The Right to Die: Euthanasia

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Introduction

It is universally accepted that all human beings are born with inherent human rights which are the existing rights of an individual and are not derived from any other factor, whatever their nationality, sex, religion, age, or any other condition. These rights are simply guaranteed by the law, in the forms of both international and domestic laws. Therefore, every government has an obligation to protect and recognise the inherent human rights from the beginning until the end of life. In particular, the “right to life” is the most basic of all human rights and is based on the belief that human beings have the right to live decently. To elaborate further, some scholars divide the “right to life” into two components which are a right to decent working conditions including a right to access four requisites. Another one is a right to go on living — in other words, a right not to be killed by another human being or allowed to die which renders a debate on the issues of euthanasia, suicide and capital punishment.¹

Euthanasia has been debated since the 1870’s ² and has become a most controversial issue recently because the Belgian government passed the law to

¹Joel Feinberg, ’Voluntary Euthanasia and the Inalienable Right to Life’ (1978) 7 Philosophy & Public Affairs 93, 94
²Nick Kemp, ’Merciful release’ The history of the British euthanasia movement (2nd, Manchester University Press, 2002) 11
extend euthanasia to children of all ages after the enforcement of the euthanasia law for adults in 2002. Belgium became the second country in the world to favour euthanasia after the Netherlands, where euthanasia is legal.

This paper will be conducted based on analysing the issues surrounding human rights, particularly the right to choose the way to end their own life in the euthanasia case. To begin with a brief historical part of euthanasia, followed by a general background of euthanasia and the difference between euthanasia and physician assisted suicide (PAS). The influence of the ECHR which refers to the basic rights of patient in euthanasia cases will be considered. Finally, the reasons that the European Court of Human Rights (hereinafter referred to as the ECtHR) use to interpret the difference between the right to life and the right to die in the case will also be examined.

**General Idea about Euthanasia and Human Rights Issue**

**Terminology and Classification of Euthanasia**

The term ‘Euthanasia’ was used by a Roman historian named Suetonius to identify the death of Augustus Caesar.\(^3\) It is derived from the Greek word: ‘eu’ which means ‘good’ and ‘thanatos’ which means ‘death’. Used together the term ‘euthanasia’ means ‘good death’. One meaning given to the word by the Oxford Advanced Learner’s Dictionary is the illegal practice (in most countries) of killing without pain a person who suffers from incurable and painful disease. It is normally used in cases

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where the death of a patient is caused by the assistance of the doctor. Consequently, this process is commonly known as ‘mercy killing’.  

Euthanasia is defined by different perspectives, and in different point of views. On the one hand, it can be divided by the patient’s view into voluntary, non-voluntary and involuntary euthanasia. On the other hand, the act of a person who brings death to another person should be considered as active and passive euthanasia. Euthanasia can be described further as follows;

(i) **Voluntary euthanasia** – this euthanasia is conducted with the explicit consent of the individual patient, such as in the case that the patient cannot move his or her body as a result of paralysis but he or she can express his or her will and request to be killed directly to the doctor.

(ii) **Non-Voluntary euthanasia** – this type of euthanasia is conducted when the patient is unable to provide his or her request and unable to give informed consent. This term is often used in the case of an incompetent person as a child, in a coma, in a persistent vegetative state whose wish is not known.

(iii) **Involuntary euthanasia** – this type of euthanasia is performed on the subject against the person’s will or without the consent of the patient. For example, during the war, the serious injured soldier is killed whether he chooses life because of the limitation of drug. This is usually called murder but not always.

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4 Emily Jackson, *MEDICAL LAW Text, Cases, and Materials* (3rd, Oxford University Press, Oxford 2013) 874

5 J.K.Mason and G.T.Laurie, *Law and Medical Ethics* (7th, Oxford University Press, Oxford 2006) 599
(iv) **Active euthanasia** – this is a direct action causing the death of a patient which is done by patient request. To take an example, in the case that a patient requests the doctor to end his or her life in order to avoid pain from the advancing disease which would cause a horrible death.

