life-saving interventions, such as respiratory support, ultimately leading to the patient's death.¹¹

The ECtHR observed that due to Mr. Karsai's medical condition, the applicant had no real possibility of ending his life on his own terms. This not only fell within the scope of Article 8 of the Convention but also constituted an interference with his right to private life. The ECtHR considered that this case concerns the core of the right to private life, as it concerns respect for his autonomy, physical and mental integrity and for human dignity, which lies in the very essence of the Convention.¹² Furthermore, the ECtHR emphasized the broad margin of appreciation afforded to Member States in regulating matters related to assisted dying, particularly in light of the lack of European consensus on the issue. However, it was noted by the ECtHR that in some Member States, such as Austria, Germany, and Spain, some important legal developments in favour of granting some form of access to PAD have occurred over last few years. Despite this emerging trend, the majority of states continued to criminalize PAD and international law did not impose an obligation to legalize such practices. Given these considerations, the ECtHR concluded that Hungary's absolute prohibition of PAD fell within the state's margin of appreciation and did not violate Article 8 of the Convention.¹³

Judge Wojtyczek submitted a partly concurring, partly dissenting opinion on the aforementioned judgment.¹⁴ He challenged the ECtHR's reasoning in the part where, following rulings such as *Mortier v. Belgium*, it found that Article 2 of the

¹⁰ Judit Sandor, "A Lawyer's Legacy: The Significance of the *Dániel Karsai V. Hungary* Case," *Pravni Zapiši* 15, no. 3 (2024): 311–12.

¹¹ Judgement of the ECtHR of September 9, 2024, *Dániel Karsai v. Hungary*.

¹² Judgement of the ECtHR of September 9, 2024, *Dániel Karsai v. Hungary*, § 85.

¹³ Judgement of the ECtHR of September 9, 2024, *Dániel Karsai v. Hungary*, § 166.

¹⁴ Krzysztof Wojtyczek, "Partly Concurring, Partly Dissenting Opinion of Judge Wojtyczek," *Dániel Karsai v. Hungary*.

Convention does not preclude domestic law from allowing euthanasia. In his opinion, Judge Wojtyczek advocated for a strict interpretation of Article 2, arguing that the four exceptions to the prohibition of the intentional deprivation of life enumerated in the provision cannot be expanded. These exceptions—namely, the execution of a court sentence imposing the death penalty for a crime punishable by law, the defence of any person from unlawful violence, the lawful arrest or prevention of escape of a person lawfully detained, and actions taken in accordance with the law to quell a riot or insurrection¹⁵—do not include an exception for euthanasia or medically assisted suicide. This led to the conclusion that the right to life guaranteed by Article 2 of the Convention cannot be interpreted as allowing an additional exception in the form of PAD. Furthermore, Judge Wojtyczek disagreed with the majority's finding that physician-assisted dying falls within the scope of private life under Article 8, asserting instead that the request for PAD pertains to the right to life.

The aforementioned judgments of the ECtHR, namely *Mortier v. Belgium* and *Karsai v. Hungary*, clearly demonstrate that the right to death in the form of access to active euthanasia cannot be derived from either Article 2 of the Convention, which guarantees the right to life, or Article 8, which guarantees the right to privacy, including respect for individual autonomy and physical and mental integrity. These rulings also highlight the wide margin of appreciation granted to Member States regarding end-of-life decisions, indicating that the Convention does not preclude domestic regulations allowing active euthanasia. However, the applicant's arguments, as well as the partly concurring, partly dissenting opinion of Judge Wojtyczek, illustrate that in the legal and especially ethical sense, this issue remains far from settled, and the scope and interpretation of the right to life and the right to privacy in the context of the right to die continue to raise concerns.

2. Passive Euthanasia

The ethical and legal debate surrounding passive euthanasia, which includes cessation of therapy, raises profound questions about personal autonomy, medical responsibility, and state obligations in this matter. Unlike active euthanasia, it allows death to occur naturally by stopping interventions that prolong suffering without benefit. Advocates argue it respects patient's autonomy and dignity, while opponents fear it undermines the duty to preserve life.

