

Miljan SAVOVIĆ*

Benefits and Challenges of Legalising Euthanasia – Example of Serbia

ABSTRACT: *We are all familiar with the fact that the legal practice of euthanasia is causing great misunderstandings between law scholars on international level. There are a lot of open questions to discuss about, especially those with ethical and moral backgrounds. Mutual consensus is nowhere to be found. Euthanasia questions the right to life at its fundamentals; that is undeniable. Some of the legal systems are acknowledging its existence, while some are advocating against it. Both sides have their positive and negative arguments, there is not yet adequate middle ground. There is a lot of room for finding mutual consensus in the future. Regarding my home country, Serbia, the legal practice of euthanasia, is not officially part of its Criminal Code. Some authors and legal scholars propose that it needs to become part of our positive legal system. The right to life is one of the cornerstones of human rights, and one of the main pro euthanasia arguments is that every individual should have the possibility to choose whether or not he/she will exercise that right. There are a lot of countries that are successfully practicing this practice for years (the Kingdom of the Netherlands and Switzerland e.g.). The facts and hypotheses quoted in the Para. above are going to be main focus of this article. During the writing of this article, I will primarily use the following scientific methods: analytical, critical and parallelism. The article is going to show the positive and negative sides of legalising euthanasia in Serbia. Its main focus is going to revolve around comparison and analysis with countries that have accepted the legal practice of euthanasia as a part of their legal systems. Additionally, this article is going to examine if the decision to legally exercise the right to life should be in the hands of its bearer, especially when there are some excusing circumstances (fatal illness e.g.), and whether Serbia needs to work on legalising it.*

KEYWORDS: *Euthanasia, Legalisation, Positive Law, Right to Life, Comparative Law.*

* PhD candidate; Faculty of Law Novi Sad; savovicmiljan@gmail.com; <https://orcid.org/0009-0006-1244-8867>.



1. Introduction

The right to life is one of the most important rights that an individual can exercise. The European Convention on Human Rights (ECHR), in Article 2, prescribes right to life in the following manner:

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.¹ Furthermore, regarding this topic, we can also quote Article 2 of the Convention on Human Rights and Biomedicine (Oviedo convention): The interests and welfare of the human being shall prevail over the sole interest of society or science.² The right to life stands as one of the fundamental and most important pillars of the entire category of law. In addition, it is a precondition for enjoying a vast array of other rights.³ However, in modern legal systems, there are many institutes that are bringing the right to life into question. Abortion, death sentence and euthanasia are some of the most flagrant examples of it. Even in question, the right to life maintains its status as one of the most valuable human rights. One of the most famous international cases where the right to life was questioned was *Evans versus the United Kingdom (UK)*.⁴ Natalie Evans and her partner, underwent IVF because of her ovarian cancer. Six embryos were frozen, but after their separation, her partner withdrew his consent for the embryos to be used, as he no longer wished to be a father. Evans argued that the UK law violated her rights under the ECHR, particularly Article 2 (right to life of the embryo). The Grand Chamber of the ECHR unanimously found no breach of Article 2. The Court affirmed the UK's legislation, emphasizing that the right to private life includes the right not to become a parent. The decision reinforced the State's margin of appreciation in regulating reproductive technologies, and upheld the principle of mutual consent in IVF treatment, recognizing the competing interests of both parties. This case still causes disputes between experts around the world, even after nearly twenty years later.

1 Convention for the Protection of Human Rights and Fundamental Freedoms.

2 Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine.

3 Opsahl, 1993, pp. 203–227.

4 *Evans v. the United Kingdom*, 2007.

Numerous institutes are questioning the right to life to its core. Among them is the institute and practice of euthanasia (assisted suicide, as critics like to label it). Today, euthanasia is one of the most debated and criticised legal concepts that is causing great differences in opinions between legal scholars and legal systems around the world. It remains a highly controversial moral issue, with ethical, political, religious and ethical considerations playing an important role.⁵ Mutual consensus is nowhere to be found, and it appears that it is going to stay like that for a long time. Only a few countries (around 10) have legalised it, which confirms the disagreements and disputes that exist worldwide. The Kingdom of Netherlands, Belgium and Luxembourg are some of the examples. However, regardless of evidence on the high level of criticism and drawbacks, the legal practice of euthanasia has showed a large number of positive side effects after legalisation. For example, some of the surveys showed that in some countries the legalisation of euthanasia contributed to a decrease in the number of suicides. Psychologically speaking, for an individual, it is a lot easier and comforting for him/her to know that his/her decision for exercising/not exercising the right to life is fully legalised and accepted by society. Not to mention the elimination of public shame of the deceased's family and other side effects that legalising euthanasia brings.

Right to life stands as one of the most important human rights of every individual. Some of the authors would argue that the legalisation of euthanasia is jeopardising the right to life itself, while some other authors have a slightly different approach. Differences in their stances will be fully elaborated in the chapters that follow.

2.