(v) **Passive euthanasia** – the death is brought about by an omission. It can be by withdrawing treatment, such as switching off a respirator, or withholding treatment with the intention of terminating a patient’s life.

According to the first three types of euthanasia which are classified by the degree of expressed consent as mentioned above, it is clear that patient’s consent is the necessary form of medical treatment to provide legal protection for healthcare professionals from legal claim. In the medical treatment process, the medical practitioner cannot avoid touching a patient’s body as it might cause both a tort for battery and a crime for assault without informed consent. To be a legally valid consent; first, the patient must be a competent person who understands relevant information about the nature of the treatment and be able to consider as well as make a decision about the proposed treatment; secondly, the consent must be a voluntary decision from the decision maker; and, thirdly the treatment is taking place by authorisation of the patient. However, it is different in the euthanasia case which even the patient expressed his or her consent by request to the doctor to relieve the excruciating pain from the disease, the doctor was convicted of attempted murder.

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6 Emily (n 4) 172
8 R v Cox(1992) 12 BMLR 38
For the latter two types of euthanasia which are categorised by the action of the person, there is a difference in the manner which causes death to the other person; action and omission. To describe further, active euthanasia is a direct action causing the death by the use of lethal substances which is unacceptable and illegal in most countries\(^9\), while passive euthanasia is an omission that allows a person to die by withdrawing medical treatment which could sustain life longer. As a result of this difference, passive euthanasia is traditionally less terrible and more acceptable than active euthanasia.\(^10\)

Moreover, there is another process that is used to terminate a patient’s life by the patient himself. It is commonly known as physician-assisted suicide (PAS). It occurs when the patient voluntary kills himself or commits suicide with help from the doctor who provides or prescribes a lethal dose of medicine for the patient to self-administer.\(^11\) In this case, the doctor only assists in the process upon the patient’s request, while the patient is the final link to end his or her own life. This process is much more acceptable than the previous two types of euthanasia above.\(^12\)

Nevertheless, it should be noted that all kinds of euthanasia and physician-assisted suicide are still illegal and unacceptable in most countries in the world because they intentionally terminate the other person’s life which is protected by law. Moreover, it qualifies as murder or attempted murder.\(^13\)

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\(^9\) Active euthanasia is illegal unless there is legislation permitting it. As of 2011, three countries that recognise active euthanasia as legal are the Netherlands, Belgium, and Luxembourg.

\(^10\) Passive euthanasia is legal not only in the Netherlands, Belgium, and Luxembourg, but also legal in India, Ireland, Mexico.


\(^12\) Physician-assisted suicides legal in Colombia, Luxembourg, the Netherlands, the US states in Washington, Oregon, Vermont and Montana and in Switzerland.

\(^13\) R (n 8)
Human Rights Issue Regarding the End of Life and the Position of the European Court of Human Rights (ECtHR)

Euthanasia is a complex legal problem which has been debated often at all levels because it relates to the rights of an individual person, such as the right to life, the right to respect private life and the right to non-discrimination which are all enshrined under the European Convention on Human Rights (the ECHR) Article 2, Article 8 and Article 14 respectively. One argument regarding the euthanasia debate depends on whether or not a human being has the right to die. According to this argument, the European Court of Human Rights (the ECtHR) position regarding the relationship between the right to die and other rights can be seen in the case of Pretty v The United Kingdom.14

Mrs. Diane Pretty, the applicant of the case, suffered from motor neurone disease, a progressive, degenerative and incurable illness. In its terminal stage, Mrs. Pretty was completely paralysed. Before she lost her intellect and capacity to make a decision, she fought to commit suicide assisted by her husband. They all knew that this action was illegal and her husband might be prosecuted. Therefore, she asked the Director of Public Prosecutions (DPP) for permission. The UK authorities refused her wish, so she took the case to the House of Lords and the ECtHR, on the grounds that the refusal violated her Convention rights; the right to life (Article 2), human dignity (Article 3), right to respect for private life (Article 8), freedom of conscience (Article 9) and the right to non-discrimination (Article 14).