While Article 2 of the Convention guarantees the protection of life, the ECtHR acknowledged that in certain cases withdrawing life-sustaining treatment does not constitute a violation of this right. Instead, it falls within the scope of medical

¹⁵ Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.

ethics and national discretion, as seen in landmark rulings such as *Lambert and Others v. France*.¹⁶

Passive euthanasia, defined as a withdrawal or withholding of life-prolonging treatment,¹⁷ differs fundamentally from active euthanasia, where medical intervention directly causes death. Passive euthanasia as a result of deliberate withholding or withdrawal of life-sustaining medical treatments, allows a terminally ill or irreversibly unconscious patient to die naturally from their underlying condition. It involves omitting medical interventions such as mechanical ventilation or artificial nutrition and hydration, when such treatments are deemed medically futile, burdensome, or contrary to the patient's wishes. Similarly, the cessation of therapy refers to the discontinuation of treatments deemed non-beneficial or disproportionate to the patient's condition.¹⁸ This practice is legally and ethically complex, balancing between respecting patient's autonomy under Article 8 of the Convention (right to private life) and the state's duty to safeguard life. As medical advancements prolong life beyond natural limits, societies must confront the question: does the right to live inherently include the right to die?

The legal status of passive euthanasia varies across European countries, depending on different ethical and legal perspectives on the end-of-life issue. For instance, in Germany and Finland passive euthanasia—in cases of terminal illness or medical futility—is legally permitted, whereas active euthanasia is illegal in these countries. On the other hand, the Netherlands, Belgium, and Luxembourg, allow both passive and active euthanasia under regulated circumstances. Meanwhile, in the United Kingdom and France, euthanasia is prohibited entirely. However, terminal patients in France can request to be heavily sedated until they die. As already mentioned, Poland has a stricter policy, concerning euthanasia to be a crime that is regulated in Article 150 of the Polish Penal Code. In light of these regulations, it appears to be difficult to distinguish between active euthanasia and withdrawal of life-sustaining treatment.¹⁹

In spite of these differences amongst European countries, the ECtHR has ruled in cases such as *Lambert and Others v. France* that the decision to withdraw life-sustaining treatment falls within a state's "margin of appreciation", which allows each country to regulate passive euthanasia according to its own legal framework. This legal diversity highlights the ongoing debate and lack of consensus between protecting life and respecting patients' autonomy across Europe. The ECtHR's ruling

¹⁶ Judgement of the ECtHR of June 13, 2024, *Lambert and Others v. France*, application no. 46043/14.

¹⁷ Iain Brassington, "What Passive Euthanasia Is," *BMC Medical Ethics* 21, no. 41 (2020): 3–6, <https://doi.org/10.1186/s12910-020-00481-7>.

¹⁸ Eve Garrard and Stephen Wilkinson, "Passive Euthanasia," *Journal of Medical Ethics* 31, no. 1 (2024): 64–68, <https://doi.org/10.1136/jme.2003.005777>.

¹⁹ Marcin Śliwka and Aneta Gałęska-Śliwka, "Regulating End of Life Decisions in Poland: Legal Dilemmas," *Advances in Palliative Medicine* 10, no. 2 (2021): 49–56.

in *Lambert and Others v. France* marked a significant decision on end-of-life care, affirming that the withdrawal of life-sustaining treatment does not violate the right to life.