Historical Aspect and Development of Euthanasia

In one way or another, euthanasia has made its presence since the early times, but in different forms and manifestations. Debates about the moral dilemmas of euthanasia date back to ancient times. Many of the historical arguments used for and against the practice of euthanasia remain vivid even today,⁶ while the first traces of forms of euthanasia date to ancient Greek and Rome. Some of the ancient philosophers referred to euthanasia as a “good death” and explored the various motives behind it. However, it is debatable if death can be “good”?! Sure, some ways of dying are far more elegant, sophisticated and less painful to endure, but, as the end awaits all of us, “good” is a strongly debatable term, with a question mark. Moreover, as self-suicide and euthanasia were common acts in classical antiquity, they did not conflict with

5 Fontalis, Prousalis and Kulkarni, 2008, pp. 407–413.

6 Harris, 2001, pp. 367–370.

the moral beliefs of that era. Ancient authors treated it in a permissive manner, while they looked on human life as having inherent value. Some authors like Plato even considered it as a heroic act. Suicide was predominantly legally permitted, and was even perceived as a triumph over fate.⁷

During the Middle Ages, public stance regarding euthanasia drastically changed. Suicide was perceived as a serious sin and a major crime. Most theologians advocated that executing euthanasia/suicide were in no case religiously permissible as it defied the duty to live and love ourselves, and an offence against God. Literature was far more than hostile.⁸

Sixteenth and seventeenth centuries brought years of revolution, romanticism and the rapid progress of science, but public opinion regarding euthanasia practically stayed the same, more or less. Theologians and scientists saw no justifiable cause for euthanasia. Some of the most renowned authors, who discussed these topics were Thomas More, Francis Bacon, John Bunyan.⁹

The period of enlightenment brought different approaches. Many philosophers were dissatisfied with the religious, political and social status quo. They respected science because they believed it was a more reliable means for determining truth, rather than theological speculation. To authors like Voltaire and Montesquieu, suicide was a question of individual liberty. They were optimistic and believed that every individual with proper education could make rational choices. Baron d'Holbach deemed euthanasia/suicide to be determined by biological or psychological facts, and thus were purely natural acts.¹⁰

The nineteenth and twentieth centuries brought higher levels of concern and tolerance among authors. They were not against practicing euthanasia, but they expressed their concerns, especially from an ethical and moral standpoint.¹¹

In today's modern time, the legal practice of euthanasia is causing great debates among authors, law makers and doctors. There is no mutual ground between authors: some of them are criticising it, while others are advocating for it. Both sides have valid argumentation. The fact that out of approximately 190 countries, only around 10 have fully legalised it, speaks more than enough. There is considerable room for more constructive dialogues and solutions in the coming times.

7 See: Dowbiggin, 2007.

8 Ibid.

9 Ibid.

10 Ibid.

11 Ibid.

3. Definition and Types of Euthanasia – Active and Passive Euthanasia

Even though the practice of euthanasia has numerous manifestations and classifications, the distinction between active and passive euthanasia stands out as the most prominent classification.

In its essence, death by euthanasia must be defined as death that results from the intention of one person to kill another, using the most gentle and painless means possible, that is solely motivated by the best interests of the person who dies. Consequently, it is reasonable to infer that any method for including death, other than the most gentle and effortless, is not true euthanasia. Euthanasia is generally defined as being motivated by the best interests of the person who dies. While this motivation is a necessary part of the definition, it is not sufficient on its own. If euthanasia is meant to serve a person's best interests, then the gentler available option should always be used. This is because the "best" choice is, by definition, is the one that cannot be improved upon. Therefore, intentional killing, that does not use the gentlest and easiest possible means, cannot be euthanasia.¹² Additionally, H.J.J. Leenen gives a definition of euthanasia that consists of three main components:¹³

1. An act which has resulted in death
2. The act itself has to be performed by someone other than the person who has died
3. The act must have been performed at the deceased's request

While definitions of euthanasia vary in their approaches on this topic, their fundamental concepts remain more or less the same.

Given the main classification of types of euthanasia, we define active euthanasia as intentional ending of one person's life by another, motivated solely by the best interest of the person who dies, through the deliberate administration of a life-ending substance or procedure.¹⁴ One of the most prominent representatives of legalising active euthanasia was Daniel Karsai, who got famous in the Karsai versus Hungary case.¹⁵ Dr Karsai campaigned to legalise active euthanasia, in which, a physician gives the patient a lethal drug. In June 2024, the European Court of Human Rights – Karsai's former workplace – ruled in favour of the Hungarian government's argument that the denial of euthanasia was not an infringement of his fundamental rights as a

12 Brassington, 2020, pp. 1–13.

13 Leenen, 1984, p. 333.

14 Ibid.

15 *Dániel Karsai v. Hungary*, 2024.

Hungarian citizen. In September, the European Court of Justice also ruled against him. While he lost both cases, he won significant popular support. He died shortly thereafter, yet his efforts have left a great contribution to the international legal community. Conversely, we define passive euthanasia as the intentional ending of one person's life by another, motivated solely by the best interest of the person who dies, through the deliberate withholding of a life-preserving substance or procedure.¹⁶

Basically, the main difference between active and passive euthanasia revolves around executing the act of ending someone's life (active euthanasia), and being passive by letting someone die (passive euthanasia). To kill or let someone die are two different dimensions. Both of them raise a lot of open and debatable questions, especially from ethical and moral viewpoints, but there is a major difference between ending someone's life, and simply being passive and letting an individual die, while refraining and doing nothing.¹⁷

Moreover, there is a lot of controversy regarding permissibility of both active and passive forms of euthanasia. While the active form of euthanasia is unanimously criticised and tends to be prohibited by law makers and authors, the passive form tends to be more subject to discussion and open mindedness. Once again, moral and ethical components raise its manifestations, while opinions about passive euthanasia are divided. Some authors think that the passive form can be permissible in some situations, while others are rather sceptical. However, both sides agree that the active form of euthanasia should be forbidden.¹⁸ It is evident that the active form of euthanasia leaves equally devastating consequences for the deceased as well as the assistant. For the deceased, it is the termination of the right to life. For the assistant (executioner) it is the emotional and psychological burden that he/she has to carry and endure for the rest of his/her life.

