

The Right to Die – Euthanasia and Assisted Dying Under the European Convention on Human Rights^{*}

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List of Abbreviations

ACHPR	African Charter on Human and Peoples' Rights (<i>Banjul Charter</i>)
ACHR	American Convention on Human Rights (<i>Pact of San José</i>)
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
EAD	Euthanasia and/or Assisted Dying
ECHR	European Convention on Human Rights
ECtHR/The Court	European Court of Human Rights
GC	Grand Chamber
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHRL	International Human Rights Law
MoA	Margin of Appreciation
MND	Motor neurone disease
UK	United Kingdom
UN	United Nations
UDHR	Universal Declaration of Human Rights

Introduction

“Death is the wish of some, the relief of many, and the end of all.”
Seneca (4 BC- AD 65)¹

The *Pretty v. the United Kingdom* case: beginnings of the discussion on the European level

To what extent does a person have autonomy over one's own body? Are states obliged to protect the right to life even against the will of the person whose life they are preserving? Does a person who is permanently paralysed from the neck down, with no decipherable speech and fed through a tube, have a right to request the ending of her or his own life? These were some of the questions that arose for the first time before the European Court of Human Rights (ECtHR) in the case of *Pretty v. the United Kingdom*.² Mrs. Pretty, the applicant, was suffering from motor neurone disease (MND) and no existing treatment could prevent the progression of the disease. Eventually, the advanced stage of the MND left her paralysed from the neck down with virtually no decipherable speech, and a life expectancy measurable only in weeks or months. Nevertheless, her intellectual capacity was unimpaired, and she knew that the final stages of the disease were going to be extremely distressing and undignified. Frightened and upset at the suffering and indignity that she might endure if the disease was to run its course, Mrs. Pretty wished to control how and when she died and spare herself from the ache and humiliation of a slow death. Since she was unable to end her life by her own hands,³ Mrs. Pretty's husband was willing to assist his wife. However, upon making inquiries about this to the Director of Public Prosecutions, it was clear that Mr. Pretty would not be exempted from prosecution if he was to act in accordance with her wishes.⁴ Consequently, Mrs. Pretty argued that the refusal in her case violated fundamental rights under the European Convention on Human Rights (ECHR),⁵ and eventually ended up challenging the UK's legislation before the ECtHR.

1 SENECA, L. A., & REINHARDT, T. (2008). *Dialogues and essays*. Oxford University Press, p. 51.

2 *Pretty v. the UK*, 2346/02, ECtHR, 29 April 2002.

3 Suicide was, and still is, legal under English law. *Pretty v. the UK* § 9.

4 Prosecution under S. 2(1) of the Suicide Act 1961.

5 Mrs. Pretty argued that the legislation was in violation with Articles 2, 3, 8, 9 & 14 of the ECHR.

Regardless of the judgement, which found no violation of any right under the ECHR, this case illustrated the social, ethical and religious dilemmas as to whether the terminally ill should be free to seek assistance in taking their own lives. Ultimately, if euthanasia and assisted dying (EAD) were to be legalized in national legislation, would it be feasible to encompass all the possible circumstances surrounding patients and to provide sufficient safeguards to prevent abuse? These questions, on which widely differing beliefs and views are strongly held,⁶ have now been the subject of a discussion in several cases before the ECtHR, but the debate still seems to be at a stalemate. European states aiming to strike a fair balance between the rights of the individual and the interests of the community, in particular between the principle of self-determination and the principle of the sanctity of human life, approach the issue differently and make European consensus on this question unlikely to emerge.⁷ In addition to that, the strong division between scholars points out that there is a case to be made both for prohibition of EAD, as well as its legalisation.⁸ Personal autonomy and relief of suffering are certainly values that underlie human dignity and accordingly human rights,⁹ but it is also true that the issue of EAD is one in which the interest of the individual cannot be separated from the interest of society as a whole.¹⁰ Dying is not only a personal or individual affair, but the death of a person also affects the lives of others in various ways. Consequently, it becomes clear that with regards to the issue in question, autonomy and the interest of the society are often perceived as mutually exclusive. This shows the delicacy of the matter and some of the potential challenges states might face in their balancing exercises.

The social, ethical and religious dilemmas, the absence of a European consensus,¹¹ and the very valid points for and against legalisation of EAD, function as a starting point for further exploration. Given the increasing likeliness that cases concerning this matter will only become more prevalent in the future, as well as the impact this discussion might have on the lives of people, there are several legal issues which ought to be explored to determine the desired outcome. This paper will tackle a few of these legal issues in hope to contribute useful insight as to how the ECtHR should approach this topic.

6 Compare the third-party comments in *Pretty v. the UK* from the Voluntary Euthanasia Society (§§ 25-27) to the ones from the Catholic Bishops' Conference of England and Wales (§§ 28-31).

7 PUPPINCX G. & DE LA HOUQUE C. (2014) p. 743.

8 For example, Somerville argues that legalizing euthanasia would cause irreparable harm to society's value of respect for human life in SOMERVILLE, M. (2014) pp. 3-9, whilst Dworkin asserts that autonomy and relief of suffering are the values that should prevail in DWORKIN, G., FREY, R. G., & BOK, S. (1998) pp. 2-5.

9 DWORKIN, G., FREY, R. G., & BOK, S. (1998) pp. 3-5.

10 SOMERVILLE, M. (2014) pp. 5-9.

11 This means that the states parties to CoE have different (non) regulations in place.

Scope of the paper and formulation of the research question

“What I fear is a death that negates, as opposed to concludes, my life. [...] I do not want to waste away unconscious in a hospital bed. I do not want to die wracked with pain.”¹² These words by Ms. Taylor,¹³ found in a landmark decision by the Canadian Supreme Court, represent the essence of what this paper aims to discuss. The judgment serves as an inspiration to examine the legal possibilities and obstacles under the ECHR for terminally ill people who wish to end their lives via EAD. This paper approaches the conflict between individual autonomous choices and the self-worth of human life in general from the standpoint of human dignity. The Universal Declaration of Human Rights (UDHR) makes clear that human dignity has a fundamental role in respect of all human rights.¹⁴ Several United Nations (UN) documents also unequivocally state that human rights derive from the inherent dignity of the human person.¹⁵ Although the ECHR does not explicitly refer to human dignity, there is little doubt that it is regarded as an underlying principle by the ECtHR.¹⁶ This idea of dignity of human life is particularly challenged in the scenario where a person is forced to linger on in old age and/or in states of advanced physical or mental incapacitation, which go against strongly held ideas of self and personal identity.¹⁷ As a consequence, the search for dignity in dying is pursued by both advocates and opponents of EAD.¹⁸ The challenge is thus to determine whether adopting the standpoint of human dignity invokes a right to EAD or not.

This issue is complex because whilst it is morally contested,¹⁹ it is also a practically pressing need within the scope of personal autonomy of the individual.²⁰ However, there are very few cases regarding EAD in the sphere of international human rights law (IHRL), and all of them have been heard before the ECtHR.²¹ The ECHR, as a living instrument,²² is a very suitable candidate

12 SCC, *Carter v. Canada*, 2015 SCC 5, 1 S.C.R. 331 § 12.

13 G. Taylor was suffering from ALS. ALS patients first lose the ability to use their hands and feet, then the ability to chew, swallow, speak and, eventually, breathe. *Carter v. Canada* § 11.

14 UDHR, Preamble.

15 UN Charter, Preamble as well as other major UN human rights treaties. ICESCR and ICCPR both state in their Preambles that all human rights derive from the inherent dignity of the human person.

16 The ECtHR's reliance upon human dignity as a guiding principle can be seen most clearly in its interpretation of Art. 3. *Tyrer v. the UK*, 5856/72, ECtHR, 15 March 1978; Also see McCrudden, C. (2008).

17 *Pretty v. the UK* § 65.

18 Wicks, E. (2012) p. 213.

19 Arras, J. D. (1996) p. 368.

20 Puppink G. & de la Hougue C. (2014) p. 738.

21 The ECtHR has discussed the issue in five cases.

22 This means that the ECHR must be interpreted according to present-day conditions. Letsas, G. (2013) p. 1-2.

to tackle the problem and to provide a comprehensive approach due to the divergent solutions adopted by the Contracting Parties of the Council of Europe (CoE).²³ Ergo, the exclusivity of the ECtHR jurisprudence on this matter, the general characteristics of the ECHR, and the variety of views on EAD among European states, are adequate reasons to limit the scope of this paper only to the contents of the ECHR.

Several Articles of the Convention could be used as a basis on which to build a case to include a right to EAD under the ECHR.²⁴ The right to life as defined in Article 2 of the ECHR²⁵ is the first obvious choice since one could argue that this right also includes the right not to live.²⁶ Nonetheless, the analysis would not be able to cover the whole debate surrounding this matter since some of the points fall outside of the scope of the Article. For example, the arguments regarding personal autonomy, as well as the ones concerning morality, would either be omitted from the examination or construed in such a way to shift the discussion to the right to life rather than to the choice being made in these situations. Since this is as likely to happen with any of the other Articles that could be triggered in different situations, such as Articles 3, 9 and/or 14, it is only Article 8 of the ECHR that can sufficiently cover the standpoint of human dignity as part of the right to private and family life.²⁷ Article 8 of the ECHR comprehensively incorporates both sides of the human dignity argument, as well as the entire 'right to die' debate.²⁸ The respect for private life could be used to encompass the moral foundation of the potential right to choose how to die. On the other hand, the limitations of the right incorporate the morality and the sanctity of human life arguments. Considering that dying is a part of life and how one dies is a vital aspect of how that individual has lived his or her life, the process of dying fits into the scope of private and family life in the meaning of Article 8 of the ECHR.²⁹

Hence, this paper aims to answer the following research question:

23 3 states have legalized EAD, 1 has legalized ass. dying but has prohibited euthanasia, and the rest of the states have either made EAD illegal or leave the matter unregulated. PUPPINCK G. & DE LA HOUQUE C. (2014) p. 736.

