

# **The Constitutional Right to Life versus the Right to Dignity: A legal analysis of whether euthanasia should be legalised in South Africa**

by

Omayya Ameer

Submitted in partial fulfilment of the requirements for the degree

*IIE Legum Baccalaureus (LLB)*

in the

FACULTY OF LAW

at the

IIE MSA

Supervisor:

Mrs. M. Chawaremera

Date of submission

17 November 2022

## **ANNEXURE D:**

Declaration against plagiarism:

1. I have read the IIE's Intellectual Integrity Policy IIE023 and understand that I am bound by this policy.
2. I know that plagiarism means taking and using ideas, writings, works or inventions of another as if they are one's own. I know that plagiarism not only includes verbatim copying, but also the extensive use of another person's ideas without proper acknowledgement (which includes the use of proper quotation marks).
3. I acknowledge and understand that plagiarism is wrong.
4. I understand that my written work must be accurately referenced. I have followed the rules and guidelines concerning referencing, citation and use of quotations as set out in the IIE Law Style Guidelines and Legal Referencing 2022.
5. This assignment is my own work. I acknowledge that copying someone else's work, or part thereof, is wrong and that submitting identical work of others constitutes a form of plagiarism and will result in the IIE instituting disciplinary action proceedings against me.
6. I have not allowed, nor will I in the future allow anyone to copy my work with the intention of passing it off as their own work.

NAME & SURNAME: STUDENT NUMBER: \_OMAYYA AMEER \_\_\_\_\_

SIGNED:

DATE: \_\_\_\_17 November 2022\_\_\_\_\_

# CONTENTS

|                                           |               |
|-------------------------------------------|---------------|
| <b>1.1 INTRODUCTION.....</b>              | <b>6</b>      |
| <b>1.2 RESEARCH OBJECTIVES/AIMS.....</b>  | <b>6</b>      |
| 1.2.1 RESEARCH QUESTION(S) .....          | 7             |
| <b>1.3 PROBLEM STATEMENT .....</b>        | <b>7</b>      |
| <b>1.4 RESEARCH METHODOLOGY.....</b>      | <b>8</b>      |
| <b>1.5 ASSUMPTIONS OF THE STUDY .....</b> | <b>8</b>      |
| <b>1.6 CHAPTER OUTLINE .....</b>          | <b>8</b>      |
| 1.6.1 CHAPTER 1 .....                     | 6             |
| 1.6.2 CHAPTER 2 .....                     | 8             |
| 1.6.3 CHAPTER 3 .....                     | 8             |
| 1.6.4 CHAPTER 4 .....                     | 9             |
| 1.6.5 CHAPTER 5 .....                     | 9             |
| 1.6.6 CHAPTER 6 .....                     | 10            |
| <b>1.7 CONCLUDING REMARKS.....</b>        | <b>10</b>     |
| <b>2.2 CHAPTER 2</b>                      |               |
| LITERATURE REVIEW.....                    | 12            |
| <b>3.3 CHAPTER 3</b>                      |               |
| LEGISLATION.....                          | 15            |
| <b>4.4 CHAPTER 4</b>                      |               |
| CASE LAW.....                             | 20            |
| <b>5.5 CHAPTER 5</b>                      |               |
| APPLICATION.....                          | 25            |
| <b>6.6 CHAPTER 6</b>                      |               |
| CONCLUSION.....                           | 31            |
| <br><b>1.7 REFERENCE LIST .....</b>       | <br><b>34</b> |

|                         |    |
|-------------------------|----|
| TABLE OF STATUTES ..... | 35 |
| TABLE OF CASES .....    | 36 |
| BOOKS.....              | 37 |
| JOURNAL ARTICLES .....  | 38 |
| WEB RESOURCES.....      | 40 |
| DISSERTATIONS.....      | 42 |
| DECLARATION.....        | 54 |

## Chapter 1:

### INTRODUCTION

#### 1.1 Introduction

**Chapter 1** contains an introduction to the dissertation, research objectives, research questions the problem statement and the methodology. It also includes an overview of the chapter outlines.