Opinions regarding passive euthanasia differ, though it generally has a higher dose of elasticity than its active counterpart. Some authors even consider passive euthanasia as non-existent, presumably because passiveness cannot be legally charged, and contend that passive euthanasia cannot really be euthanasia if it does not cause death.¹⁹

Despite drastic differences in opinions and approaches, the distinction between active and passive euthanasia remains the most prominent. It is clear that only an adequate symbiosis between the two is the only possible way to achieve the full potential and eventual worldwide legalisation of euthanasia, assuming that lawmakers decide to give the legal institute of euthanasia a chance, globally speaking.

16 Leenen, 1984, p. 333.

17 McLachlan, 2008, pp. 636–638.

18 See: Rachels, 2019.

19 Garrard and Wilkinson, 2005, pp. 64–68.

4.

Positive Examples of Implementation of the Legal Institute of Euthanasia in the Netherlands and Belgium

Even though the institute of euthanasia has been fully legalised in only a few countries (Spain, Luxembourg, six states of Australia...), for the purpose of this article, I shall use only the Netherlands and Belgium as examples, and for comparative analysis.

Kingdom of Netherlands: the legal institute of euthanasia was first formally legalised in the Netherlands when the Termination of Life on Request and Assisted Suicide (Review Procedures) Act came into force in April 2002. This Act, which also serves as an umbrella law for the practical procedure of euthanasia consists of 24 articles. The main governing bodies responsible for its rightful exercise are the Ministries of Justice, Health, Welfare and Sport.²⁰

Under this Act, the requirements for lawful execution of the legal institute of euthanasia include: the patient's request was voluntary and well considered, patient's suffering was lasting and unbearable, patient was well informed about all the consequences, and the act itself could be performed only by an authorised physician.²¹ It also prescribes the formation of regional committees, appointed by ministers. This is further elaboration in articles 3 to 18.²² Later Acts provide additional explanations about potential penalties regarding unlawful execution of this institute. The maximum punishment for unlawful conduct of euthanasia is 12 years.²³

While the initial introduction caused great disturbances, most of the surveys reveal that Dutch voters/citizens have fully embraced euthanasia as a part of everyday life, with some of the recent polls indicating that over 70% of the population support it.²⁴ Additionally, from 2000 to 2022, the number of executed legal euthanasia cases rose from around 2000 to nearly 9000.²⁵ That speaks volumes of how the Netherlands has fully recognised the full potential of legalising euthanasia.

Belgium: a few months after the Netherlands introduced its euthanasia laws, Belgium introduced its own legal instrument for euthanasia to the international legal theatre under the name of the Belgian Act on Euthanasia. It consists of around 16 articles, and its provisions lean heavily on its Dutch counterpart.²⁶ The differences

20 Termination of Life on Request and Assisted Suicide (Review Procedures) Act (2002) Netherlands.

21 Ibid., Art. 2.

22 Ibid., Arts. 3–18.

23 Ibid., Art. 20.

24 CARE (2024) 80% of Dutch voters support allowing euthanasia for those who feel their life is “complete”.

25 Statista (no date) Netherlands Euthanasia.

26 The Belgian Act on Euthanasia, 2002.

are minimal. Some of the provisions that are slightly different are the ones regarding committees. Belgian legislative rules are more precise in the matter of the exact number of individuals that the committee needs to have (16 members) and their qualifications.²⁷ However, the differences are minor. While surveys in the Netherlands showed a significantly higher evolutionary and exponential growth in the number of lawfully performed euthanasia cases (increasing from around 300 in 2003 to over 3500 in 2023),²⁸ the nature of exponential dynamics stays practically the same as in the Netherlands. Nevertheless, Belgium stands as one of the most flagrant examples of a positive legal system with successful implementation of euthanasia.

While the Netherlands and Belgium represent positive examples, they are still only exceptions, rather than a pattern because a sample size of approximately 10 out of over 190 countries across the world, is not statistically substantial enough for a valid comparative legal analysis. More legalisation trends need to be executed for the surveys and comparative analysis samples to become more relevant.

5.

Ethical and Moral Complexities of Legalising Euthanasia in the Republic of Serbia and Globally

Even though the terms “ethics” and “morality” hold a lot of similarities, there is a fine line of distinction between them. While ethics stands as one of the branches of philosophy, morality is more centred around norms and acceptable patterns of behaviour in society.²⁹

Despite being somewhat different, these two constructs form one unbreakable symbiotic bond. One cannot discuss about ethics without mentioning morality, and vice versa.³⁰ The legal institute of euthanasia and its legalisation certainly raises a lot of questions that are questioning ethical and moral views to their core.