24 Mrs. Pretty argued the case based on Articles 2, 3, 8, 9 & 14 of the ECHR.

25 ECHR, Art. 2(1).

26 For example, Art 11 (Freedom of assembly and association) also confers a right not to join an association. See *Young, James and Webster v. the UK*, 7601/76; 7806/77, 4 EHRR 38, 18 October 1982.

27 This is thoroughly explained in KEOWN, J. (2003) pp. 724-725.

28 *Pretty v. the UK* § 65.

29 WICKS, E. (2012) p. 214.

To what extent can (based on feasibility from a human dignity perspective, current interpretation methods and case-law) euthanasia and assisted dying be read into Article 8 (right to respect for private and family life) of the European Convention on Human Rights?

The paper aims to test whether these morally diverging views within Europe, that lead countries to regulate the issue differently, could be unified in a direction offered by IHRL. Namely, to answer the question if human rights law, with an emphasis on human dignity, offers a direction for the moral discussion, a mandate or even an obligation for states to regulate the obligations arising from the ECHR in this aspect. To clarify the scope of this paper and to precisely indicate its aim, a brief description of the main components of the research question will follow.

Primarily, euthanasia and assisted dying are very similar in the sense that they both lead to the same result-death, but the processes themselves differ in several aspects.³⁰ Euthanasia is generally defined as an act, undertaken only by a physician, that intentionally ends the life of a person at his or her request.³¹ On the other hand, assisted dying is constituted when a person self-administers a lethal substance prescribed by a physician.³² Ergo, the main difference is that euthanasia compels the physician both to prescribe and administer the lethal substance, while assisted dying may have different forms, but as a rule requires only prescription from the physician.³³ Nonetheless, this paper will be using EAD defined as the situation in which a doctor ends the life of a person who is suffering unbearably (without any prospect of improvement) at the latter's explicit request.³⁴ To be more exact, the ending of the life in this paper shall be understood to occur in a way of administering a lethal injection, and the explicit request would have to be made by the person that is going to be subjected to EAD.³⁵ The suffering could be physical and/or mental and must be characterized by a physician as unbearable in order to fit under the definition.³⁶

30 DIXON, N. (1998) p. 25.

31 PEREIRA J. (2011) p. 38.

32 *Ibid.*

33 This distinction is accepted as the most common throughout the academic literature. QUILL E. T., CASSEL K.C., AND MEIER E.D. (1992) pp. 1381-1383.

34 This definition is used by many authors and is mostly based on the Dutch perspective. For example, it is used throughout GRIFFITHS, J., BOOD, A., & WEYERS, H. (2010) pp. 17-18.

35 DIACONESCU, A. (2012) pp. 474-475.

36 For example, such is the case with the Dutch law, Termination of Life on Request and Assisted Dying Act – Upper House. Parliamentary year 2000-2001, 26 691, no 137, April 1, 2002, Art. 2(b).

Moreover, EAD will be treated as the same for the purposes of this paper.³⁷ Acknowledging the differences between EAD,³⁸ and the fact that many in the medical community may disagree,³⁹ a unified definition of EAD is necessary and sufficient to answer the research question. Necessary because that is the only way to gather enough information to provide more space for substantive arguments at the expense of the technicalities of the forms and sufficient from a legal perspective as differences between the processes do not affect the 'can' parameter.

Secondly, the assessment criteria will analyse the contentious issues through confrontation of the two principles via a human dignity lenses. The test will be whether the key element of the principle of self-determination,⁴⁰ the choice to die as part of the right to respect for private and family life,⁴¹ is more dignified than the morality elements of the principle of the sanctity of human life.⁴² Hence, the yardstick is the coherence between human dignity as underlying principle to the right to private and family life and the right itself.⁴³ Specifically, the clash between the individual and the human dignity of life in general, demonstrated through the belief of a society as a whole that human dignity is always attacked whenever someone decides to undergo EAD, shall provide the answer.

Finally, the evaluation based on current interpretation methods and case-law is relevant to decide if the ECtHR, realistically speaking, would ever read EAD into the ECHR. Current methods include evolutive interpretation and interpretation via European consensus.⁴⁴ Evolutive interpretation is a tool that provides the ECtHR with a degree of flexibility to ensure the realisation of the rights protected under the ECHR and to keep up with important social changes.⁴⁵ On the other hand, the European consensus may be defined as a general agreement among the majority of member states of the CoE about certain rules and principles.⁴⁶ This means that the paper will take into account both the dynamic interpretation by the Court, as well as the Margin of Appreciation (MoA) granted to the states.⁴⁷

37 This approach is also taken by GRIFFITHS, J., WEYERS, H., ADAMS, M., & ADAMS, M. (2008).

38 QUILL, T. E., LO, B., & BROCK, D. W. (2008) pp. 49-64.

39 RIETJENS, J. A., VAN DELDEN, J. J., VAN DER HEIDE, A., VRAKKING, A. M., ONWUTEAKA-PHILIPSEN, B. D., VAN DER MAAS, P. J., & VAN DER WAL, G. (2006) pp. 749 & 752.

40 WICKS, E. (2001), p. 17.

41 *Pretty v. the UK* § 67.

42 RAKOWSKI, E. (1994), p. 2102-2117.

43 BREMS, E. (2008) p. 620.

44 DZEHTSIAROU, K. (2011) pp. 1731-1734.

45 *Vo v. France*, 53924/00, ECtHR, 8 July 2004 § 82.

46 DZEHTSIAROU, K. (2011) p. 534.

47 Some authors approach the European consensus as a mediator between dynamic interpretation and the MoA but this will not be the case in this paper. See MORAWA, A. H. (2002).

Lastly, this paper will be strictly legal and will not consider issues that are not based on legal grounds apart from the discussion on human dignity. Although some of these issues, such as ECtHR judges' ideologies, might be very important and even decisive in the debate, it is not possible to include them as that would become an endeavour too large for this paper.

Methodology and structure

The debate on EAD between those supporting its legalization and those who are opposed to it may seem to be well established.⁴⁸ However, adopting a specific angle in the theoretical framework that encompasses all these viewpoints is still a challenge. The introduction has so far delineated the scope and goal of this paper and has placed the research within the relevant context, consequently the paper will now proceed to set out the structure to guide the reader as to what can be expected in terms of methods and analysis.

The research for this paper will be conducted through a qualitative analysis, as an appropriate method of research for this type of topic, of several sources.⁴⁹ The paper will examine case-law from the ECtHR as the main type of source and it will combine it with academic literature. The studies that currently exist regarding this issue are mostly focused on analysing EAD through Article 2 of the ECHR.⁵⁰ A smaller proportion of the literature examines the protection of EAD in the light of Article 8 of the ECHR,⁵¹ but almost none of it focuses on human dignity in a sufficient manner.⁵² The approach this research will take differs from the existing studies as it will analyse both Articles 2 and 8 of the ECHR, as well as EAD, using human dignity as a starting point. The different studies on this topic will be used to provide a rather global overview of the state of the art. What this paper is looking to add is a critical examination of Article 8 of the ECHR, as well as an analysis of what human dignity requires states to do when discussing private choices as to the way one wishes to die.

After a brief introductory section on the necessity to discuss EAD at the international level, three additional sections will follow. The second section will delve into the analysis of human dignity as part of the EAD debate and Articles 2 and 8 of the ECHR together. Here, the argumentation will point out the differences

48 DIXON, N, pp. 25-29 & PEREIRA J. (2011), p. 38.

49 LAW, M & others (1998) p. 2.

50 PUPPINCK G. & DE LA HOGUE C. (2014).

51 CHRISTOPHER McCRUDDEN (2008).

52 This is also claimed in WICKS E., (2012) pp. 213-216.

between the protection under different Articles of the ECHR, and explain why the case under Article 8 would be the strongest. Moreover, section three will focus on the line of development of the issue of EAD in the jurisprudence of the ECtHR, and mainly analyse the case-law and the Articles of the ECHR which are the basis for the cases. Important cases that will be used in the third section, together with academic literature, are: *Pretty v. the United Kingdom* (2002),⁵³ *Haas v. Switzerland* (2011),⁵⁴ *Koch v. Germany* (2012),⁵⁵ *Gross v. Switzerland* (2013),⁵⁶ and *Lambert and Others v. France* (2015).⁵⁷ Having provided the basis of the research in the two preceding sections, the fourth section will move on to examine human dignity in light of Article 8 of the ECHR. The division between sections three and four will show the difference between the existing and the desirable situation. Hence, Article 8 of the ECHR and its scope will be studied in-depth in the fourth section. The links between human dignity, EAD, and the right to private and family life should already become apparent by sections two and three. The fourth section will also discuss how European States should deal with these developments, and if the development is desirable.

Finally, the conclusion will draw together the final observations and show how these findings differ from the state of the art. The paper will tackle and answer how the focus on human dignity in life can, or cannot, be used as a justification for the tolerance of a freedom to choose death at one's own hands on a principled level in the context of the ECHR. Ultimately, the paper can serve as a legal exercise to test the boundaries, the beginnings and the endings, between individual bodily autonomy and state obligations.