14 Pretty v United Kingdom (2002) 35 EHRR 1
The Right to Life and the Right to Die

According to Article 2 of the ECHR, the right to life, the House of Lords and the ECtHR found that her claim had been no violations of Article 2.1 which guarantees that

“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 sentence of a court following his conviction of a crime for which this penalty is provided by law.”

Although, Mrs. Pretty claimed that this Article protected both the right to life and the right to choose to die in order to avoid her suffering, the court decision demonstrated that it is the state’s obligation to positively protect life and this Article cannot be interpreted to include a negative aspect; namely the right to die or the right to self-determination in order to choose death rather than life.\textsuperscript{15} From this assessment, it can be said that the right to life does not include the right to die which is not protected by the Convention.

In respect of the right to life which was mentioned above, Feinberg\textsuperscript{16} concluded that the right to life refers to the right not to be killed or allowed to die and the right to be protected from approaching death. It is clear that the right to life and the right to die differ greatly because the intentions of the law to protect the individual’s right are distinct and different.

\textsuperscript{15} ibid
\textsuperscript{16} Joel (n 1) 94
Human Dignity and the Right to Die

As it enshrines in Article 3 of the ECHR that

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Mrs. Pretty argued that in the final phase of her illness, she faced degrading treatment, suffering and indignity. As the state’s responsibility, she should be treated in a positive manner in order to protect her from suffering by allowing Mr. Pretty to assist her to commit suicide. However, her argument was disagreed by both the House of Lords and the ECtHR on the grounds that the state has principally negative obligation to refrain from causing cruel harm. That is to say, Article 3 was not interpreted to cover positive duties, such as to prevent the foreseeable harm from other. Thus, human dignity as the claim of Mrs. Pretty was not spotted in this Article.

The Right to Respect for Private Life and the Right to Die

According to Article 8 of the ECHR which provides that

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”
It can be implied that the aim of this Article is to protect a person’s physical and psychological integrity.\textsuperscript{17} On the one hand, a human being has the right over his or her own body not to be forced by another in order to do something against his or her will.\textsuperscript{18} On the other hand, it protects the sound mental state of a person with the intention of the opportunity to benefit from this private life.\textsuperscript{19}

In this part, Mrs. Pretty claimed that the right to make decisions about her own body as well as when and how to die in order to avoid suffering and indignity is one of the rights to self-determination and autonomy which are recognised and guaranteed by this Article. Moreover, the state’s policy which bans assisted suicide interfered with her right to private life. Even though the ECtHR accepted that Mrs. Pretty’s right to private life was interfered as her claim and mentioned further that Article 8 should consider the quality of life human dignity as a factor\textsuperscript{20}, it was justifiable and necessary for the state to protect the right of others under Article 8 subsection 2. Thus, the ECtHR held that the right to private life of Mrs. Pretty had not been violated under this Article.\textsuperscript{21}

**Freedom of Conscience and the Right to Die**

Article 9 of the ECHR provides that

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  1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either or in community with others and in public or
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\textsuperscript{17} Pretty (n 14) para 61
\textsuperscript{18} Y.F. v TurkeyApp No 24209/94
\textsuperscript{19} Glass v United Kingdom App no 61827/00 (2004)
\textsuperscript{20} Pretty (n 14) para 67
\textsuperscript{21} Ibid para 78
private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of the rights and freedoms of others.”