Debates about the moral dilemmas of euthanasia date back to ancient times, and stand as one of the most controversial open questions of modern law. It provokes emotional reactions and responses from experts and the general public.³¹

Some authors would say that the potential legalisation of the legal practice of euthanasia questions an individual’s ability to exercise his/her right to life to its full potential, while simultaneously raising doubts about the possible unlawful

27 *Ibid.*, Art. 6.

28 Statista (no date) Number of registered euthanasia instances in Belgium from 2002 to 2023.

29 Annas, 1992, pp. 119–136.

30 Mattingly and Throop, 2018, pp. 475–492.

31 Harris, 2001, pp. 367–370.

termination of someone's life, previously quoted. Right to life is seen by many as an absolute moral value.³²

Additionally, it is morally harder to justify letting somebody die a slow and ugly death, dehumanised, than it is to justify helping him/her to escape from such misery. This is the case at least in any humanistic or personalistic code of ethics, one with a value system that puts humanness and personal integrity above biological life and function.

It makes no difference whether such an ethics system is grounded in a theistic or naturalistic philosophy. We may believe that God wills human happiness, or that human happiness is, as Protagoras thought, a self-validating standard of the good and the right. However, what counts ethically is whether human needs come first, not whether the ultimate sanction is transcendental or secular. What follows is a moral defence of active or positive euthanasia, which helps the patient to die, over the passive or negative form of euthanasia – which “lets the patient go” by simply withholding life-sustaining treatments. The plain fact is that negative euthanasia is already a *fait accompli* in modern medicine,³³ and that is something to question and think about.

Further, we can analyse the term euthanasia from the perspective of *eudaimonia*,³⁴ the ancient Greek conception of happiness across one's whole life. It is argued that one cannot be said to have fully flourished or had a truly happy life if one's death is preceded by a period of unbearable pain or suffering that one cannot avoid without assistance in ending one's life. While death is to be accepted as a part of life, it should not be left to nature to dictate the way we die, and it is fundamentally unjust to grant people a liberal latitude in how they live their lives, while granting them little control over the conclusion of their life narratives.³⁵

It is hard to adequately dispute the facts mentioned in the Para. above. We can argue that every person is a master of his/her own life and fate, especially when there are excusing circumstances like insufferable diseases. The question of ethics and morality are highly debatable, and at the same time, they are crossing some fine lines and entering the legal areas of grey zones (colloquially speaking). Furthermore, potential legalisation shakes the principles of ethics and morality and their universal definitions.

It is highly questionable whether the potential legalisation of the legal practice of euthanasia in Serbian positive legal system will bring more positive than negative effects. The passage of time will be the best indicator and judge.

32 See: Keown, 2018.

33 Fletcher, 1977, pp. 348–360.

34 Deci and Ryan, 2008 pp. 1–11.

35 Shaw, 2009, pp. 530–533.

6.

Benefits of Legalising Euthanasia within the Positive Law of the Republic of Serbia

As Serbia's positive legal system does not recognise the legal practice of euthanasia in its criminal code or via any individual/separate legal acts, there is significant room for legal variations regarding its hypothetical implementation.

Secondly, euthanasia/assisted suicide are not ends in themselves with intrinsic value, but are means to realise the end of a good death, or to be more precise, a quality dying experience. The current debates revolve around whether euthanasia is appropriate for some individuals, whether passive euthanasia is the same as active euthanasia,³⁶ and whether providing morphine for pain relief – with the risk of respiratory depression and premature death, is the same as euthanasia. Besides ethical and moral considerations, there is also a lot of debate on topics relating to the social acceptance and clinical practice of euthanasia. Will terminally ill patients be helped or harmed by having euthanasia available to them? There is not definitive or consensus answer on this topic yet.

When speaking about trademarks and characteristics of the Serbian population and society, we are looking at a mix of people holding traditional values, who are slowly opening themselves to new and liberal virtues. In this context and social climate, it is going to be more of a challenge to fully legalise the practice of euthanasia. Still, that process is a long way from being impossible. Maybe, but just maybe, the Serbian legislature needs to evolve, and the implementation of legal practice of euthanasia is one of the hypothetical ways to achieve that goal.

Secondly, by implementing legalisation, Serbian lawmakers could demonstrate to the international community that Serbia is ready to join a select group of countries, who are playing a pivotal role in revolutionising modern law. Most countries have chosen to prohibit this practice completely, with the exception, not surprisingly, of Belgium, Canada, Colombia, Switzerland, Kingdom of Netherlands and a few American states.

By becoming a part of this group of countries, around 10 countries worldwide, that have legalised euthanasia, Serbia can possibly show international legal systems that it is not afraid to take initiatives, especially when it comes to upgrading and modifying its legal acts.