Section 1. The Necessity to Discuss Euthanasia and Assisted Dying

The following introductory section first presents the current legal situation in IHRL with regards to EAD, and then emphasises the necessity of an international, namely European, discussion on the matter. The section concludes with a consideration of the initial problems this approach may bring.

53 *Pretty v. the UK*.

54 *Haas v. Switzerland*, 31322/07, ECtHR, 20 January 2011.

55 *Koch v. Germany*, 497/09, ECtHR, 19 July 2012.

56 *Gross v. Switzerland*, 67810/10, ECtHR, 14 May 2013.

57 *Lambert and Others v. France*, 46043/14, ECtHR, 5 June 2015.

1.1 The legal status quo of euthanasia and assisted dying

At the date of writing, four member states of the CoE permit some form of assisted dying: Belgium, Luxembourg, the Netherlands and Switzerland.⁵⁸ Other states have seen numerous domestic cases challenging the prohibition of EAD on the basis of the ECHR directly and/or the national legislation.⁵⁹ Although assisting or encouraging suicide remains a criminal offence in most of the European countries,⁶⁰ cases like *Nicklinson* before the UK Supreme Court,⁶¹ and *Fleming* before the Irish Supreme Court,⁶² show that this question is far from settled.⁶³ The two Courts delivered judgements that dismissed the applications, but their reasoning seems to allow space for interpretation on both sides as to the direction in which the jurisprudence might develop.⁶⁴ This brings to light a question regarding the status of EAD in IHRL.

Opponents of EAD claim that IHRL tends to condemn EAD related practices by sanctioning the right to life in the human rights treaties.⁶⁵ The explanation is that these practices are a form of murder,⁶⁶ and since states have a positive obligation to ensure that a person's life is not arbitrarily taken by private individuals,⁶⁷ it can be concluded that EAD are incompatible with the right to life.⁶⁸ While it is indeed true that the Human Rights Committee (HRC) has expressed its concern regarding uncontrolled practices,⁶⁹ and that some Conventions disallow such actions without consent,⁷⁰ there is neither explicit nor implicit complete prohibition of EAD in international or regional human rights law. The fact that international and regional bodies distinguish between arbitrary deprivation of life and

58 MARTIN, S. S. (2018) p. 244. Outside of Europe, there are additional nine jurisdictions that permit some form of EAD: California, Canada, Columbia, Colorado, District of Columbia, Oregon, Vermont, Victoria (Australia) and Washington State.

59 *Ibid.*, p. 246.

60 *Ibid.*, pp. 273-274.

61 Two judges claimed that prohibition is incompatible with Article 8 of the ECHR.

62 There was clear reluctance from the Supreme Court to examine the requirements under Art. 8(2) of the ECHR.

63 The same applies to academia, compare PERKINS, H. S. (2016) with ROSCOE, L. A., & SCHENCK, D. P. (2017).

64 *Nicklinson* §§ 163 & 164 and *Fleming* § 159.

65 Art. 3 UDHR, Art. 6 ICCPR, Art. 2 ECHR, Art. 4 ACHR, Art. 4 ACHPR & Art. 6 CRC.

66 ALTERS, S. M. (2009) pp. 13-17.

67 FOCARELLI C. (2013) § 23.

68 *Ibid.* §§ 23 & 24.

69 HRC's comment on the Netherlands in UNHRC, *Concluding observations: Netherlands*, 2009 § 7.

70 The combination of Articles 25(f) & 10 of the CRPD prohibits forms of eugenic and economic euthanasia.

assisted dying in their decisions and documents,⁷¹ clearly shows that EAD in the meaning of this paper are not considered a form of murder. On the contrary, the ECtHR has stated that it is not excluding that a prohibition of a person's choice to avoid what he or she considers will be an undignified and distressing death, might constitute an interference with the right to respect for private life under Article 8 of the ECHR.⁷² This, together with the reality that countries which allow for EAD are not found to be in violation of international or regional human rights law, leads to the conclusion that EAD are not inherently contrary to the right to life or any other right under current IHRL.

Therefore, the legal status of EAD under current IHRL is ambiguous, and it should be explored in order to clarify whether any state obligations are arising from its (non) regulation. While national solutions vary, some domestic Courts do not take hard stances on the issue and seem to welcome suggestions and guidance on the matter. This leaves space to approach the issue from a regional and/or international perspective.

1.2 Possibility, necessity and relevance of a European discussion

So far, the ECtHR has not ruled that a law prohibiting EAD is incompatible with any of the Articles of the ECHR,⁷³ but likewise it has not stated that a law authorizing EAD is inherently irreconcilable with one or more of the ECHR provisions either.⁷⁴ Hence, to set the basis for the paper, it is essential to scrutinize the ECtHR rationale in the EAD related case-law, see if it shows that EAD are covered by a certain provision of the ECHR, and if it is possible to have the discussion on a European level.

Primarily, the ECtHR acknowledged that Article 8 of the ECHR might apply to EAD,⁷⁵ which means that any interference with this choice, such as prohibition of EAD, must pursue a legitimate aim to be able to limit the right to respect for private life. In the specific cases under consideration, the ECtHR found that the challenged laws were proportional measures to ensure the attainment of the legitimate aim of protecting the rights of others, particularly of the most vulnerable people in society.⁷⁶ However, the Court did not rule out that under other circum-

71 See Parliamentary Assembly (PA) of CoE, Rec. No. 779 & *Pretty v. the UK* § 65.

72 *Pretty v. the UK* § 67.

73 *Ibid.* §§ 38-42.

74 *Ibid.* § 42.

75 *Pretty v. the UK* § 65.

76 *Haas v. Switzerland* § 56.

stances, disallowing EAD might be incompatible with Article 8 of the ECHR.⁷⁷ Since it is admitted that Article 8 of the ECHR applies to EAD, the ECtHR reasoning in these cases is essentially a balancing exercise between the right to respect for private life, on one hand, and other fundamental rights, including the right to life, on the other. This leaves open the possibility, and from a human dignity perspective also the necessity and the relevance, to read a potential 'right to die' into Article 8 of the ECHR.

Secondly, the necessity to have this discussion on a regional level stems from the inclusive protection of human dignity under the ECHR.⁷⁸ The focus on human dignity will offer a direction for the development of comparative national legislation in the Member States of the CoE, that complies with the ECHR and the principles underlying it. Contrarily, allowing a wide MoA would keep the discussion at national level, with states being able to uphold their current legislation, regardless if they allow EAD or not, and ignoring their potential obligations regarding the right to respect private life.

Finally, the increasing number of EAD-related cases being brought before national courts and the ECtHR, demonstrates the high relevance of the discussion today.⁷⁹ The importance of the discussion's outcome for the people who wish to end their lives, as well as their families, the strong division on the matter between the ones supporting EAD and the ones opposing it, and the attention attracted by news on this issue, all add up to the relevance of the debate.⁸⁰

1.3 Initial problems and concerns in a nutshell

Focusing on the ECHR may render this paper unable to reach a straightforward conclusion due to the unpredictability of the doctrine of MoA, even though the MoA will be considered throughout the paper. Elements such as the stage of the illness, the patient's determination, family circumstances, the precise wording of the law at issue, and its actual implementation can decisively influence the outcome of a judicial argument.⁸¹ If all possible solutions were to be taken into account, the discussion would result in the ECtHR keeping a wide MoA, and not moving too far from the status quo. Ergo, it is important to note that even though this paper will be able to conduct the academic exercise and

77 FOCARELLI C. (2013) § 42.

78 CONNELLY, A. M. (1986) pp. 574-575.

79 For example, in the period of 2000-2010 and before that, the ECtHR had delivered only 1 judgement on EAD, after 2010, that number increased to 5 judgements. *Factsheet – End of life and the ECHR*.

80 In May 2018 a story about 104-year old Australian scientist travelling to Switzerland to end his life attracted a significant level of public interest, see <https://bbc.in/2le3jPf>.

81 FOCARELLI C. (2013) § 42.

analyse whether legally speaking EAD are covered under the ECHR, the ‘can’ part of the research question is also variable according to the circumstances of a particular case.⁸²

Section 2. Human Dignity, the European Convention on Human Rights and Euthanasia and Assisted Dying

Currently, there is no formulation of human dignity as a substantive explicit right in any of the operative provisions in the human rights Conventions.⁸³ Instead, human dignity is often found in the Conventions’ preambles and is used as an underlying principle in combination with other guarantees and prohibitions.⁸⁴ This is also the case with the ECHR where dignity is mentioned only once, in the preamble of Protocol No. 13,⁸⁵ but the ECtHR has used it regularly when discussing potential violations of Articles of the ECHR.⁸⁶ The cases of *Vo v. France* and *Bock v. Germany* are good illustrations for this in relation to Article 2 and Article 8 respectively.

Namely, in *Vo v. France*, the ECtHR argued that the mere capacity to become a person, among other things, was sufficient to be vested with dignity so that unborn life could already be considered as a bearer of human dignity.⁸⁷ Regardless of the discussion whether this leads to the consequence of the embryo being also protected by the right to life or not, the important part is that the Court explicitly recognized human dignity as a factor within Article 2 of the ECHR. Additionally, in the case of *Bock v. Germany*, the ECtHR found that a nine-years long divorce procedure, which put into question the applicant’s mental capacity, infringed upon the applicant’s dignity and violated his guarantee of private life as laid down in Article 8 of the ECHR.⁸⁸ Thus, the Court made clear that human dignity is likewise an element of Article 8 of the ECHR, and ought to be taken into account when considering potential violations.