Euthanasia frees anyone suffering by enabling them to experience a gentle death.<sup>1</sup> S v *Makwanyane*<sup>2</sup> pointed out that 'the Right to Life includes the Right to Dignity emphasizing that the Right to Life and the Right to Dignity are entwined.'<sup>3</sup> Human dignity must support the Right to Life and should not be excluded.<sup>4</sup> In euthanasia there is a clash as the Right to Life shield's life and the Right to Dignity favours death of persons.<sup>5</sup> My research will discover whether euthanasia should be legalised in South Africa when it uncovers which right will triumph between the Right the Life and the Right to Dignity regarding euthanasia.

Euthanasia is frequently illegal but countries like the Netherlands, Canada and Belgium allows euthanasia meaning no prosecution happens if the doctor had followed specific procedures in law.<sup>6</sup> The Constitution of the Republic of South Africa 1996,<sup>7</sup> also allows sustaining treatment to be withdrawn however euthanasia is still regarded as murder by many.<sup>8</sup> There are positive and negative aspects to euthanasia.<sup>9</sup> Euthanasia goes against the Islamic and Christian religion and weakens sanctity of life.<sup>10</sup> It constitutes as a threat to values of society.<sup>11</sup> The common law says that if anyone participates in euthanasia, they "will be guilty of murder or culpable homicide".<sup>12</sup>

Euthanasia greatly affects terminally ill patients inside South Africa considering that it is a perfect solution to end their suffering.<sup>13</sup> The South African Law Commission did submit their report called Euthanasia and the Artificial Preservation of Life (project 86), which tries to assist terminally ill patients, but it has been completely ignored as remains in limbo.<sup>14</sup> Euthanasia is regarded as a humane when it's applied to animals but not humans.<sup>15</sup> The Constitution should consider legalizing euthanasia to serve terminally ill patients that are suffering.<sup>16</sup> Preserving that life of a terminally ill patient extends their pain because it forces them into an undignified death.<sup>17</sup>

---

<sup>1</sup> Kakadia, M & Kanaki, NS "Mercy Killing Methods in Animals" 2011 *ISSN* (2) 44-59.

<sup>2</sup> 1994 (4) SA 674 (W) 326.

<sup>3</sup> 1994 (4) SA 674 (W) 326.

<sup>4</sup> Rebus, De "Law and human dignity at odds over assisted suicide" October 2015 website at <https://www.derebus.org.za/law-human-dignity-odds-assisted-suicide/> [Accessed on 20 July 2022].

<sup>5</sup> Chand, K "Why We Should Make Euthanasia Legal" July 2009 website at <https://www.theguardian.com/society/joepublic/2009/jul/01/euthanasia-assisted-suicide-uk> [Accessed 12 April 2022].

<sup>6</sup> Van der Akker, B "Euthanasia and International Human Rights Law Prolegomena for International debate" 1997 *ISSN* 1.

<sup>7</sup> The Constitution of the Republic of South Africa, 1996. (The Constitution).

<sup>8</sup> Banovic, B & Turanjanin, V "Euthanasia: Murder or Not: A Comparative Approach" 2014 *PMCID* (43) 1.

<sup>9</sup> Jacobs, RK "Legalizing physician-assisted suicide in South Africa: Should it even be considered" 2019 *ISSN* (11) 66.

<sup>10</sup> Perret, R "Buddhism, euthanasia and the sanctity of life" 1996 309-313.

<sup>11</sup> Pereira, J "Legalizing Euthanasia Or Assisted Suicide: The Illusion Of Safeguards And Control" 2012 *PMCID* 38-45.

<sup>12</sup> Jacobs, RK "Legalizing physician-assisted suicide in South Africa: Should it even be considered" 2019 *ISSN* (11) 66.

<sup>13</sup> Ingle, R "End-of-life decisions" 2008 *ISSN* (98) 1.

<sup>14</sup> Ingle, R "End-of-life decisions" 2008 *ISSN* (98) 1.

<sup>15</sup> Kakadia, M & Kanaki, NS "Mercy Killing Methods in Animals" 2011 *ISSN* (2) 44.

<sup>16</sup> Jacobs, RK "Legalizing physician-assisted suicide in South Africa: Should it even be considered" 2019 *ISSN* (11) 66.

<sup>17</sup> Boudreau, JD & Somerville, MA "Euthanasia and assisted suicide: A physicians and ethicists perspective" 2014 4.