Undoubtedly, after considering the wording in Article 9, the House of Lords and the ECHR both agreed that Mrs. Pretty’s belief about the notion of assisted suicide by her husband did not encompass freedom of thought and belief in the sense that was protected by this Article. Moreover, Lord Bingham in the House of Lords argued that if Mrs. Pretty’s right was infringed under Article 9 subsection 1, the state would have authority to justify the infringement pursuant to Article 9 subsection 2 by giving the same reasons as mention in Article 8 to protect the right of others.

The Right to Non-Discrimination and the Right to Die

It is mentioned in Article 14 of the ECHR that

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Mrs. Pretty submitted that she had been discriminated against in the enjoyment of the Convention rights from others who could end their lives themselves. As she was not

22 Ibid para 58
23 R (Pretty) v DPP (2002) 1 AC 800
a vulnerable person, she therefore did not need protection from the state to end her life. According to this argument, the ECtHR assessed that the aim of this Article is to treat everybody with equality. Discrimination may occur when no objective or reasonable justification in a different treatment can be found between similar positions. On the contrary, it also arises when different persons in different situations or positions are treated in the same way without a good reason. In this case, the ECtHR could not distinguish between those who are capable and incapable of committing suicide and Article 8 of this Convention was required to act in response to the discriminating prohibition with the right to respect for private life.

From the ECtHR decision in this case, it is reasonable to conclude that the court respected the rights to self-determination and autonomy of individual persons as well as human dignity in the way of the quality of life rather than life in the general sense. These assertions rendered a new concept of living and ending life which are ‘to live with quality of life’ and ‘to die with dignity’. Nevertheless, it is also clear that the right to respect for a person’s private and family life could be interfered with under Article 8(2) as is necessary in the interest of others. In other words, the prevention provided by the state forbidding citizens from causing serious harm either to themselves or others was deemed to be preferable to giving them the freedom of choice as an individual.

Similarly, in the case of Hass v. Switzerland, where Mr. Haas, suffered from bipolar disorder and wanted to commit suicide by obtaining a lethal substance without a prescription, Mr. Hass filed for permission to acquire the substance without prescription to the domestic authorities, but they all rejected his request. Finally, he

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24 Pretty (n 14) para 87
filed an application with the ECtHR complaining that his right to respect for his private life was infringed and his right to decide an end to his life was not respected. The Court did confirm the same verdict as in the Pretty case and recognised the right of an individual to decide to end his life as one of the aspects of the right in Article 8 of the ECHR. The right to respect for private life includes the free will of the individual person and a capacity to take appropriate action. In light of the facts in these two cases, it is explicitly clear that the state has no positive obligation to incorporate the provisions concerning the right to die. Article 8 of the ECHR requires the state to avoid intervening in individual decision-making, but it is not the state’s duty to encourage someone to kill themselves.

The Development of Patient Autonomy and the Legalization of Euthanasia

In a situation where everyone is concerned about his or her rights, particularly regarding the medical procedure, the concept of patient autonomy and the right to self-determination of the patient has been greatly highlighted. It is generally accepted that the patient’s informed consent is necessary in medical treatment in order for the medical professional to avoid legal liability. Consequently, the patient who is assumed to have competence could exercise his or her rights by giving consent or making his or her own decision individually under the permitted law. In this sense, the state plays a significant role in preventing serious harm from its people by confining the scope of decision-making to the individual.

Euthanasia and physician-assisted suicide (PAS), are both still controversial issues at all levels. The question is whether they should be legalised because they are a part of the medication processes that may cause death to the patient albeit with the

25 Hass v Switzerland AppNo 31322/07
purpose of short-term pain relief. In this regard, euthanasia is compared with the right to refuse life-sustaining medical treatment which may cause the same result. If the state allows competent individuals to have the right to refuse life-sustaining medical treatment, then the same concept should be applied with euthanasia cases.\textsuperscript{26}

**Euthanasia on an International level**

There are several international instruments related to the end of life in human beings in respect of the protection of life and self-determination, however, there have been no specific instrument giving permission for euthanasia to member States, in order to recognise a ‘right to die’ explicitly, unlike the domestic law in the Netherlands and Belgium.