Hence, in the jurisprudence of the ECtHR, human dignity is used to justify the right to life and the right to respect for private life, and/or simply to stress their importance.⁸⁹ As a result, the proponents of EAD argue for human dignity mani-

82 WERTH JR, J. L., & BLEVINS, D. (eds.) pp. 158-160.

83 PETERSEN N. (2012) § 6.

84 UDHR, Preamble & Articles 1, 22 & 23.

85 ECHR, Preamble to Protocol No. 13.

86 *Vo v. France* § 84 & *Bock v. Germany*, 1/1988/145/199, ECtHR, 29 March 1989 § 48.

87 *Vo v. France* § 84.

88 *Bock v. Germany* § 48.

89 PETERSEN N. (2012) § 19.

fested in the right to choose when and how to die, while the opponents contend for dignity expressed through the principle of sanctity of life. Considering that by now it is apparent how dignity in dying is pursued by both advocates and opponents of EAD, it is necessary to clarify the role human dignity plays regarding Articles 2 and 8 of the ECHR.

2.1 Human dignity, Article 2 of the European Convention on Human Rights and EAD

Article 2(1) of the ECHR reads:

“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.”

Article 2(2) then continues to list the limited circumstances in which a person can be deprived of this right, but none of these relate to EAD. The wording clearly shows that the primary obligation of a State is negative, which means that it is a duty to abstain from violating a person’s right to life.⁹⁰ Nonetheless, the ECtHR jurisprudence has developed the ‘doctrine of positive obligations’ that compels States to take appropriate steps to safeguard the lives of those within its jurisdiction, even when the right is threatened by third parties or activities that are not directly connected to the State.⁹¹ Although there are still gaps in the interpretation and application of Article 2,⁹² the ECtHR has made clear several issues regarding human dignity.

First, the Court has consistently emphasized the fundamental nature of the right to life and has stated that Article 2, together with Article 3 of the ECHR, enshrines one of the basic values of the European States.⁹³ The willingness of the ECtHR to find a violation of Article 2 of the ECHR even in situations where there has been no loss of life at all,⁹⁴ suggests that the right to life also protects the sanctity of life in general, as well as the respect for all human life.⁹⁵ This

90 SCHEININ M. (2012) p. 28.

91 SCHEININ M. (2012) p. 28.

92 WICKS, E. (2012) p. 201.

93 *McCann v. the UK*, 18984/91, ECtHR, 27 September 1995 § 147.

94 *Makaratzis v. Greece*, 50385/99, ECtHR, 20 December 2004.

95 WICKS, E. (2012) p. 202.

means that the interpretation of the right to life considers the sanctity of life as a foundation of Article 2 of the ECHR. Some authors argue that protecting 'life with dignity' as opposed to 'sanctity of life' may represent 'a fuller reflection of life',⁹⁶ and if that theory is to be adopted by the Court, EAD would easily find its place into the ECHR. Nevertheless, the ECtHR in its current reasoning prioritizes the sanctity of life over a life with dignity and thus makes it very unlikely to understand EAD as establishing an obligation for States to provide a right to choose when and how to die under Article 2 of the ECHR.

Second, in abortion cases, such as *Vo v. France* and *A, B, C v. Ireland*, the ECtHR use of dignity as the underlying principle of the right to life seems to derive from an idea of human dignity innate in humanity itself, rather than the individual human being.⁹⁷ The nature of life in the Court's words is perceived to be based on profound moral values that are inherent to human life generally,⁹⁸ and has little to do with the specific features of the life in question. As such, human dignity is not considered to be the decisive element in the reasoning whether there has been a violation of Article 2 of the ECHR, and the best example to illustrate this is the case of *Vo v. France*. Here, the Court claimed that the embryo requires protection in the name of human dignity generally, but still found no violation of Article 2 of the ECHR in the specific case. Similarly, it would be very challenging to fit individual autonomous choices regarding the end of life into such a general idea of human dignity. Even more so, if one agrees with the beliefs that these choices might sometimes threaten the dignity of human life in general,⁹⁹ and that premature end to life and/or the involvement of state officials and private individuals in killing a human being always violates human dignity.

Last, the ECtHR approach towards human dignity where there is a conflict between the right to life and the right to respect for private life is unclear. So far, the ECtHR has excluded the entitlement to choose death rather than life under Article 2 of the ECHR with the explanation that the Article cannot be interpreted as conferring the diametrically opposite right.¹⁰⁰ This discards Article 2 as an option for EAD under the ECHR. However, the Court has also pointed out that the intrinsic value in human life is just one of the elements to be assessed, and that it could be overridden by other considerations present in a case.¹⁰¹ Since

96 DUPRÉ, C. (2009) p. 200.

97 WICKS, E. (2012) p. 209.

98 *A, B, C v. Ireland*, 25579/05, ECtHR, 16 December 2010 § 222.

99 WICKS, E. (2012), p. 214.

100 *Pretty v. the UK* § 39.

101 Such is the example with the case of *Vo v. France*, where the ECtHR found no violation of Art. 2 of the ECHR.

individual autonomy and freedom from pain and suffering are potential factors capable of establishing an obligation to provide a right to die, it is vital to consider human dignity in light of Article 8 of the ECHR.

“It is the treating of an individual as a means to an end to which we object, even if it is the individual who has chosen, for good reason, to be so treated.”¹⁰²

2.2 Human dignity, Article 8 of the European Convention on Human Rights and EAD

Article 8(1) of the ECHR states:

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

Article 8(2) of the ECHR then sets out the restricted situations that allow public authorities’ interference with the exercise of the right. The paragraph asserts that any interference must be in accordance with the law and necessary in a democratic society in the interests of several goals, out of which the most relevant for the issue of EAD are the protection of health or morals and/or the protection of the rights and freedoms of others. This right, similar to the right to life, mostly gives rise to a negative obligation for States not to interfere with one’s right to privacy. Nevertheless, the ECtHR has made it clear that this right also requires a positive obligation from the States.¹⁰³ One important difference is that, unlike what was previously said about the human dignity as part of the right to life, the right to respect for private life has much more of an individualistic approach towards dignity.

To begin with, the nature of the right is said to be centred around the human being as an individual and an autonomous subject who is absolutely sovereign over her or himself and all of her or his actions that do not interfere with others.¹⁰⁴ As such, this right represents the core of the liberal idea of freedom, and the ECtHR has persistently promoted it in that manner in its jurisprudence. In *Peck v. United Kingdom*, the ECtHR emphasized that “private life is a broad term not susceptible to exhaustive definition”,¹⁰⁵ and that as such it develops together with society’s pressing needs. Considering that EAD has been actualized in the

¹⁰² Immanuel Kant as cited in Wicks, E. (2012), p. 213.

¹⁰³ ZIEMELE I. (2009) § 2.

¹⁰⁴ *Ibid.* § 1.

¹⁰⁵ *Peck v. the UK*, 44647/98, ECtHR, 28 January 2003 § 57.

last 15 to 20 years, with the Netherlands becoming the first country to legalize EAD only in 2002,¹⁰⁶ the ‘right to die’ can be regarded as a pressing need, able to fit under the developing concept of privacy. Even more so if one bears in mind that the case of *X and Y v. The Netherlands* highlighted that physical and psychological integrity of a person constitute a part of the right to respect for private life.¹⁰⁷ As previously explained, the argument that people’s physical and psychological integrity demands legalization of the EAD is very often used by the proponents of the EAD to establish a positive obligation for the States.

Furthermore, the ECtHR acknowledged that the right to personal autonomy and self-determination, which includes the right to make decisions about one’s body and the option to choose death over life, also fits under Article 8(1) of the ECHR.¹⁰⁸ Even though this might seem like EAD has already found its place in the ECHR, it should be noted that not all interferences with the right to privacy amount to a violation of the ECHR.¹⁰⁹ This means that the ECtHR may still allow for interference as long as it is in accordance with Article 8(2) of the ECHR, namely “...justified on account of a legitimate aim that it pursued and, on the balance, was not disproportionate.”¹¹⁰ Taking into consideration that some of the arguments of the opponents of EAD, such as protection of the sanctity of life, could be construed as a legitimate aim, it is hard to predict at this stage whether EAD can be protected under Article 8 of the ECHR. This is particularly so because the ECtHR would consider the absence of a European consensus on the regulation of EAD and may review the question of where to strike the balance only within the MoA of the concerned State.¹¹¹ On the other hand, the wide MoA might be narrowed down if one takes into account that personal autonomy and self-determination are particularly intimate aspects of private life.¹¹² This means that with the notions of human dignity and individual autonomy, the EAD debate is fully encompassed under Article 8 of the ECHR.

Ultimately, the breadth of the right to respect for private and family life and the ECtHR jurisprudence on this Article make it difficult to ascertain which elements should prevail in the balancing exercise between the personal autonomy and the legitimate aims for interference.¹¹³ This leads to potential uncertainty as to the obligations arising from Article 8 of the ECHR and puts States in a position

106 MARTIN, S. S. (2018), p. 244.

107 *X and Y v. the Netherlands*, 8978/80, ECtHR, 26 March 1985 §§ 22-30.

108 *Pretty v. the UK* §§ 61 & 67.

109 ZIEMELE I. (2009) § 26.

110 *Ibid.* § 26.