## 1.2 RESEARCH OBJECTIVES

With the introduction in mind, the main aim of this study is to discover whether euthanasia should be legalised in South Africa. To achieve the main objective, it is necessary to discover which right triumphs between the Right to Life and the Right to Dignity. Therefore, determining what South Africa's current legal position on euthanasia must be established.<sup>18</sup> Arguments for and against euthanasia will be discussed. Suggestions and recommendations for implementation of euthanasia will be gathered through Netherlands, Belgium and Canada will be provided in this research.<sup>19</sup>

### 1.2.1 RESEARCH QUESTIONS

With the research objectives in mind the **main** research question is whether euthanasia should be legalised in South Africa?

**The sub questions are:**

Would the Right to Life triumph the Right to Dignity?

What is South Africa's current legal position regarding euthanasia?

Why euthanasia be legalized in South Africa and what are the criticisms of euthanasia?

When considering legalization in South African what are some recommendations and suggestions that can be gathered from the requirements of euthanasia in other countries?

## 1.3 PROBLEM STATEMENT

If the Right to Life and The Right to Dignity are accurately balanced, then the Right to Life should contain that Right to Die with Dignity.<sup>20</sup> Euthanasia needs to be accessible inside South Africa for terminally ill patients that continue suffering.<sup>21</sup> Terminally ill patients are suffering, doctors cannot relieve their pain to an appropriate extent and our Constitution needs to take action.<sup>22</sup> Whenever the state preserves the terminally ill patient's life, suffering continues.<sup>23</sup> There are some issues relating to why euthanasia should be legalized.<sup>24</sup> Euthanasia can be applied to animals in law but not humans, the Constitution does actually permit life sustaining treatment to be withdrawn/refused, people should be allowed to choose if they want to end their life with dignity and people commit suicide every day.<sup>25</sup> On the other hand, there are a lot of issues as to why euthanasia should not be legalized.<sup>26</sup> Euthanasia constitutes as murder by many.<sup>27</sup> Religion greatly influences euthanasia's objection, but euthanasia should not be prohibited based only on religious and sanctity of life views.<sup>28</sup> Euthanasia could also put the

---

<sup>18</sup> *Stranham-Ford v Minister of Justice and Correctional Services* 2015 (3) All SA 109 (GP).

<sup>19</sup> Stewart, K "A legislation review: Bill C-14 Euthanasia or assisted Dying" ISSN 2017 (2) 1-3.

<sup>20</sup> Konstant, A "Euthanasia Case in South Africa: Does the Right to Life include the Right to Die with Dignity?" June 2015 website at <https://ohrh.law.ox.ac.uk/euthanasia-case-in-south-africa-does-the-right-to-life-include-the-right-to-die-with-dignity/> [Accessed on 22 April 2022].

<sup>21</sup> Chris, L Smyre, BA John, D Yoon, MD Kenneth, A Rasinski, PD Farr, A Curlin, MD "Limits and responsibilities of physicians addressing spiritual suffering in terminally ill patients" 2015 (49) 562-569.

<sup>22</sup> Chris, L Smyre, BA John, D Yoon, MD Kenneth, A Rasinski, PD Farr, A Curlin, MD "Limits and responsibilities of physicians addressing spiritual suffering in terminally ill patients" 2015 (49) 562-569.

<sup>23</sup> Math, SB & Chaturvedi, SK "Euthanasia: Right to Life vs Right to Die" 2012 *PMCID* (6) 899-902.

<sup>24</sup> Du Sart, A "Euthanasia – My Life My Choice?" October 2018 website at <https://www.lexology.com/library/detail.aspx?g=473ffd5d-7e02-439a-b20a-bef4d2cd866c> [Accessed 11 April 2022].

<sup>25</sup> Du Sart, A "Euthanasia – My Life My Choice?" October 2018 website at <https://www.lexology.com/library/detail.aspx?g=473ffd5d-7e02-439a-b20a-bef4d2cd866c> [Accessed 11 April 2022].

<sup>26</sup> Banovic, B & Turanjanin, V "Euthanasia: Murder or Not: A Comparative Approach" 2014 *PMCID* (43) 1.

<sup>27</sup> Banovic, B & Turanjanin, V "Euthanasia: Murder or Not: A Comparative Approach" 2014 *PMCID* (43) 1.