Moreover, by legalising euthanasia, Serbian legislation could add a new layer of humane virtue to the right to life and its ability to be exercised, even if it seems contradictory. Legalising euthanasia/assisted suicide can be seen as a necessary

36 Ibid., See more in Chapter 3.

“insurance policy” that will ensure that no one dies in painful agony or unremitting suffering. Legalised euthanasia would protect the vulnerable from wrongful death, and enable peaceful death with dignity. Furthermore, proposers of euthanasia and physician assisted suicide identify three main benefits to legalisation: realizing individual autonomy, reducing needless pain and suffering, and providing psychological reassurance to dying patients.³⁷ It is indisputable that the most important reasons for euthanasia include medical arguments, such as great suffering and pain caused by incurable diseases in the terminal phase, persistent vegetative state, possibility of organ transplantation in special cases, and conditionally, the equitable distribution of healthcare costs.

Furthermore, we cannot forget arguments for supporting euthanasia, like ending suffering, freedom of choice to decide how and when one dies, and being able to die with dignity. A terminally ill patient can have terrible pain. Such patients can also have difficulty with sleeping. Medications used in the treatment of pain have the potential to alter consciousness, change the state of mind, and even cause death. It should be noted that without physician assistance, patients may commit suicide in a messy, horrifying, and traumatic way, and that type of action and reaction can leave devastating consequences, especially for the family of the deceased. It is debatable whether the dying process can be avoided or become more elegant and sophisticated through the legalisation of the institute of euthanasia.

Besides, when a patient is unable to speak, the decision regarding treatment becomes even more complicated. The instruction to the physician must be as close as possible to what the patient, if able, would give. In such cases, the physician must find out any wishes the patient had expressed previously. If patients are unable to communicate on their own, the physician is obligated to communicate with their families.³⁸ Thereafter, the physician must try to obtain consent from a proxy. Almost always, the patient has a close family tie with a spouse, partner or adult child. Pertinent information from relatives and close friends is extremely helpful at these times.³⁹ By the hypothetical implementation of the legal practice of euthanasia, maybe the psychological burden for families of potential practitioners, becomes less heavy, and an easier burden to endure. Probably, one of the most crucial aspects of this whole process is that the family should be protected as much as possible, both legally and morally.

However, should Serbia decide to legalise the practice of euthanasia/physician-assisted death, it should be practiced only as a last resort, applicable only when all medical treatments have failed, and there are no options left for potential

37 Emanuel, 1999, pp. 629–642.

38 Teno et al., 2004, pp. 88–93.

39 Steinhauser et al., 2001, pp. 727–737.

practitioners to recover. Given the facts and premises quoted in the Para. above, we can see that there are a lot of positive arguments regarding the legalisation of euthanasia in Serbia. If our lawmakers decide to take that step, I propose that during that process, we should use Belgian and Dutch legislation as our primary source of inspiration and comparison.

7.

Challenges to Legalising Euthanasia within the Positive Law of the Republic of Serbia

Euthanasia is categorically prohibited in almost all countries throughout the world,⁴⁰ and that fact alone speaks volumes about how much of a challenge the legalisation of euthanasia would present to the Serbian legislature, if Serbia decides to legalise the practice.

As discussed in previous chapters, perhaps the most significant obstacles and challenges to legalising the practice of euthanasia, stem from its ethical and moral viewpoints.⁴¹ While ethics and morality are fundamental obstacles, legalising euthanasia also brings another set of challenges and impediments.

Firstly, as mentioned several times in the Para. above, not many countries have fully legalised euthanasia (only around 10). Therefore, there are only a few example-states to use as a sample for implementation. At the same time, the number of countries available for a comparative-law approach and eventual execution, also remain at low levels. Serbian lawmakers are going to be extremely limited during the process of legalising and implementing the practice of euthanasia. Given the historical, geopolitical and cultural background, I would say that my country can only rely on a few countries as a model, specifically the European ones (Netherlands, Belgium, Luxembourg).

Secondly, there are many opponents of euthanasia and physician-assisted suicide among law researchers and practitioners globally.⁴² One of the reasons for their advocating that some societies should never legalise euthanasia is that the doctor-patient relationship will be seriously weakened. When the physician becomes involved in euthanasia, the relationship between the patient and doctor is radically undermined. The nature of the patient-doctor relationship is extremely confidential, private and personal. It is debatable whether a dying patient is able to make a rational decision. The potential legalisation of euthanasia questions and jeopardises the essence and

40 Bollen et al., 2019, pp. 111–113.

41 See more in Chapter 5.

42 See: Callahan, 2019.

fundamentals of that relationship. Many people recover after being “written off” by doctors. Patients may have said that they wanted euthanasia when they were nowhere near death. However, when actually faced with death, they may change their mind, but be incapable of telling anyone. Additionally, opponents of legalised euthanasia typically argue that pain and suffering at the end of life can be controlled in almost all cases to a level that is satisfactory to the patient, and that the few patients whose pain cannot be adequately controlled do not justify the legalisation of euthanasia. They claim that complete sedation can be used to alleviate a patient’s pain when it can no longer be controlled. Further, opponents generally argue that public funds should be spent on making sure that all patients who are dying have access to palliative care, rather than on setting up the legislative and procedural framework necessary for the safe provision of euthanasia. Additionally, opponents of the autonomy argument contend that terminal patients cannot force a physician to take an immoral action, such as voluntary active euthanasia. They believe that actively ending a life is murder. Therefore, physicians cannot end a patient’s life even if the patient has given his/her consent.⁴³

Moreover, there is a lot to discuss from a religious point of view. Most religions around the world explicitly prohibit any form of taking someone’s life (killing), even if the person whose life is going to be hypothetically taken has given consent and permission. Not to mention that suicide is classified as one of the gravest sins, and perceived as a one-way ticket to hell. For Serbian society and culture, which is traditionally orthodox Christian and part of the Eastern Orthodox Church family, persuading the public, media and citizens of the benefits and positive attributes of legalising euthanasia is going to be an extremely challenging task. Not impossible, but definitely difficult.