111 This was the situation in *Evans v. the UK*, 6339/05, ECtHR, 10 April 2007 §§ 61 & 68.

112 Thus, the MoA shall be narrower. *Dudgeon v. the UK*, 7525/76, ECtHR, 22 October 1981 § 52.

113 MOREHAM, N. A. (2008) p. 45.

to stick with the negative obligations and to implement only the steps that are more predictable and that do not require additional effort.¹¹⁴

To be specific, the ECtHR follows three simple steps where the negative obligations are at stake.¹¹⁵ Primarily, the obligation of the State is not to interfere with the right to respect for private life and to respect the autonomy of the person in question. Once the State has interfered, the Court examines whether there has been interference with one of the rights specified in Article 8(1) as step number two, and if the answer is positive, it analyses the justification or the non-justification of the interference as step number three.¹¹⁶ The justification is assessed on the basis of Article 8(2), and thus it must be in accordance with the law,¹¹⁷ serve one of the legitimate aims,¹¹⁸ and must be necessary in a democratic society.¹¹⁹ This, with the MoA granted by the ECtHR, makes it easy for States, regardless if they have legalized EAD or not, to fulfil the negative obligation as long as they follow these steps.

On the other hand, the effective respect for private or family life also requires positive obligations from the States, including the adoption of measures to guarantee the respect for private life between individuals themselves.¹²⁰ However, the focus on positive obligations is not directly on the precise criteria enumerated in Article 8, but on a broader examination into whether Article 8 is applicable and if a fair balance has been struck between the competing interests in the case.¹²¹ This makes positive obligations ambiguous and has lead the ECtHR to assert that “the boundaries between the State’s positive and negative obligations under Article 8 do not lend themselves to precise definition”.¹²² In spite of that, the ECtHR has clarified that similar principles are applicable both for negative and positive obligations, and that States have to strike a fair balance between the general interest and the interests of the individual.¹²³

114 Ziemele I. (2009) § 42.

115 Moreham distinguishes between two steps only, but that is because she considers the rule for non-interference as an inescapable starting point (p. 47). For reasons of clarity, the first step is explained here as well.

116 MOREHAM, N. A. (2008), p. 47.

117 *Sunday Times v. the UK*, 6538/74, ECtHR, 26 April 1979 § 47.

118 The aims might be various due to the broad definition of Art. 8(2). CONNELLY, A. M. (1986), pp. 580-583.

119 In other words, this means there must be a pressing social need for the interference. *Dudgeon v. the UK* § 48.

120 *Evans v. the UK* § 75.

121 *Taşkın and Others v. Turkey*, 46117/99, ECtHR, 10 November 2004 §§ 111-114.

122 *Van Kück v. Germany*, 35968/97, ECtHR, 12 June 2003 § 71.

123 *Von Hannover v. Germany*, 40660/08 & 60641/08, ECtHR, 7 February 2012 § 57.

“The very essence of the Convention is respect for human dignity and human freedom. [...] The notion of personal autonomy is an important principle underlying the interpretation of [Convention] guarantees.”¹²⁴

2.3 Comparison of two human dignity perspectives: Article 2 and Article 8 of the ECHR

The free autonomous human personality is the ultimate manifestation of human rights values.¹²⁵ Paradoxically, its beginnings and endings are limited by the protection of the rights and freedoms of others.¹²⁶ With this in mind, it is necessary to base the EAD debate on one of the two previously presented conceptions of human dignity. The choice between general human dignity, innate in humanity itself, and specific individual human dignity, centred around the human being as a sovereign autonomous subject, will emphasize the specific elements of EAD and consequently shall set the ground for this paper to answer the research question.

The human dignity of the person as a sovereign autonomous subject will be used as a foundation of the right to respect for private life, and the dignity innate in humanity itself shall be used as potential limitation to the right. Nevertheless, it is only the individual human dignity that offers an all-inclusive basis for a particularly intimate aspect of private life such as the decision when and how to die. This is so because of the differences between each EAD case, and its numerous specifics, which can be covered solely with a type of dignity that perceives the human being as a sovereign autonomous subject and that takes the features of the individual life as its starting point. Since the dignity behind the right to life is based on profound moral values that are inherent to human life generally,¹²⁷ and because that kind of dignity does not include the details of each case,¹²⁸ the ECtHR has already shown that it would not be possible to ground the EAD debate on the human dignity underlying Article 2 of the ECHR.

Namely, the ECtHR has made it clear that Article 2 of the ECHR, together with the principles behind it, are not concerned with the quality of living or

124 *Pretty v. the UK* §§ 61 & 65.

125 BREMS, E. (2008), pp. 61-63. See also RENZ, M. (2015) pp. 28-32.

126 Brems, E. (2008) pp. 65-68.

127 *A, B, C v. Ireland* §§ 222-225.

128 WICKS, E. (2012) pp. 202-203.

what a person chooses to do with his or her life.¹²⁹ The Court has stated that even though the principle of self-determination is protected under the ECHR,¹³⁰ it cannot be read in the sense of conferring on an individual the entitlement to choose death rather than life into Article 2, and that protection of the principle shall be sought within other rights of the ECHR.¹³¹ The ECtHR in its reasoning on Article 2 of the ECHR prioritizes the dignity in the form of the principle of sanctity of life and does not leave space to interpret EAD as establishing an obligation for States to provide a ‘right to die’. Hence, it is safe to conclude that individual autonomous choices regarding the end of life would not fit into such a general idea of human dignity as provided by Article 2 of the ECHR.

On the other hand, Article 8 of the ECHR protects the individual’s private, as well as personal sphere, and covers the notions of human dignity and individual autonomy in a manner that offers adequate platform to discuss whether EAD can be read into the Convention or not.¹³² The ECtHR jurisprudence points out the reasons as to why the case for EAD would be the strongest under Article 8 of the ECHR.¹³³ In addition to everything that has been said regarding the case of *Pretty v. the United Kingdom*, in *Haas v. Switzerland* the Court presumed that States “have a positive obligation to adopt measures to facilitate the act of dying with dignity”.¹³⁴ Even though the ECtHR barely assumed that even if there was an obligation it would not lead to a violation of the ECHR in the case, it is evident from the reasoning that the Court is approaching EAD through the lenses of specific individual human dignity.¹³⁵ For instance, the ECtHR acknowledged the importance to end life in a safe manner, without unnecessary pain and suffering, to protect the person’s human dignity.¹³⁶ This example together with the stressing of the non-transferrable¹³⁷ nature of Article 8 in *Koch v. Germany*,¹³⁸ shows the individualistic perspective that the Court adopts towards the issue of EAD.

Therefore, the case for EAD fits most appropriately under Article 8 of the ECHR and the human dignity perspective that will be taken throughout this paper will mostly be centred on the individual as an autonomous subject who is

129 *Pretty v. the UK* § 39.

130 *Ibid.* § 61.

131 *Ibid.* § 39.

132 ZIEMELE I. (2009) §§ 1-3.

133 BENTON, K. (2017).

134 *Haas v. Switzerland* § 61.

135 *Ibid.* §§ 50-53. For a broader perspective also see CRIPPEN, D. W. (2008).

136 *Haas v. Switzerland* § 56.

137 Non-transferrable means that this right cannot be pursued by anyone else, in this case a close relative or other successor, except for the immediate victim. *Koch v. Germany* § 79.

138 *Ibid.* § 79.

absolutely sovereign over himself/herself and all of his actions that do not interfere with others. Contrastingly, the human dignity illustrated in the principle of sanctity of life will be considered as a potential legitimate aim for interference with the right to respect for private life under Article 8 of the ECHR.

Section 3. Euthanasia and Assisted Dying in the Jurisprudence of the European Court of Human Rights

This section will focus on the case-law related to EAD and it will present important findings to display the development of the issue in the ECtHR jurisprudence.

3.1 Line of development of the issue throughout the cases

Since *Pretty* in 2002, which was the first case adjudged on merits before the Court, the ECtHR has adjudicated four other cases related to the 'right to die' in the meaning of this paper. In 2011, the ECtHR delivered its judgement in *Haas v. Switzerland*, a case that raised the issue of whether the right to respect for private life requires States to ensure a sick person's wish to end his/her life pain-free, and with no risk of failure, without a prescription. Considering that this case and *Gross v. Switzerland* are the only cases against a State which allow for some form of EAD, it is important to see the approach towards this issue from a viewpoint of a legislation that allows for EAD.¹³⁹ *Gross* concerned an elderly woman who complained that by denying her the right to decide by what means and at what point she died, as someone who was not terminally ill, Switzerland had breached her right to respect for private life.

Moreover, the case of *Koch v. Germany* saw a complaint arguing that the domestic courts' refusal to examine the merits of a request to obtain a deadly lethal dose of a drug infringes upon that person's and his family's right to respect for private and family life. Ergo, the *Koch* case opens the question of whether disallowing the right to EAD to a certain person infringes upon the rights of his/her close family members as well.

Lastly, in *Lambert and Others v. France* in 2015, the Court was deciding on an application brought by the parents, a half-brother and a sister of the victim, who were complaining against a medical report that allowed the State to

139 PUPPINCK G. & DE LA HOUGUE C. (2014) p. 736.

discontinue the victim's artificial nutrition and hydration. Since these are the only five merits-based judgements in IHRL, they ought to be briefly considered.