<sup>28</sup> Banovic, B & Turanjanin, V "Euthanasia: Murder or Not: A Comparative Approach" 2014 *PMCID* (43) 1.

values of society at risk in terms of ubuntu.<sup>29</sup> The Constitution should be gathering suggestions and recommendations from other countries that allow euthanasia in their legal system.<sup>30</sup>

## 1.4 METHODOLOGY

The research method I have employed is Black letter law as I incorporated primary sources, secondary sources as well as common law.<sup>31</sup> Black letter law is legal rules which are certain.<sup>32</sup> Black letter law contains well established case law, it is sometimes known as hornbook law and is characteristically well regarded.<sup>33</sup> The Constitution is particularly essential as it is the highest law in the country and all law has to be interpreted in that way which uplifts the Constitutions spirit.<sup>34</sup> Common law, case law, statutory law, journal articles, internet resources are gathered to support arguments for euthanasia and the criticisms against euthanasia.<sup>35</sup> To understand euthanasia better I explored Dutch law in relation to the Netherlands.<sup>36</sup> To further understand euthanasia I made use of writings of authors for suggestions and arguments.<sup>37</sup>

## 1.5 ASSUMPTIONS

- For the purposes of this dissertation, it is assumed that common law prohibits euthanasia is true, as it was pointed out in *Stransham-Ford v Minister of Justice and Correctional Services and Others*.<sup>38</sup>
- For the purposes of this dissertation, it is assumed that the statistics from South Africa Suicide Rate 2000-2022 is valid, and that people commit suicide every day in South Africa is true.<sup>39</sup>
- For the purposes of this dissertation, it is assumed s 11 which is the Right to Life does not include the right to die with dignity in South Africa.<sup>40</sup>

## 1.6 CHAPTER OUTLINES

**1.6.1 Chapter 2** will consist of the literature review. The types of euthanasia will be explored.<sup>41</sup> Criticism of religious issues preserving the right to life will prevail.<sup>42</sup> There will also be criticism between the states duty to protect life and poor health systems in place.<sup>43</sup> The impact of euthanasia and ubuntu will be touched on.<sup>44</sup> Acceptance and rejection of euthanasia in South

---

<sup>29</sup> Pereira, J "Legalizing Euthanasia Or Assisted Suicide: The Illusion Of Safeguards And Control" 2012 *PMCID* 38-45.

<sup>30</sup> Van der Akker, B "Euthanasia and International Human Rights Law Prolegomena for International debate" 1997 *ISSN* 1.

<sup>31</sup> Cornell Law School "Blackletter Law" May 2020 website at [https://www.law.cornell.edu/wex/blackletter\\_law](https://www.law.cornell.edu/wex/blackletter_law) [Accessed on 21 April 2022].

<sup>32</sup> Cornell Law School "Blackletter Law" May 2020 website at [https://www.law.cornell.edu/wex/blackletter\\_law](https://www.law.cornell.edu/wex/blackletter_law) [Accessed on 21 April 2022].

<sup>33</sup> Cornell Law School "Blackletter Law" May 2020 website at [https://www.law.cornell.edu/wex/blackletter\\_law](https://www.law.cornell.edu/wex/blackletter_law) [Accessed on 21 April 2022].

<sup>34</sup> Grove Framework For The Implementation of Euthanasia In South Africa (degree thesis, University of Pretoria) 2007 5.

<sup>35</sup> Grove Framework For The Implementation of Euthanasia In South Africa (degree thesis, University of Pretoria) 2007 5.

<sup>36</sup> Grove Framework For The Implementation of Euthanasia In South Africa (degree thesis, University of Pretoria) 2007 5.

<sup>37</sup> Grove Framework For The Implementation of Euthanasia In South Africa (degree thesis, University of Pretoria) 2007 5.

<sup>38</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 51.

<sup>39</sup> Macrotrends "South Africa Suicide Rate" April 2022 website at <https://www.macrotrends.net/countries/ZAF/south-africa/suicide-rate> [Accessed on 21 April 2022].

<sup>40</sup> Boudreau, JD & Somerville, MA "Euthanasia and assisted suicide: A physicians and ethicists perspective" 2014 4.