**The European Convention on Human Rights (ECHR)**

This Convention is an international treaty that aims to set forth and protect fundamental human rights in Europe through the provisions and decisions of the European Court of Human Rights (ECtHR). The court set the standard particularly related to the end-of-life decision in the case of *Pretty*, that a right to life in Article 2 was not opposite to the right to die and the state had no positive obligation to protect the right to die. Nonetheless, the right to respect for private life enshrined in Article 8, was considered instead as it encompasses the principle of individual autonomy and the principle of consent. In other words, it is an individual’s autonomy to informed consent or the ability to make any decision in an end-of-life situation without any intervention from others. In this circumstance, finally, the court was concerned and

\textsuperscript{26} Derek Morgan, *Issues in Medical Law and Ethics* (1st, Cavendish Publishing Limited, Great Britain 2001) 248
gave more weight to the protection of the life rather than the autonomy of individual. This concept was affirmed by the decision in *Hass v. Switzerland* case.

Previously, in 1999, the Parliamentary Assembly of Council of Europe (PACE) expressed its view through the recommendation 1418 ‘Protection of the human rights and dignity of the terminally ill and the dying’\(^{27}\) paragraph 9 (c) that

> “C. by upholding the prohibition against intentionally taking the life of terminally ill or dying persons, while:
> i. recognising that the right to life, especially with regard to a terminally ill or dying person, is guaranteed by the member states, in accordance with Article 2 of the European Convention on Human Rights which states that “no one shall be deprived of his life intentionally”;
> ii. recognising that a terminally ill or dying person’s wish to die never constitutes any legal claim to die at the hand of another person;
> iii. recognising that a terminally ill or dying person’s wish to die cannot of itself constitute a legal justification to carry out actions intended to bring about death.”

Recently, the PACE also confirmed its view by adopting Resolution 1859 ‘Protecting human rights and dignity by taking into account previously expressed wishes of patients’ on 25 January 2012\(^{28}\) stating that


“§5 : Euthanasia, in the sense of the intentional killing by act
or omission of a dependent human being for his or her
alleged benefit, must always be prohibited.”

It can be clearly seen that euthanasia is unacceptable at the European level. However, the prohibition of euthanasia has not been clear in previous case-law of the ECtHR, it is the state’s consideration in each country whether to recognise a ‘right to die’ in practice.

While the issue of euthanasia has remained controversial in Europe, the Committee on Bioethics (DH-BIO) of the Council of Europe drafted a ‘guide concerning the decision-making process regarding medical treatment in end-of-life situations’ on 21 February 2013 as a guideline for health professionals, patient and patient’s family dealing with this situation. Nevertheless, the issues of euthanasia were not included in this guideline. It can be implied that the Council of Europe’s position concerning the end-of-life issue, in the scope of how to deal with specific situations properly. The Council has attempted to separate it from the issue of euthanasia, although the Netherlands and Belgium as the European Union members allow this practice.

Conclusion

Euthanasia or mercy killing has been known from ancient Roman times as a method to hasten the death of human beings who are suffering from serious incurable illness. There are five types of euthanasia; voluntary euthanasia, non-voluntary euthanasia, involuntary euthanasia, active euthanasia, and passive euthanasia.

On an international level, all types of euthanasia in all ages are unacceptable because they cause death to another person. To analyse the *Pretty* case in ECtHR to euthanasia and the right to refuse life-sustaining medical treatment, it could be implied that the end-of-life decision has been guaranteed by Article 8 of the ECHR the right to respect for private life. Although euthanasia nowadays is prohibited and illegal in most countries, there are places in the world where euthanasia is legal such as The Netherlands, Belgium and Luxembourg. Besides physician-assisted suicide is lawful in some parts of the world, such as Luxembourg, the Netherlands, Switzerland and Oregon - a state in the United States\(^\text{30}\), as noted above.

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