3.1.1 *Pretty v. the United Kingdom*

This case has been mentioned throughout the paper and its facts have been laid out in the introduction. The ECtHR held that the choice to avoid what one considers an undignified and distressing end to life falls within the scope of Article 8 of the ECHR.¹⁴⁰ The Court did not exclude that preventing the exercise of a choice, to avoid what one considers would be an undignified and distressing end to a life, constituted an interference with the right to respect for private life as guaranteed under the Convention. Although it undoubtedly established personal autonomy as an important principle underlying the guarantees of Article 8 of the ECHR,¹⁴¹ the Court found no violation of the ECHR in this case.

3.1.2 *Haas v. Switzerland*

Mister Haas, the applicant, was a 58 years-old man suffering from a serious bipolar affective disorder for about twenty years.¹⁴² During this period, he attempted suicide twice and stayed in psychiatric hospitals on numerous occasions. Maintaining that his illness, for which treatment is difficult, made it impossible for him to live with dignity, the applicant complained that his right to decide how and when to end his life, protected under Article 8 of the ECHR, had been breached.¹⁴³ The Court reaffirmed its reasoning given in *Pretty*,¹⁴⁴ and emphasized that the fundamental question of the patient's wish to self-determinedly end his or her life in EAD related cases is of general interest because similar questions have repeatedly been raised before the ECtHR.¹⁴⁵ Additionally, the Court further developed the case-law by highlighting once again that an individual's right to decide how and when his or her life should end is certainly one of the aspects of the right to respect for private life under the ECHR.¹⁴⁶ This was the first time the ECtHR approached a case related to EAD from the perspective of a State's positive obligation to take the necessary measures to permit a dignified end of life. As a result, the discussion acknowledged that there is a

¹⁴⁰ *Pretty v. the UK* § 67.

¹⁴¹ *Ibid.* § 61.

¹⁴² *Haas v. Switzerland* § 7.

¹⁴³ *Ibid.* §§ 32-33.

¹⁴⁴ *Ibid.* § 50.

¹⁴⁵ *Ibid.* § 46.

¹⁴⁶ *Ibid.* § 51.

positive obligation, and moved from questioning the existence of a ‘right to die’ to sole evaluation as to whether the decision to die was taken freely and with full understanding of what is involved.¹⁴⁷ In the end, the Court concluded that the requirement of a prescription, based on psychiatric assessment, was necessary in a system that facilitates access to assisted dying. Since the State must comply with the positive obligation to put in place a procedure capable of ensuring that a person’s decision to end their life reflects their free will, the interference with the right to privacy of the applicant served a legitimate aim and the ECtHR found no violation of the Convention.

3.1.3 *Koch v. Germany*

The applicant was a 69 years-old man who claimed that the refusal to grant his late wife permission to acquire a lethal dose of drugs, allowing her to end her life, violated both her and his own right to respect for private and family life.¹⁴⁸ His wife had been suffering from total sensorimotor quadriplegia for several years, and the disease had left her completely disabled, in need of artificial ventilation and constant assistance from nursing staff.¹⁴⁹ Considering that she had a life expectancy of at least fifteen more years, she wished to end what was, in her view, an undignified life by dying with the applicant’s help.¹⁵⁰ Unable to obtain the lethal dose of medication in Germany, she was forced to travel to Switzerland to end her life.¹⁵¹ The ECtHR recognized the applicant’s legal standing and acknowledged that he could claim to have been directly affected by the State’s refusal to grant his wife approval to acquire a lethal dose of the medication.¹⁵² However, the acceptance of the fact that the upsetting situation, caused by his wife’s unfulfilled wish to commit suicide, had repercussions on his own state of health, did not lead the Court to allow him to rely on his wife’s ‘right to die’ because of the non-transferable nature of the right.¹⁵³ Even though the Court re-established the reasoning given in *Pretty* and *Haas*, it did not add much to the EAD case-law as it mostly discussed the procedural aspects of Article 8 of the ECHR. Accordingly, the ECtHR concluded that the domestic courts’ refusal to examine the applicant’s complaints on the merits constituted a violation of his

147 *Ibid.* § 53.

148 *Koch v. Germany* § 3.

149 *Ibid.* § 8.

150 *Ibid.* § 8.

151 *Ibid.* § 12.

152 *Ibid.* §§ 43-44.

153 *Ibid.* § 81.

right to respect for private life under the ECHR.¹⁵⁴ On the other hand, the Court refused to examine if the rights of his wife had been violated and rejected that part of the application as being incompatible *ratione personae* with the provisions of the ECHR.¹⁵⁵

3.1.4 Gross v. Switzerland

Ms. Gross, the applicant, was an 80 year-old woman who alleged that her right to decide how and when to end her life had been breached in contravention to Article 8 of the ECHR.¹⁵⁶ Even though the Chamber's decision found a violation of the right to respect for private life,¹⁵⁷ and the reasoning could have notably developed the case-law regarding the EAD related positive obligations,¹⁵⁸ the Grand Chamber later declared the application inadmissible due to the death of the applicant. The Court concluded that by taking special precautions to avert the disclosing of the information about her death to her counsel, and to the Court, the applicant had intended to mislead the Court on a very important matter of her complaint in order to prevent the discontinuing of the proceedings in this case.¹⁵⁹ Thus, the Court declined to examine the EAD issue in general and failed to add much to the case-law on this matter.

3.1.5 Lambert and Others v. France

The applicants were all relatives to Vincent Lambert, a man in his late thirties who sustained serious head injuries in a road-traffic accident that left him tetraplegic and in a chronic vegetative state.¹⁶⁰ Although this case is related to EAD, its features have little to do with the issue and the Court is mostly dealing with life-sustaining treatment. Nevertheless, the ECtHR highlighted once again that in the sphere that concerns the end of life, including EAD, States must be afforded a certain MoA, and strengthened the States' position to establish the patient's wishes in accordance with national law.¹⁶¹

154 *Ibid.* § 72.

155 *Ibid.* § 82.

156 *Gross v. Switzerland* § 3.

157 *Gross v. Switzerland* C § 69.

158 *Ibid.* §§ 62-69.

159 *Gross v. Switzerland* GC § 36.

160 *Lambert and Others v. France* § 11.

161 *Ibid.* § 144.

3.2 Current standing of EAD in the jurisprudence

The existing situation before the ECtHR in relation to EAD is evidentially dominated by the MoA granted to the States on this issue. The Court's approach is based on the national legislation on EAD and it only considers the obligations arising from that State's (non) regulation of EAD. This means that the Court leaves each State's authorities to take a stance and offers every society room for a change within the national dialogue. Nonetheless, the ECtHR agreed on several elements, that might pave the way towards the recognition of EAD as a separate right for the terminally ill to choose when and how to die under Article 8 of the ECHR.

3.3 Concluding observations

The ECtHR is reluctant to find violations of Article 8 in EAD related cases. Despite that, it has been slowly developing the issue of EAD as a notion that might give rise to positive obligations under the ECHR in certain scenarios. The Court has declared both, regulations that allow for EAD, as well as the ones that do not, to be in compliance with their obligations under the ECHR due to the wide MoA grounded on the absence of a European consensus on the issue of EAD. However, it remains to be seen whether this MoA can be narrowed down in accordance with the nature of EAD and the importance of the interests at stake in cases regarding EAD.

Section 4. Reading Euthanasia and Assisted Dying into Article 8 of the European Convention on Human Rights

At this stage it is indisputable that EAD are covered under Article 8(1) of the ECHR. Yet, the EAD's falling within the scope of the Article would fail to establish a 'right to die' if the exception-clause in Article 8(2) would, as a rule, allow governments to prohibit the exercise of EAD under the right to respect for private life. In other words, if the 'rights and freedoms of others' were to prevail as a legitimate aim, that always permits interference with a terminally ill person's right to choose when and how to die, EAD would remain an unfeasible option from the ECHR perspective. This section will consider everything that was discussed so far in the paper, to investigate the extent to which EAD can, or cannot, be read into Article 8 of the ECHR. Ergo, the research question will mostly be answered here, and the scene will be set for drawing together the final observations.

4.1 Coherence between human dignity and the right to respect for private life

In order to answer the research question, it is necessary to test the coherence of the Article and its limitations,¹⁶² to see if the notion of human dignity inclines towards the legalisation of EAD.¹⁶³

Acknowledging the general problems and constrictions of the ‘legitimate aim’ test in the ECtHR case-law,¹⁶⁴ this part will focus solely on ‘the rights and freedoms of others’ clause because of its relevance for the paper.¹⁶⁵ The broadness of the clause generally, and especially in relation to EAD,¹⁶⁶ gives rise to the same weaknesses that have been studied as one element of the extensive critique of the ‘right and freedoms of others’ by Jacco Bomhoff. Bomhoff criticizes the Court’s use of the clause because:

“a) [the ECtHR] is not clear about the kinds of rights that could qualify for inclusion under ‘the rights of others’, (b) is often vague about which of those rights precisely is at issue in specific cases, and (c) does not apply a consistent category to who can qualify as rights holders – i.e. who can be ‘others’ for the purposes of the clause.”¹⁶⁷

The Court’s reasoning implies that the limitations in EAD related cases are always based only on “the rights and freedoms of others”.¹⁶⁸ The Court’s reliance on the MoA in EAD related cases is often cursory and based only on the absence of a European consensus on the matter. This undermines the consideration of the nature of a potential right to EAD because it overlooks the substantive part of the discussion and the importance of the interests at stake.

Considering that these remarks are relevant to test the coherence between Article 8 of the ECHR and human dignity, it is necessary to apply these questions to the findings of the second and the third section, and, based on that, to analyse the MoA that should be granted to the States.