<sup>41</sup> Firmansyah, Y Wijaya, H Setiadi, W "Two sides of euthanasia: mercy-killing or evil according to human rights, religion, ethics and the law" 2020 (6) *ISSN* 112.

<sup>42</sup> Banovic, B & Turanjanin, V "Euthanasia: Murder or Not: A Comparative Approach" 2014 *PMCID* (43) 1.

<sup>43</sup> Math, SB & Chaturvedi, SK "Euthanasia: Right to Life vs Right to Die" 2012 *PMCID* (6) 899.

<sup>44</sup> Rautenbach, C (ed) Waheeda, A Francette, G Chuma, H Najma, M Caroline, MW Nomtahndazo, NM Olivier, NJJ Fatima, O Devina, P Pienaar, JM Rautenbach, C Tshivhase, AE *Introduction to Legal Pluralism in South Africa* 6<sup>th</sup> ed (2021). (hereinafter Rautenbach et al *Introduction to Legal Pluralism in South Africa* 29) 29.

Africa and other countries will be emphasized.<sup>45</sup> The importance of the research will be emphasized.

**1.6.2 Chapter 3** will consist of **legislation**. The Right to Life and Right to Dignity will be discussed in detail as it is the focus of the research.<sup>46</sup> There will be a discussion how the Right to Security, the Right to Equality, the Right to Privacy, Right to Freedom of Religion, Belief and Opinion, the Right to Access to Health Care and the Limitation Clause relates to euthanasia.<sup>47</sup> The Choice on Termination of Pregnancy Act<sup>48</sup>, will be used to show that the foetus can be deprived of the Right to Life.<sup>49</sup> National Health Care Act<sup>50</sup> is relevant to show the circumstances that a person may refuse or be withdrawn from medical treatment.<sup>51</sup> Legal requirements for euthanasia in the Netherlands under Termination of Life on Request and Assisted Suicide Act<sup>52</sup> will be listed.<sup>53</sup> Requirements for lawful euthanasia under The Belgian Euthanasia Act,<sup>54</sup> will be set out.<sup>55</sup> Bill C-14 in Canada is going to be used to set out requirements for lawful voluntary euthanasia in Canada.<sup>56</sup> Proposed legislation in Project 86 will be explored when necessary to providing insight on legalisation of euthanasia in South Africa.<sup>57</sup>

**1.6.3 Chapter 4** will discuss case law. *S v Makwanyane*<sup>58</sup> will be used to show the Right to Life and the Right to Dignity are entwined.<sup>59</sup> *Stransham-Ford v Minister of Justice and Correctional Services and Others*<sup>60</sup> will be contrasted with *S v Hartmann*<sup>61</sup> and South Africa's legal position on euthanasia would be stated.<sup>62</sup> *Clarke v Hurst*<sup>63</sup> is relevant to show preservation of life through passive euthanasia.<sup>64</sup> *S v Lawrence*, *S v Negal*; *S v Solberg*<sup>65</sup> and *Minister of Home Affairs v Fourie*,<sup>66</sup> is an important case for interpreting the Right to Freedom of Religion.<sup>67</sup> *Soobramoney v Minister of Health, KwaZulu-Natal*<sup>68</sup> is relevant to discuss the quality of life and how dying is a part of life.<sup>69</sup> *Carter v Canada (AG)*,<sup>70</sup> is relevant to show euthanasia legal in Canada.<sup>71</sup> *Cruzen v Director, Missouri Department of Health*,<sup>72</sup> is relevant

---

<sup>45</sup> Stewart, K "A Legislation Review: Bill C-14 Euthanasia or assisted dying" 2017 ISSN (2) 1.

<sup>46</sup> The Constitution.

<sup>47</sup> The Constitution.

<sup>48</sup> Act 92 of 1996.

<sup>49</sup> S 2(b)(iii) of Act 92 of 1996.

<sup>50</sup> Act 61 of 2003.

<sup>51</sup> Act 61 of 2003.

<sup>52</sup> Act of 2001.

<sup>53</sup> Act of 2001.

<sup>54</sup> Act of 2002.

<sup>55</sup> Act of 2002.

<sup>56</sup> Stewart, K "A legislation review: Bill C-14 Euthanasia or assisted dying" ISSN 2017 (2) 1-3.