This case concerned Vincent Lambert, who was in a vegetative state, with no signs indicating a minimally conscious state.²⁰ His family was divided over whether to continue artificial nutrition and hydration or cease it. They contended that ending Mr. Lambert's life by withdrawing treatment amounted to a breach of the state's obligation to protect life. They argued that depriving him of nutrition and hydration would constitute ill-treatment amounting to torture within the meaning of Article 3 of the Convention. They further argued that the lack of physiotherapy and the lack of therapy to restore the swallowing reflex amounted to inhuman and degrading treatment in breach of that provision. Furthermore, they submitted that the withdrawal of nutrition and hydration would also infringe Mr. Lambert's physical integrity, in breach of Article 8 of the Convention. Lastly, they argued that the French legal framework lacked sufficient safeguards, making it too easy to end life-sustaining treatment.²¹

The ECtHR ruled that the withdrawal of artificial nutrition and hydration from Mr. Vincent Lambert did not violate the right to life, emphasizing that states enjoy a margin of appreciation in regulating end-of-life decisions and that the right to life does not impose an absolute duty to prolong life in all circumstances.²² Given that French law provided clear legal safeguards, including medical assessments and judicial oversight, the ECtHR assessed no violation of Lambert's rights.²³ It also ruled that the right to private and family life was not breached, as the legal process had properly considered Lambert's presumed wishes, medical opinions, and the views of his family.²⁴ This decision reinforced the legality of passive euthanasia, affirming that withdrawing life-sustaining treatment can be lawful when based on medical necessity and appropriate legal safeguards.

The legal and ethical debate on passive euthanasia remains complex, balancing patient autonomy and the state's duty to protect life. The ruling in *Lambert v. France* shows that withdrawing life-sustaining treatment does not violate the right to life when proper legal safeguards exist. However, laws vary across Europe and when reflecting on ongoing disagreements on end-of-life rights, societies must decide whether passive euthanasia is an exercise of the individual's autonomy or a potential risk to human rights, ensuring a balance between dignity and protection.

²⁰ Judgement of the ECtHR of June 13, 2024, *Lambert and Others v. France*, § 40.

²¹ Judgement of the ECtHR of June 13, 2024, *Lambert and Others v. France*, § 80.

²² Judgement of the ECtHR of June 13, 2024, *Lambert and Others v. France*, § 148.

²³ Judgement of the ECtHR of June 13, 2024, *Lambert and Others v. France*, § 151.

²⁴ Judgement of the ECtHR of June 13, 2024, *Lambert and Others v. France*, § 167.

3. Assisted Suicide

Assisted suicide is the act of intentionally providing a person with the means or knowledge to end their own life, typically through the prescription or supply of lethal substances, upon their voluntary and competent request. The final act leading to death is carried out by the individual, rather than a third party. The debate concerning assisted suicide is complex and usually highly emotional for both sides. The arguments for allowing this measure include that it protects patients autonomy and freedom of choice, relieves their suffering and allows families to be involved in the process, which may help alleviate their grief and lastly, that it preserves patients' dignity.²⁵

The legal status of assisted suicide varies across the world, with some countries recognizing it as an individual right and others strictly prohibiting it. Currently, physician-assisted suicide can be legally practiced in the Netherlands, Belgium, Luxembourg, Colombia, and Canada. It is also legal in 5 US states and Switzerland.²⁶ Switzerland has an uncommon position on assisted suicide, as it is legally condoned and can be performed by non-physicians.²⁷

The ECtHR approaches assisted suicide through the lens of personal autonomy and state obligations under the Convention. In cases like *Gross v. Switzerland* or *Pretty v. the United Kingdom* the ECtHR aims to find the balance between individual rights and the state's duty to protect vulnerable persons from abuse or undue pressure.

The ECtHR's ruling in *Pretty v. the United Kingdom* represents a significant moment in the legal debate surrounding the right to die. In this case, Mrs. Pretty suffered from terminal illness—a progressive neuro-degenerative disease of motor cells within the central nervous system. It is associated with progressive muscle weakness affecting the voluntary muscles of the body and causing severe weakness of the arms, legs and muscles involved in the control of breathing. Death is usually a result of muscle weakness, leading to respiratory failure and pneumonia.²⁸ There is no treatment that can prevent the progression of this disease. Diane Pretty wished to be able to control how and when she dies and thereby be spared suffering and indignity. Although it is not a crime to commit suicide under English law, she was prevented by her disease from taking such a step without someone else's assistance.