There is also an argument that giving physicians/medical staff too much power to kill patients, or assist in their suicide, under the cloak of confidentiality is to run a considerable risk, one that is hard to spot as well as hard to act upon. There is just no way, in the end, for outsiders to know exactly what doctors do behind the veil of confidentiality, which in itself is a threat. Besides, the tradition of medicine has, for centuries, opposed the use of medical knowledge and skill to end life. Every important Western medical code of ethics has rejected euthanasia – and rejected it even in eras when there were far fewer ways of relieving pain than are now available.⁴⁴ It would be an extremely difficult task to harmonise medical and criminal legislative acts in the Serbian case.

It is undeniable that the obstacles and challenges presented in section 7 of this article have valid argumentation, and that if Serbian law makers decide to legalise

43 See: Battin, 2005.

44 Callahan, 2005, pp.179–190.

euthanasia, it is going to be a nearly impossible task to find a way to bypass these problems.

8.

Possible Legal Provisions/Solutions within the Positive Law of the Republic of Serbia

As there are currently no adequate legal solutions regarding the legal practice of euthanasia, there are two possible solutions for potential future implementation: regulation via the Criminal Code or through a separate legal act.

In my humble personal opinion, keeping in mind that the process of legalising euthanasia is an extremely delicate matter, the best solution for Serbian lawmakers, should they decide to legalise it, is to introduce a unique legal act to regulate this topic. My proposed title is “The Serbian Act on Euthanasia”,⁴⁵ similar to the Belgian model.

That hypothetical future act would be heavily inspired by the Dutch Termination of Life on Request and Assisted Suicide (Review Procedures) Act, but the act itself would be adapted to Serbian circumstances and conditions.

In the following sections, I will propose possible changes and adaptations that can be made, from my standpoint, and I will use the Dutch Act as a point of comparison:⁴⁶

1. In the opening sequence of the Act, given that Serbia is not a monarchy in comparison to the Netherlands, I would quote that the act is brought by and for Serbian people and its citizens as bearers of sovereignty (to learn more about the Serbian perspective on sovereignty, you can refer to the textbook “Constitutional Law” by our distinguished professor Ratko Markovic, where he clearly elaborates on three manifestations of sovereignty: internal, external and synthetic elements).
2. In Article 1 of the Dutch Act, the ministers, who are key to the execution of this Act are Health, Welfare, Sports and Justice. Further, there is a room for adding the Ministry of Finance, because I predict that there will be two situations: when euthanasia is financed by the state and when it is financed privately. Therefore, I think that including the Ministry of Finance is of great importance for better execution, if it gets an opportunity to be a part of the positive legal system.
3. In Article 2, I propose that within the potential Serbian case, the legal age limit for a person who is giving his/her consent for euthanasia should be at least 21

45 See more in Chapter 4.

46 Termination of Life on Request and Assisted Suicide (Review Procedures) Act, 2002, Netherlands.

years at the moment of giving consent. It is perhaps debatable whether that age limit should be lower than 21 years.

4. In Article 3, the Dutch Act refers to an uneven number of committee members. I think that the number of five members is fairly adequate, and that it is more than enough for high quality voting making decisions.
5. Articles 4 through 12 are more than satisfying, so Serbian lawmakers can implement them verbatim.
6. In Article 13, the Dutch Act addresses the consultation dynamics between the chairman and representatives on an annual basis. I believe that these consultations should be held at least quarterly, four times a year. Given that, we are dealing with an extremely delicate and sensitive topic, consistency is crucial; therefore, consultations should be frequent, as much as possible.
7. Articles 14 through 19 are also extremely appropriate, so direct implementation would be the best solution.
8. In Article 20, the Dutch Act addresses wrongful execution and potential legal consequences. I would argue that the punishment for the unlawful execution of euthanasia should be more rigorous, and that the sentence should be a minimum of 20 years of imprisonment. Other forms of wrongful execution should also be punished more drastically. We are talking about snuffing out someone's right to life; after all, people need to be aware and afraid of the consequences. Drastic punishment and public awareness of it bring effective results.
9. Articles 21 and 22 are also good, and should be implemented identically.
10. Articles 23 and 24 (final provisions) need to be adapted by Serbian lawmakers. *Vacatio legis* for legal acts in Serbia is typically 8-15 days from the time of its publication in the Official Gazette of the Republic of Serbia, though this can be prolonged to 30 days in special circumstances, for example when a new Code of Criminal procedure becomes a part of the legal system, as owing to the delicate nature of the Act itself, the public and experts need more time to adapt. Consequently, the Act needs to take effect within that time span. Furthermore, the Serbian parliament is unicameral and does not have a lower and upper house, in comparison to the Dutch parliament, which is bicameral. In the Serbian case, there is no possibility for a lower house to bring this Act (because it is non-existent).