<sup>57</sup> South African Law Commission Report, "Euthanasia and The Artificial Preservation Of Life", Project 86 1998.

<sup>58</sup> 1994 (4) SA 674 (W) 326.

<sup>59</sup> 1994 (4) SA 674 (W) 326.

<sup>60</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP).

<sup>61</sup> 1975 (3) SA 532 (C).

<sup>62</sup> 1975 (3) SA 532 (C) 533.

<sup>63</sup> 1992 (4) SA 630 (D).

<sup>64</sup> 1992 (4) SA 630 (D) 638.

<sup>65</sup> 1997 ACC 11; 1997 (4) SA 1176 (CC); 1997 (10) BCLR 1348 (CC).

<sup>66</sup> *Minister of Home Affairs v Fourie* 2006 (3) SA 524 (CC) 89.

<sup>67</sup> 1997 ACC 11; 1997 (4) SA 1176 (CC); 1997 (10) BCLR 1348 (CC) 119.

<sup>68</sup> 1998 (1) SA 765 (CC).

<sup>69</sup> 1998 (1) SA 765 (CC) 772.

<sup>70</sup> 2015 5 (SCC).

<sup>71</sup> (AG) 2015 5 (SCC) 13-14.

<sup>72</sup> 1990 U.S. 497 (SCC).

to emphasize the right to refuse treatment.<sup>73</sup> The Postma case is relevant for discussing euthanasia in the Netherlands.<sup>74</sup>

**1.6.4 Chapter 5** contains arguments of why euthanasia should and should not be legalized will be discussed with legislation and case law. This chapter argues that animals can die with dignity, but human beings cannot with the Animals Protection Act.<sup>75</sup> This chapter discusses how people should be allowed to choose if they want to end their life with dignity.<sup>76</sup> Section 7B of The National Health Care Act<sup>77</sup> would prove argument that persons may refuse or choose to be withdrawn from medical treatment and *Soobramoney v Minister of Health, KwaZulu-Natal applies*<sup>78, 79</sup>. The argument that women can choose to end the Right to Life of a foetus but not her own life will be discussed, and s 2(b)(iii) of The Choice on Termination of Pregnancy Act<sup>80</sup>, applies to show the Right to Life is not absolute.<sup>81</sup> Project 86 and *Stransham-Ford v Minister of Justice and Correctional Services and Others*<sup>82</sup> will be used to support the argument that the state has a duty to preserve life.<sup>83</sup> The argument on how euthanasia is objected through religion will be supported and *S v Lawrence*, *S v Negal*; *S v Solberg*<sup>84</sup> and *Minister of Home Affairs v Fourie and Another*,<sup>85</sup> will apply.<sup>86</sup> Euthanasia destroying sanctity of life will also be discussed.<sup>87</sup> Euthanasia being viewed as murder will be discussed with *S v Hartmann*<sup>88</sup>. Legalizing euthanasia could affect society's values overtime including ubuntu will be discussed.<sup>89</sup> This chapter will gather some of their suggestions/ recommendations for our Constitution reflecting on requirements of euthanasia in Canada, Belgium and the Netherlands. *Carter v Canada (AG)*,<sup>90</sup> *Cruzen v Director, Missouri Department of Health*<sup>91</sup> and The Postma case<sup>92</sup> talks about euthanasia and would apply to show that euthanasia is accepted in other countries.<sup>93</sup>

**1.6.5 Chapter 6** will conclude whether euthanasia should be legalized in South Africa for terminally ill patients and which right triumphs between the Right to Life and the Right to Dignity in euthanasia. Research questions will be answered. A discussion on 39(2) on the interpretation of the Right to Life and the Right to Dignity will be discussed to guide the answer.<sup>94</sup> *S v Makwanyane*<sup>95</sup>, will also be reflected regarding the interpretation on Right to Life and the Right to Dignity to aid the answer.

## 1.7 Concluding remarks

<sup>73</sup> 1990 U.S. 497 (SCC) 269-285.

<sup>74</sup> The Postma Case.

<sup>75</sup> Kakadia, M & Kanaki, NS "Mercy Killing Methods in Animals" 2011 *ISSN* (2) 44-59.