²⁵ L. Sue Baugh, "Assisted Suicide," *Encyclopedia Britannica*, <https://www.britannica.com/topic/assisted-suicide>, accessed 16 March 2025.

²⁶ Ezekiel J. Emanuel et al., "Attitudes and Practices of Euthanasia and Physician-Assisted Suicide in the United States, Canada, and Europe," *Jama* 316, no. 1 (2016): 86–87, <https://doi.org/10.1001/jama.2016.8499>.

²⁷ Samia A. Hurst and Alex Mauron, "Assisted Suicide and Euthanasia in Switzerland: Allowing a Role for Non-Physicians," *BMJ* 326, no. 7383 (2003): 271–73, <https://doi.org/10.1136/bmj.326.7383.271>.

²⁸ Judgement of the ECtHR of April 29, 2002, *Pretty v. the United Kingdom*, application no. 2346/02, § 7.

As a consequence, she sought the right to have her husband assist her in ending her life. It is however a crime to assist another to commit suicide.²⁹

The applicant argued that the prohibition of assisted suicide violated her rights under the Convention. She submitted that permitting her to be assisted in committing suicide would not be in conflict with Article 2 of the Convention, as it protected the right to life and not life itself. She stated that the sentence concerning deprivation of life was directed towards protecting individuals from third parties, not from themselves. Article 2 of the Convention therefore acknowledges that it is for the individual to choose whether or not to go on living and reserves her right to die in order to avoid inevitable suffering and indignity.³⁰ Moreover, she argued that her right to autonomy under Article 8 (the right to respect for private life and family life) was violated by the prohibition of assisted suicide, as it prevented her from choosing the way she dies.³¹

Mrs. Pretty also stated that her suffering from a terminal disease amounted to degrading treatment under Article 3 of the Convention, which imposes both a negative obligation on the state to refrain from such treatment and a positive obligation to protect individuals from it. The applicant contended that this right was absolute and could not be balanced against community interests and that the blanket ban on assisted suicide violated Article 3 of the Convention by denying her protection from unbearable suffering without considering her specific circumstances.

However, the ECtHR ruled against her, stating that the right to life under Article 2 of the Convention does not extend the right to die. Article 2, which guarantees the right to life, imposes a positive obligation on states to protect life and this cannot be interpreted as a right to end one's life. The first sentence of this article enjoins the state not only to refrain from the intentional and unlawful taking of life, but also to take necessary steps in order to safeguard the lives of those within its jurisdiction.³² The ECtHR found that UK's law on assisted suicide was a justifiable restriction under Article 8(2) of the Convention, and held that prohibition of assisted suicide served a legitimate aim of protecting vulnerable individuals from potential abuse and it was a necessary measure in a democratic society.³³

Similarly, the ECtHR concluded that there is no positive obligation under Article 3 of the Convention to require the state to allow assisted suicide or to prevent the prosecution of the applicant's husband for helping her. While sympathetic to the applicant's situation, the ECtHR found that Article 3 of the Convention does not extend to sanctioning actions intended to end life and therefore, there was no violation of Article 3 of the Convention in this case.

²⁹ Judgement of the ECtHR of April 29, 2002, *Pretty v. the United Kingdom*, § 9.

³⁰ Judgement of the ECtHR of April 29, 2002, *Pretty v. the United Kingdom*, § 35.

³¹ Judgement of the ECtHR of April 29, 2002, *Pretty v. the United Kingdom*, § 17.

³² Judgement of the ECtHR of April 29, 2002, *Pretty v. the United Kingdom*, § 51.

³³ Judgement of the ECtHR of April 29, 2002, *Pretty v. the United Kingdom*, § 78.