From this short comparative analysis, we can see how Dutch legislation can inspire Serbian lawmakers in the process of implementing the legal institute of euthanasia. The Dutch example is perhaps the best one to look upon, because the Dutch Act stands as a flagship of international regulatory law regarding euthanasia. If and when Serbia

decides to legalise euthanasia, I suppose that the Dutch solution should become one of the primary sources of inspiration.

9.

Conclusion

Based on the topics elaborated in this article, we get an insight of what would be the benefits and challenges of legalising the practice of euthanasia within the positive legal system of Serbia, as outlined in the headline.

Even though there are several arguments/challenges for and against legalising euthanasia, there is a possibility that the hypothetical legalisation of euthanasia could become extremely beneficial in the times to come. Evidently, there is substantial room for discussion and consideration. It is indisputable that ethical and moral complexities constitute perhaps the greatest obstacles on the road to full implementation and legalisation of euthanasia, not only in the Republic of Serbia, but also in all other countries that are considering it.

However, even with the given obstacles/challenges, there is global tendency towards the decriminalisation and simultaneous legalisation of the legal practice of euthanasia. Legal scholars and law makers are becoming increasingly aware of the potential implications of legalising euthanasia. Furthermore, an increasing number of voices from other fields of expertise, including philosophy and medicine, are advocating for it. Experts from various branches are examining the core essence and meaning of the right to life as one of the most fundamental human rights. Some critics argue, and propose that if we give every individual the full legal capacity to end his/her life on his/her own terms, are we jeopardizing and breaching that same law, or are we giving them the opportunity to fully exercise and execute that same right, in legal form and shape? Some would argue to the contrary, but can we really talk about practising a right when we are limiting it from the start? It is a great dilemma to be pondered.

The right to life is a personal and exclusive right of every individual. How and on which terms someone plans to use it, should be discretionary and in the hands of that person, especially when that individual is in severe pain, endures suffering and no longer finds meaning in his/her own life. A question about a hypothetical possibility arises: Who are we to object and deny that?

Today, everybody is talking about human rights; the media is full of it on a daily basis. Some would argue: Can we genuinely talk about human rights, while simultaneously limiting their potential? Some believe that if Serbia decides to legalise euthanasia, there is a possibility that it could provide the Serbian legislature with a whole new dimension for upgrading and improving its categories of human rights.

This would simultaneously send a message to the international community that Serbia is fully ready not just to implement and follow modern legal trends, but also to be a pioneer of revolutionary legal reforms.

Furthermore, by legalising euthanasia, Serbia could further improve the legal position of its citizens and voters. Serbian citizens might feel safer and more confident in their own legal system if euthanasia were to become a part of it. It is indisputable that the Republic of Serbia is, and will strive to remain, a civilised, modern and innovative full time member of the international legal community. There is a hypothetical possibility that by legalising the practice of euthanasia, we can further consolidate and strengthen our position in the international community.

This paper contributes to the debate on the legalisation of euthanasia in Serbia by examining its benefits and challenges. Future studies should explore and thoroughly analyse arguments pro and contra, to contribute to the debate on whether the legalisation of euthanasia and physician-assisted suicide should be implemented in the times to come. Regardless, it is of crucial importance to foster public dialogue between experts and citizens. Furthermore, experts need to engage with government officials and the public to discuss about possible vital interests – or the lack thereof – and the challenges of legalising euthanasia within the positive law system of the Republic of Serbia.

Bibliography

- Annas, J. (1992) 'Ancient ethics and modern morality', *Philosophical Perspectives*, 1992/6, pp. 119–136. <https://doi.org/10.2307/2214241>
- Battin, M.P. (2005) *Ending Life: Ethics and the Way We Die*. New York: Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780195140279.001.0001>
- Bollen, J.A., Shaw, D., de Wert, G., Ten Hoopen, R., Ysebaert, D., van Heurn, E., van Mook, W.N.K.A. (2019) 'Euthanasia through living organ donation: ethical, legal, and medical challenges', *The Journal of Heart and Lung Transplantation*, 38(2), pp. 111–113. <https://doi.org/10.1016/j.healun.2018.07.014>
- Brassington, I. (2020) 'What passive euthanasia is', *BMC Medical Ethics*, 21(19), pp. 2–13. <https://doi.org/10.1186/s12910-020-00481-7>
- Callahan, D. (2005) 'A case against euthanasia' in Wellman, C.H., Cohen, A.I. (eds.) *Contemporary debates in applied ethics*. Chichester: Wiley Blackwell, pp. 179–190. <https://doi.org/10.1002/9781394268054.ch5>
- Callahan, D. (2019) 'When self-determination runs amok' in Battin M.P., Francis L.P., Landesman B.M. (eds.) *Death, Dying and the Ending of Life, Volumes I and II*. London: Routledge, pp. 265–268. <https://doi.org/10.4324/9781315258447>
- Deci, E.L., Ryan, R.M. (2008) 'Hedonia, eudaimonia, and well-being: an introduction', *Journal of Happiness Studies*, 2008/9, pp. 1–11. <https://doi.org/10.1007/s10902-006-9018-1>
- Dowbiggin, I. (2007) *A concise history of euthanasia: Life, death, God, and medicine*. Lanham: Rowman & Littlefield. <https://doi.org/10.1086/ahr.111.3.807>
- Emanuel, E.J. (1999) 'What is the great benefit of legalizing euthanasia or physician-assisted suicide?', *Ethics*, 109(3), pp. 629–642. <https://doi.org/10.1086/233925>
- Fletcher, J. (1977) 'Ethics and euthanasia' in Weir, R.F. (ed.) *Ethical Issues in Death and Dying*. New York: Columbia University Press, pp. 348–360. <https://doi.org/10.7312/weir91040-025>
- Fontalis, A., Prousalis, E., Kulkarni, K. (2018) 'Euthanasia and assisted dying: what is the current position and what are the key arguments informing the debate?', *Journal of the Royal Society of Medicine*, 111(11), pp. 407–413. <https://doi.org/10.1177/0141076818803452>
- Garrard, E., Wilkinson, S. (2005) 'Passive euthanasia', *Journal of Medical Ethics*, 31(2), pp. 64–68. <https://doi.org/10.1136/jme.2003.005777>
- Harris, N.M. (2001) 'The euthanasia debate', *BMJ Military Health*, 147(3), pp. 367–370. <https://doi.org/10.1136/jramc-147-03-22>
- Keown, J. (2018) *Euthanasia, Ethics and Public Policy: An Argument Against Legalisation*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/9781107337909>