162 HESTER, D. M. (2010) pp. 67-68.

163 SMITH, S. W. (2012).

164 For a general critique of the ‘legitimate aim’ test, see BREMS, E. (ed.) (2008).

165 The paper will be mostly relying on one chapter from Brems’s book, see BOMHOFF, J. (2008).

166 The matter is more complicated regarding EAD because one of the rights at stake is the right to life, which is a precondition for the enjoyment of all the other rights.

167 BOMHOFF, J. (2008) p. 5.

168 *Pretty v. the UK* § 69 excludes the other limitations grounds.

4.2 Human dignity and ‘the rights and freedoms of others’

The general criticism about the Court not being clear about what qualifies for inclusion under the clause is partly applicable to the issue of EAD. While the Court should have been more explicit in showing the links between human dignity, as an underlying notion, and Articles 8(1) and 8(2) of the ECHR,¹⁶⁹ it is evident that in EAD cases the potential interference with the right to respect for private life concerns the protection of life.¹⁷⁰ Although most of the specifics regarding this protection, for example if it is inclusive of maintaining life artificially, remain undefined and the ECtHR sometimes deals with it by granting too wide of a MoA,¹⁷¹ the limitation has been consistently followed in the jurisprudence. This, together with the broadness of what is considered to be a legitimate ground for limitation under this clause,¹⁷² qualifies the right to life to be part of ‘the rights and freedoms of others’ in EAD related cases.

More importantly, the ECtHR failed to make the distinction as to whether ‘the rights and freedoms of others’ in EAD cases are merely protecting the right to life of the patients or subsequently all the other rights that stem from the ECHR but are preconditioned by safeguarding life.¹⁷³ The Court, by not being clear which of those rights precisely are at issue in EAD specific cases under ‘the rights of others’, makes harder the prediction of the obligations arising for the states under the ECHR in this aspect. Nonetheless, the reasoning in *Pretty* and *Haas* indicates that the ECtHR focuses solely on protecting the right to life as an element of the rights and freedoms of others.¹⁷⁴ Considering that the whole process of EAD is based on human autonomy, and that the right to life does not invoke a correlative obligation to live, as this would contradict human autonomy,¹⁷⁵ it is questionable who are the ‘others’ whose rights are being protected at the expense of one’s right to private life.

Namely, the right to life under the ECHR does not require the States to protect a person’s life against his or her will by penalizing suicide or EAD.¹⁷⁶

169 For example, in § 65 of *Pretty*, the Court could have elaborated how States can make sure that human dignity is not infringed when protecting Art. 8(2) of the ECHR.

170 *Lambert and Others v. France* § 148.

171 For example, the Court has consistently failed to explain why the absence of a European consensus is more relevant than the intimate aspect of private life (at stake in EAD cases) when deciding the breadth of the MoA.

172 BOMHOFF, J. (2008), p. 6.

173 The Court did not discuss the clause at all in *Gross v. Switzerland* and *Lambert and Others v. France*.

174 *Pretty v. the UK* § 69 & *Haas v. Switzerland* § 46.

175 PETERSEN N. (2012) § 13.

176 First and second section of this paper.

Consequently, the individual consenting to undergo EAD cannot constitute the 'others' in question and it is necessary to examine the cases explained in section three to understand the Court's reasoning in this regard. Neither of the five cases can provide a straightforward answer for the EAD cases to resolve this general weakness of the 'legitimate aim' test, but the interpretation of the ECtHR claims leads to the conclusion that the category of people who might be willing to undergo EAD represent the 'others' as a group.¹⁷⁷ Specifically, the Court finds the interference in EAD cases to be justified as "necessary in a democratic society" for the protection of the right to life of the weak and vulnerable people who might not be in a condition to take informed decisions on acts intended to end their lives through EAD.¹⁷⁸ Even though the Court did a poor job explaining the basis of this qualification, it is a plausible assumption that many of these people might be in a vulnerable position,¹⁷⁹ and that there are clear risks of abuse of EAD.¹⁸⁰

However, from the adopted 'individual' human dignity perspective, the ECtHR concerns about the vulnerability of the group and the potential abuse of EAD are merely an 'interest' that ought to be taken into account.¹⁸¹ Autonomous and sovereign individuals have the interest to ensure that their decision to undergo EAD is fully independent and that they are protected from abuse, but they can ensure that these conditions are satisfied through safeguards and protective procedures. In other words, this interest cannot construe a legitimate aim under Article 8(2) of the ECHR to justify the interference with the right to respect for private life as long as there are strict national safeguards and protective procedures in place. The ECtHR, in its reasoning so far, has framed the EAD issue as a conflict between two rights – the right to respect for private life,¹⁸² and the right to life,¹⁸³ rather than as a reconcilable divergence between a right to privacy and an interest. This approach has so far kept the EAD debate on a European level at a stalemate and has been criticized as too broad.¹⁸⁴

177 *Pretty v. the UK* §§ 69, 74, 76 & 78.

178 *Ibid.* § 74.

179 BROOM, A. (2016) pp. 105-107.

180 MONTGOMERY J. (2013) pp. 43-44.

181 These concerns represent an 'interest' in the setting of the paper, in other situations the same concerns might produce a different outcome, see *Keenan v. the UK*, 27229/95, ECtHR, 3 April 2001, where the applicant was a prisoner in full control of the State.

182 ECHR, Art. 8(1).

183 Expressed as legitimate aim under Art. 8(2) of the ECHR in the form of rights and freedoms of others.

184 The critique is not EAD – specific, but more general for this limitation clause; see BOMHOFF, J. (2008), pp. 28-29.

Although the distinction between a right and an interest within the ECHR framework is subtle, it is, nevertheless, very important for the EAD discussion.¹⁸⁵ Whilst the rights are enumerated in the Articles throughout the ECHR, the interests can be identified only by careful exploration of the Article and the circumstances of a particular case.¹⁸⁶ With regards to EAD, the protection of the right to respect for private life is guaranteed under Article 8 of the ECHR.¹⁸⁷ On the other hand, one's interest for his or her decision to undergo EAD to be fully independent, and protected from abuse, stems from the Court's perception of the vulnerability of the group of people that are considering EAD as an option.¹⁸⁸ The unequivocal use of the term 'rights' rather than 'interests' in the limitation clause, and the "presumption in favour of fundamental rights protection inherent in the whole set-up of the Convention",¹⁸⁹ suggest that from an 'individual' human dignity perspective, the conflict in question is not between two rights. Even less so because the conflict can be prevented, as the vulnerability danger and the risks of abuse can be countered by strong safeguards so that most of the arguments against EAD become obsolete.¹⁹⁰

Therefore, it is desirable from a human dignity perspective, centred around the individual as an autonomous subject who is absolutely sovereign over himself and all of his actions that do not interfere with others, to read EAD into Article 8 of the ECHR. This should be done only if strict national safeguards and protective procedures are in place and if the ECtHR makes clear the relationship between the right to respect for private life and the limitation clauses, as well as between 'the rights and freedoms of others' and other clauses. That way the Court will ensure the protection of the right to EAD, avoid the chance of a convergence of potentially applicable grounds for limitation of the right to respect for private life, and limit the MoA by emphasizing the intimate aspects of the right to EAD and the personal autonomy.¹⁹¹

185 *Ibid.*, p. 5.

186 Guide on Article 8 of the ECHR § 97.

187 Second section of this paper.

188 Third section of this paper.

189 BOMHOFF, J. (2008), p. 6.

190 This could be countered with arguments on religious or other grounds like the ones set out in GREEN-STREET, W. (2016). The section does not cover the counter-arguments on religious and/or other non-legal grounds because they fall outside of the scope of this paper.

191 There is virtually an absolute consensus between the Member-States of CoE that suicide should be (and is) legal, and no punishment is prescribed for people who attempt suicide. Cyprus is the only country, out of 47, where suicide is still a punishable offence. See MISHARA, B. L., & WEISSTUB, D. N. (2016) pp. 55-56.

4.3 Interpretation of the right to respect for private and family life

The primary purpose of the Convention system, including Article 8, is to provide individual relief and to raise the general standard of protection of human rights throughout the community of the Convention States.¹⁹²

EAD related cases concern personal autonomy and the self-determination principle,¹⁹³ both of which are important interests that could be deemed ‘essential aspects’ of private life.¹⁹⁴ These concerns give rise to a very narrow and precise obligation for States to provide the terminally ill people, who are suffering unbearable pain, with an option to decide when and how to die in a dignified manner.¹⁹⁵ The nature of the personal autonomy and the self-determination principle, as well as the narrow and precise obligation they impose on States, put the ECtHR in a good position to read EAD into the ECHR within the MoA of the States.¹⁹⁶ Even though the absence of a European consensus is a relevant factor that might demand a wide MoA, the Margin could be significantly narrowed down due to the important facet of one’s identity that is at stake in EAD cases.¹⁹⁷ More to the point, if the Court was to look deeper into the absence of a consensus, and if it decided to analyse the principles underlying EAD instead of the sole examination of EAD as a process, it would come to the conclusion that States have a lot more in common than perceived. Namely, the almost absolute consensus on the legality of suicide in Europe indicates that States are in an agreement regarding the definite protection of personal autonomy and self-determination,¹⁹⁸ the very same principles that underlie EAD. The fact that several countries have systems in place that allow EAD for many years now, makes it easier for the ECtHR to guide States as to how to ensure at least the minimum degree of protection to terminally ill individuals.