In essence, the ruling reinforced the principle that while individuals may have rights to personal autonomy, they are to be balanced with States' interests in preserving life and protecting public order. The ruling in *Pretty v. United Kingdom* affirmed that the right to life under Article 2 does not extend to a right to die. Furthermore, it reinforced the principle that States have a legitimate interest in protecting vulnerable individuals. The case has had a lasting impact on end-of-life legal debates in Europe, influencing later the Convention rulings and national policies on euthanasia and assisted suicide. It highlighted the tension between personal autonomy and the state's duty to protect life, a debate that continues to shape discussions on assisted dying laws across Europe and beyond.

Issues raised in this case have seen differing viewpoints in other jurisdictions. For example, in the Canadian case of *Rodriguez v. British Columbia* Justice McLachlin dissented, emphasizing the importance of individual autonomy in end-of-life decisions. She stated that this is part of the persona and dignity of the human being that he or she has the autonomy to decide what is best for his or her body.³⁴ While the ECtHR did not feature dissenting opinions in *Pretty v. United Kingdom*, discussions in other courts, such as the Canadian Supreme Court, have also presented alternative viewpoints emphasizing individual autonomy in the context of assisted suicide.

Critics of the *Pretty v. United Kingdom* ruling argue that the decision placed state interests above individual autonomy, denying terminally ill patients the right to make deeply personal choices about their own bodies. They contended that Article 2 should not be interpreted as an obligation to live but rather as a protection against unjustified deprivation of life, meaning that individuals should have the right to refuse prolonged suffering. Furthermore, while the ECtHR acknowledged that Article 8 includes autonomy in medical decisions, it ultimately prioritized abstract concerns over the real and immediate suffering of the individual. This restrictive approach contrasts with evolving legal and ethical perspectives in countries like Canada and the Netherlands, where assisted dying is perceived as a part of patient's dignity and compassionate end-of-life care.

The ECtHR's ruling *Gross v. Switzerland* was another landmark decision on end-of-life care, affirming that a Swiss woman, Ms. Alda Gross, an elderly but not terminally ill individual, wished to end her life with medical assistance.³⁵ Swiss law permits assisted suicide under certain conditions, but doctors refused to prescribe her a lethal dose because she lacked a diagnosed terminal illness.³⁶ She argued that Switzerland's legal framework was unclear and prevented her from exercising her right to end her life in a dignified manner. The applicant claimed that Switzerland's

³⁴ Judgement of the Supreme Court of Canada of September 9, 1993, *Rodriguez v. British Columbia*, CanLII 75 3 SCR 519.

³⁵ Judgement of the ECtHR of September 30, 2024, *Gross v. Switzerland*, application no. 67810/10.

³⁶ Judgement of the ECtHR of September 30, 2024, *Gross v. Switzerland*, § 15.

refusal violated Article 8 of the Convention and argued that this includes the right to decide when and how to die.

The ECtHR ruled in favour of Ms. Gross, stating that Switzerland indeed lacked clear and foreseeable legal guidelines on assisted suicide, thus resulting in legal uncertainty. Moreover, Article 8 of the Convention was violated because the legal ambiguity prevented Ms. Gross from exercising personal autonomy over her own death.³⁷

Although the *Gross v. Switzerland* ruling was ultimately nullified (before Switzerland could respond, it was revealed that Ms. Gross had already taken her own life, leading the ECtHR to dismiss the case), it remains significant in the broader debate on assisted suicide and legal clarity in end-of-life decisions. This case highlighted the growing recognition of personal autonomy under Article 8, suggesting that the right to private life includes the ability to decide when and how to die. It also underscored the need for clear and foreseeable legal guidelines on assisted suicide in order to prevent uncertainty. The case contributed to ongoing discussions in European human rights law about balancing state interests in protecting life with individual rights to end-of-life decisions, influencing later cases and policy discussions.