- Leenen, H.J.J. (1984) 'The definition of euthanasia', *Medicine and Law*, 3(4), pp. 333–338. [Online]. Available at: <http://hdl.handle.net/10822/725470>. (Accessed: 1 September 2025).
- Mattingly, C., Throop, J. (2018) 'The anthropology of ethics and morality', *Annual Review of Anthropology*, 47(1), pp. 475–492. <https://doi.org/10.1146/annurev-anthro-102317-050129>
- McLachlan, H.V. (2008) 'The ethics of killing and letting die: active and passive euthanasia', *Journal of Medical Ethics*, 34(8), pp. 636–638. <https://doi.org/10.1136/jme.2007.023382>
- Opsahl, T. (1993) 'The right to life' in Macdonald, R.St.J., Matscher, F., Petzold, H. (eds.) *The European System for the Protection of Human Rights*. Dordrecht: Martinus Nijhoff, pp. 203–227. https://doi.org/10.1163/9789004633599_016
- Rachels, J. (2019) 'Active and passive euthanasia' in Battin, M.P., Francis, L.P. (eds.) *Death, Dying and the Ending of Life, Volumes I and II*. London: Routledge, pp. V2_5–V2_7. <https://doi.org/10.4324/9781315258447>
- Shaw, D.M. (2009) 'Euthanasia and eudaimonia', *Journal of Medical Ethics*, 35(9), pp. 530–533. <https://doi.org/10.1136/jme.2008.028852>
- Steinhäuser, K.E., Christakis, N.A., Clipp, E.C., McNeilly, M., Grambow, S., Parker, J., Tulsky, J.A. (2001) 'Preparing for the End of Life: Preferences of Patients, Families, Physicians, and Other Care Providers', *Journal of Pain and Symptom Management*, 22(3), pp. 727–737. [https://doi.org/10.1016/S0885-3924\(01\)00334-7](https://doi.org/10.1016/S0885-3924(01)00334-7)
- Teno, J.M., Clarridge, B.R., Casey, V., Welch, L.C., Wetle, T., Shield, R., Mor, V. (2004) 'Family perspectives on end-of-life care at the last place of care', *JAMA*, 291(1), pp. 88–93. <https://doi.org/10.1001/jama.291.1.88>
- Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (1997) Oviedo, 4 April 1997 [Online]. Available at: <https://rm.coe.int/168007cf98> (Accessed: 20 August 2024).
- Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Rome, 4 November 1950.
- Termination of Life on Request and Assisted Suicide (Review Procedures) Act (2002) Netherlands, entered into force 1 April 2002.
- The Belgian Act on Euthanasia (2002) Belgium, 28 May 2002.
- CARE (2024) 80% of dutch voters support allowing euthanasia for those who feel their life is "complete" [Online]. Available at: <https://care.org.uk/news/2024/01/80-of-dutch-voters-support-allowing-euthanasia-for-those-who-feel-their-life-is-complete> (Accessed: 20 August 2024).
- Statista (no date) Netherlands Euthanasia [Online]. Available at: <https://www.statista.com/statistics/1363041/netherlands-euthanasia/> (Accessed: 20 August 2024).

- *Statista (no date) Number of registered euthanasia instances in Belgium from 2002 to 2023* [Online]. Available at: <https://www.statista.com/statistics/1098051/number-of-euthanasia-instances-registered-in-belgium/> (Accessed: 20 August 2024).
- *Evans v. the United Kingdom* (2007) Application no. 6339/05, European Court of Human Rights, Grand Chamber [Online]. Available at: <https://hudoc.echr.coe.int/fre?i=001-80046> (Accessed: 20 August 2024).
- *Dániel Karsai v. Hungary* (2024) Application no. 32312/23, European Court of Human Rights, Chamber, 13 June [Online]. Available at: <https://hudoc.echr.coe.int/eng?i=001-234151> (Accessed: 20 August 2024).