<sup>76</sup> Du Sart, A "Euthanasia – My Life My Choice?" October 2018 website at <https://www.lexology.com/library/detail.aspx?g=473ffd5d-7e02-439a-b20a-bef4d2cd866c> [Accessed 11 April 2022].

<sup>77</sup> Act 61 of 2003.

<sup>78</sup> 1998 (1) SA 765 (CC).

<sup>79</sup> Act 61 of 2003.

<sup>80</sup> Act 92 of 1996.

<sup>81</sup> Shaw, A "Two challenges to the double effect doctrine: Euthanasia and abortion" 2022 *ISSN* (28) 1473-4257.

<sup>82</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP).

<sup>83</sup> Math, SB & Chaturvedi, SK "Euthanasia: Right to Life vs Right to Die" 2012 *PMCID* (6) 899-902.

<sup>84</sup> 1997 ACC 11; 1997 (4) SA 1176 (CC); 1997 (10) BCLR 1348 (CC).

<sup>85</sup> *Minister of Home Affairs v Fourie* 2006 (3) SA 524 (CC) 89.

<sup>86</sup> *Minister of Home Affairs v Fourie* 2006 (3) SA 524 (CC) 89.

<sup>87</sup> Perret, R "Buddhism, euthanasia and the sanctity of life" 1996 *PMCID* 309-313.

<sup>88</sup> 1975 (3) SA 532 (C).

<sup>89</sup> Pereira, J "Legalizing Euthanasia Or Assisted Suicide: The Illusion Of Safeguards And Control" 2012 *PMCID* 38-45.

<sup>90</sup> 2015 5 (SCC).

<sup>91</sup> 1990 U.S. 497 (SCC).

<sup>92</sup> The Postma Case.

<sup>93</sup> (AG) 2015 5 (SCC) 13-14.

<sup>94</sup> The Constitution.

<sup>95</sup> 1994 (4) SA 674 (W) 326.

- Fundamental rights can be intertwined and can still clash in certain circumstances like euthanasia.<sup>96</sup>
- In light of this research there is a need for an intervention of amendment of the law to assist terminally ill patients that are suffering.
- A decision needs to be reached regarding project 86 in South Africa.<sup>97</sup>

In this chapter there was an introduction to the topic. It then expressed the research objectives, research questions the problem statement, the methodology, and there was an overview of the chapter outlines.

---

<sup>96</sup> Rebus, De "Law and human dignity at odds over assisted suicide" October 2015 website at <https://www.derebus.org.za/law-human-dignity-odds-assisted-suicide/> [Accessed on 20 July 2022].

<sup>97</sup> South African Law Commission Report, "Euthanasia and The Artificial Preservation Of Life", *Project 86* 1998.

## CHAPTER 2:

### LITERATURE REVIEW

#### 2.2

**2.2.1** Euthanasia has been a heated topic inside South Africa for a long time.<sup>98</sup> The biggest concern is whether euthanasia should be legalised in South Africa. The main purpose of this review is exploring information and arguments of euthanasia. In this review explores forms of euthanasia, religious objection of euthanasia, the state's duty to protect life, euthanasia affecting ubuntu and South Africa's position on euthanasia.

Firmansyah, Wijaya and Setiadi said euthanasia has different forms.<sup>99</sup> In active euthanasia death comes from direct or even indirect actions.<sup>100</sup> Voluntary euthanasia is present where the patient had made a request and had consented to their death.<sup>101</sup> Involuntary euthanasia is present whenever consent to death was not obtained.<sup>102</sup> Non-voluntary euthanasia is where patients request death but they are represented by another like their family.<sup>103</sup> Perret says mercy killing is rare to other killings as it involves killing patients to stop their pain and suffering.<sup>104</sup>

De Vos and others say that in a democratic society religion should not be influencing what our constitution commands because there are non-believers who don't hold these same views.<sup>105</sup> The authors explain that Freedom of Religion is a right that is including respecting diverse views.<sup>106</sup> This statement seems true. Banovic and Turanjanin said the Catholic church is against euthanasia and in Islam euthanasia is equal to murder.<sup>107</sup> The truth is that laws can be affected by religious beliefs of legislators.<sup>108</sup> Banovic and Turanjanin said that only people that are not religious will consider euthanasia.<sup>109</sup> This statement does not seem true. Smets, Bilsen, Cohen, Rurup and Deliëns did a study of euthanasia in Belgium after it was legalized and discovered the numbers for euthanasia went up every year.<sup>110</sup> In the study most patients were in unbearable pain scoring 95.6%.<sup>111</sup> A very small percentage (6.6%) were not terminally ill patients.<sup>112</sup> The Belgium study rebuts Banovic and Turanjanins statement because it proves that euthanasia would be viable option for terminally ill patients.<sup>113</sup> The *"Bringing up MAID in*