The Court has already paved the way, albeit only to some extent, for a recognition of a right to EAD under the Convention, and nothing of the previously said under this part contradicts the findings of the EAD case-law elaborated in the third section. The right to respect for private life, as a broad concept insusceptible of exhaustive definition,¹⁹⁹ imposes on States a positive obligation to “secure to their citizens the right to effective respect for their physical and psychological

192 *Konstantin Markin v. Russia*, 30078/06, ECtHR, 22 March 2012 § 89.

193 *Parrillo v. Italy*, 46470/11, ECtHR, 27 August 2015 § 159.

194 *X and Y v. the Netherlands* § 27.

195 Concluding observations of section 3 of this paper.

196 Guide on Article 8 of the ECHR §§ 3-7.

197 *X and Y v. the Netherlands* § 24.

198 MISHARA, B. L., & WEISSTUB, D. N. (2016), pp. 57-58.

199 *Peck v. the UK* § 57.

integrity”.²⁰⁰ Since it has already been established that the right to decide the manner of one’s death is an element of a person’s physical and psychological integrity as long as the decision is freely formed on the basis of the person’s own judgement,²⁰¹ EAD ought to be protected under this right. Accordingly, the Court ‘can’ read Article 8 to impose on the States a procedural obligation,²⁰² to make available a remedy requiring the domestic courts to look into the merits of the claim that absolute prohibition of EAD violates the right to respect for private life.

4.4 Desirability of the developments

Expanding the States’ positive obligations in this way might be perceived as too forceful by the States opposing EAD. Nonetheless, if the Court was to leave things to develop at its current pace, for a lot of people that would mean denial of a choice that they perceive as the only way to preserve their basic human dignity. IHRL, with an emphasis on human dignity, offers a direction for the moral discussion, and a mandate for the ECtHR to call upon states to regulate EAD and to help clarify the State’s obligations arising from the ECHR in this aspect. States that intend to keep their blanket bans on EAD might subject their citizens to additional costs and troubles by leaving them no other choice but to travel to another country that allows for EAD. In the worst-case scenarios, this might bring applications for inhuman or degrading treatment before the ECtHR,²⁰³ and may put the Court in a position to weigh completely different interests.

4.5 Concluding observations

The coherence between human dignity and the right to respect for private and family life opens questions about the Court’s reasoning in the current EAD related case-law. The source of the problem seems to be the ECtHR framing of the conflict, which is presented as a clash between the right to respect for private life and the right to life, while it actually is a confrontation between the right to respect for private life and the interest to prevent abuses and to acknowledge the vulnerability of the group. Since ‘individual’ human dignity emphasizes

200 *Odièvre v. France*, 42326/98, ECtHR, 13 February 2003 § 42.

201 *Haas v. Switzerland* § 51.

202 ECHR, Art. 1. This means that the procedural obligation is essentially also a substantive one by proxy, as absolute bans, without considering an individual situation, would not be acceptable.

203 ECHR, Art. 3.

personal autonomy, and the sole characterization of the protection of EAD as a ‘right’ trumps mere ‘interests’, it is possible from that perspective to read EAD into Article 8 of the ECHR. Even more so because the interests can be reconciled with the right to respect for private life by putting strict national safeguards and protective procedures in place. This all can be done through the ECtHR current interpretation methods and case-law because autonomy and the self-determination principle are ‘essential aspects’ of private life that give rise to a very narrow and precise obligation for States that significantly narrows the MoA.²⁰⁴

Conclusion

“Death is not the greatest of evils: it is worse to want to die, and not be able to”

Sophocles (497/6 - 406/5 BC)²⁰⁵

This paper has explored whether Sophocles’ claim inspires a legal obligation for the States to facilitate the wish of terminally ill people, who experience grievous physical or mental pain and suffering, to die with dignity. The process of EAD has been critically assessed from the standpoint of human dignity to see if, based on the literature and the developments in national and international jurisprudence, it can be read into the ECHR. Considering all the provided information, the conclusion will draw together the final observations to show how these findings require a change in the legal status quo of EAD.

Current standing of the issue

At present, the legal status of EAD under the ECHR is ambiguous, with limited space for the process to give rise to positive obligations for States. Some Member-States of the CoE allow EAD, but assisting or encouraging suicide remains a criminal offence in most of the European countries. The absence of a consensus has so far led the ECtHR to grant a wide MoA, which encompassed all the contrasting solutions and did not impose any positive obligations on the States except for the ones they were already willing to undertake by their national

204 The ECtHR can leave open the selection of safeguards and protective procedures, as long as they can ensure the protection from abuse and that the decision is not based on the vulnerability of the person. These might include but should not be limited to: investigations of the patient’s psyche, the family dynamics and the death’s financial implications.

205 DANISH, X (2011) p. 152.

laws. This is problematic from a human dignity perspective because it brings uncertainty into the relationship between personal autonomy and the sanctity of life, and thus necessitates serious consideration as to whether the ECHR could unify these diverging views.

While at first sight EAD could potentially fit into the scope of several Articles of the ECHR, the particularly intimate character of the decision when and how to die requires the safeguarding of human dignity that incorporates all the circumstances of the process. The two ECHR broad conceptions of 'general' and 'individual' human dignity point towards Article 2 and Article 8 of the ECHR respectively, as the most plausible grounds that could establish a potential 'right to die'. Since the 'general' human dignity, innate in humanity itself, is not concerned with the quality of living or what a person chooses to do with his or her life, and mostly ignores personal autonomy, it would be hard to read EAD into Article 2 of the ECHR. On the other hand, the 'individual' human dignity, focused around the human being as an autonomous subject who is sovereign over his or her body and actions, is the foundation of Article 8 of the ECHR, and the dignity innate in humanity itself can be construed as a potential limitation to the Article. Hence, the 'individual' human dignity and Article 8 of the ECHR incorporate both the principle of personal autonomy and the principle of sanctity of life and imply that the EAD debate should be approached from the 'individual' dignity perspective. These reasons, together with the Court's individualistic approach towards the issue of EAD, show that Article 8 of the ECHR is best suited to protect human dignity in EAD related cases and that it is the strongest ground for the 'right to die' case under the ECHR.

The ECtHR has only had a limited chance thus far to discuss the issue in its jurisprudence as it has adjudicated only five EAD related cases, with three of them providing at best moderate contributions to the analysis.²⁰⁶ Despite that, the Court has managed to develop the issue of EAD as a notion that might give rise to positive obligations under the ECHR in certain scenarios. It has recognized personal autonomy as the principle underlying the guarantees of Article 8 of the ECHR, and it has acknowledged that the choice to avoid what one considers an undignified and distressing end to life falls within the scope of the Article. These findings, together with the Court's willingness to analyse positive obligations under Article 8 of the ECHR in EAD related cases, form a solid starting point to establish a 'right to die'. Nonetheless, the ECtHR needs to go one step further to narrow down the MoA granted to States in order to ensure the access to EAD to those in pain wishing to choose when and how to die.

206 *Koch v. Germany, Gross v. Switzerland & Lambert and Others v. France.*

The desirable outcome

The ECtHR could move towards explicitly invoking a positive obligation, one which obliges States to provide the possibility of EAD, if it was to properly frame the conflict between the principle of self-determination and the principle of sanctity of life under Article 8 of the ECHR. If the Court's reasoning was to be in line with the coherence behind human dignity and the right to respect for private and family life in cases related to the issue, it could read EAD to a certain extent into Article 8 of the ECHR.

The EAD debate under the ECHR is presented as a clash between the right to respect for private life and the right to life. If that was the case, it would have been appropriate to endorse the Court's approach to the issue and commend it to continue. However, since the right to life under the ECHR does not contain a correlative obligation to live, the Court's approach is rather misleading. This is supported by the interpretation of the ECtHR and the European states who almost uniformly agree that committing suicide is not a punishable offence and that permission of suicide does not violate the States' obligation under Article 2 of the ECHR. Consequently, the State's ambition to preserve the life of the person choosing to undergo EAD is merely an interest to that person to prevent abuses and to acknowledge the vulnerability of his or her group contrasted to that individual's right to respect for private life.

Thus, when presented as a conflict between the right to respect for private life and the interest to prevent abuses and to acknowledge the vulnerability of the group, it is the right that should prevail. Nonetheless, the gravity of the interest should not be undermined and EAD should be read into Article 8 of the ECHR only if strict national safeguards and protective procedures are in place. EAD can be read into Article 8 of the ECHR through the ECtHR current interpretation methods and case-law because personal autonomy and the self-determination principle are 'essential aspects' of private life. These aspects give rise to a very narrow and precise obligation for States that significantly narrows the MoA. Thus, IHRL, with an emphasis on human dignity, offers a direction for the moral discussion, and a mandate for the ECtHR to call upon states to regulate EAD.

Bearing in mind all the legal issues this paper has touched upon in the attempt to contribute useful insight as to how the ECtHR should approach this topic, a summarized answer to the main research question would be the following:

EAD can, based on feasibility from a human dignity perspective, current interpretation methods and case-law, be read into Article 8 of the ECHR to the extent one's decision to undergo EAD is in compliance with all the safeguards and it is freely formed solely

on the grounds of the person's own judgement and inasmuch strict protective procedures are in place.

Insofar as these conditions are satisfied, the respect of individual bodily and mental autonomy, in terms of the definitions provided in the intro, must be a *sine qua non* for human dignity in relation to the 'right to die' under the ECHR. Accordingly, state obligations shall be construed around the notion of personal autonomy to provide people with a protection of the 'last' right.

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