Summary

As follows from the above considerations, the European Court of Human Rights' case-law clearly indicates that the Convention provisions, including Article 2, Article 3, and Article 8, in particular, do not guarantee the right to death. Despite the lack of such a guarantee, the ECtHR does not prohibit national laws that legalize active and passive euthanasia, as well as assisted suicide. However, this is linked to the obligation of states to ensure appropriate safeguards protecting individuals who resort to any form of euthanasia and assisted suicide from abuses and violations of their rights guaranteed by the Convention. Issues related to the end of life thus remain within the wide margin of appreciation of Member States. This does not mean, however, that the ECtHR's rulings have not raised controversy: quite the opposite is true; as pointed out in this article, they have supporters and opponents, both advocating for either a complete ban on euthanasia or its full legalization. After all, it poses a challenge to apply the Convention provisions that at the same time and with equal legal force obligate Member States to protect human life and prohibit intentional killing while also protecting the right to privacy and individuals' choices concerning when and how to end their lives.³⁸

³⁷ Judgement of the ECtHR of September 30, 2024, *Gross v. Switzerland*, § 35.

³⁸ Michał Balcerzak, "Euthanasia and Withdrawal of Life-Sustaining Treatment in the Case-Law of the European Court of Human Rights: Twenty Years After *Pretty v. United Kingdom*," *Prawo i Więź* 46, no. 3 (2023): 127–30, <https://doi.org/10.36128/PRIW.VI46.699>.

BIBLIOGRAPHY

- Balcerzak, Michał. "Euthanasia and Withdrawal of Life-Sustaining Treatment in the Case-Law of the European Court of Human Rights: Twenty Years After *Pretty v. United Kingdom*." *Prawo i Więź* 46, no. 3 (2023): 115–132. <https://doi.org/10.36128/PRIW.VI46.699>.
- Baugh, L. Sue. "Assisted Suicide." *Encyclopedia Britannica*. Accessed 16 March, 2025. <https://www.britannica.com/topic/assisted-suicide>.
- Brassington, Iain. "What Passive Euthanasia Is." *BMC Medical Ethics* 21, no. 41 (2020): 1–13, <https://doi.org/10.1186/s12910-020-00481-7>.
- Deliens, Luc, and Gerrit van der Wal. "The Euthanasia Law in Belgium and the Netherlands." *The Lancet* 362, no. 9391 (2003): 1239–40, [https://doi.org/10.1016/S0140-6736\(03\)14520-5](https://doi.org/10.1016/S0140-6736(03)14520-5).
- Emanuel, Ezekiel J., Bregje D. Onwuteaka-Philipsen, John W. Urwin, and Joachim Cohen. "Attitudes and Practices of Euthanasia and Physician-Assisted Suicide in the United States, Canada, and Europe." *Jama* 316, no. 1 (2016): 1. <https://doi.org/10.1001/jama.2016.8499>.
- Garrard, Eve, Wilkinson, Stephen. "Passive Euthanasia." *Journal of Medical Ethics* 31, no. 1 (2024): 64–68. <https://doi.org/10.1136/jme.2003.005777>.
- Gesang, Bernward. "Passive and Active Euthanasia: What Is the Difference?" *Medicine, Health Care and Philosophy* 11, no. 2 (2008): 175–80. <https://doi.org/10.1007/s11019-007-9087-x>.
- Hurst, Samia A., and Alex Mauron. "Assisted Suicide and Euthanasia in Switzerland: Allowing a Role for Non-Physicians." *BMJ* 326, no. 7383 (2003): 271–73, <https://doi.org/10.1136/bmj.326.7383.271>.
- Sandor, Judit. "A Lawyer's Legacy: The Significance of the Dániel Karsai v. Hungary Case." *Pravni Zapiši* 15, no. 3 (2024): 311–26.
- Śliwka, Marcin, and Aneta Gałęska-Śliwka. "Regulating End-of-Life Decisions in Poland: Legal Dilemmas." *Advances in Palliative Medicine* 10, no. 2 (2021): 49–56. https://journals.viamedica.pl/advances_in_palliative_medicine/article/view/29332.