---

<sup>98</sup> Banovic, B & Turanjanin, V "Euthanasia: Murder or Not: A Comparative Approach" 2014 *PMCID* (43) 1.

<sup>99</sup> Firmansyah, Y Wijaya, H Setiadi, W "Two sides of euthanasia: mercy-killing or evil according to human rights, religion, ethics and the law" 2020 (6) *ISSN* 112.

<sup>100</sup> Firmansyah, Y Wijaya, H Setiadi, W "Two sides of euthanasia: mercy-killing or evil according to human rights, religion, ethics and the law" 2020 (6) *ISSN* 112.

<sup>101</sup> Firmansyah, Y Wijaya, H Setiadi, W "Two sides of euthanasia: mercy-killing or evil according to human rights, religion, ethics and the law" 2020 (6) *ISSN* 112.

<sup>102</sup> Firmansyah, Y Wijaya, H Setiadi, W "Two sides of euthanasia: mercy-killing or evil according to human rights, religion, ethics and the law" 2020 (6) *ISSN* 112.

<sup>103</sup> Firmansyah, Y Wijaya, H Setiadi, W "Two sides of euthanasia: mercy-killing or evil according to human rights, religion, ethics and the law" 2020 (6) *ISSN* 112.

<sup>104</sup> Perret, R "Buddhism, euthanasia and the sanctity of life" 1996 *PMCID* 309.

<sup>105</sup> De Vos, P & Freedman, W (Eds) Boggenpoel, Z Lisa, D Gevers, C Govender, K Lenaghan, P Weeks, SM Namakula, C Ntlama, N Mailula, D Moyo, K Sibanda, S Stone, L *South African Constitutional Law in Context* 2<sup>nd</sup> ed (2021). (hereinafter De Vos et al *South African Constitutional Law in Context*). 614.

<sup>106</sup> De Vos et al *South African Constitutional Law in Context* 614.

<sup>107</sup> Banovic, B & Turanjanin, V "Euthanasia: Murder or Not: A Comparative Approach" 2014 *PMCID* (43) 1.

<sup>108</sup> Banovic, B & Turanjanin, V "Euthanasia: Murder or Not: A Comparative Approach" 2014 *PMCID* (43) 1.

<sup>109</sup> Banovic, B & Turanjanin, V "Euthanasia: Murder or Not: A Comparative Approach" 2014 *PMCID* (43) 1.

<sup>110</sup> Smets, TMA Bilsen, J Cohen, J Rurup, ML Deliëns, L "Legal Euthanasia in Belgium Characteristics of All Reported Euthanasia Cases" 2010 (48) 187.

<sup>111</sup> Smets, TMA Bilsen, J Cohen, J Rurup, ML Deliëns, L "Legal Euthanasia in Belgium Characteristics of All Reported Euthanasia Cases" 2010 (48) 187.

<sup>112</sup> Smets, TMA Bilsen, J Cohen, J Rurup, ML Deliëns, L "Legal Euthanasia in Belgium Characteristics of All Reported Euthanasia Cases" 2010 (48) 187.

<sup>113</sup> Smets, TMA Bilsen, J Cohen, J Rurup, ML Deliëns, L "Legal Euthanasia in Belgium Characteristics of All Reported Euthanasia Cases" 2010 (48) 187.

*Canada*” blog mentioned that some physicians are objectors because of religious views, and still embraced euthanasia by understanding their patients situation.<sup>114</sup> The Belgium study and the blog seem reasonable.

Besides religion other arguments against euthanasia as pointed out by Math and Chaturvedi include the state protecting the Right to Life.<sup>115</sup> The issue with this journal is that it keeps implying that euthanasia could be abused by people with mental illnesses like depression.<sup>116</sup> They criticise that preserving the Right to Life means fulfilling those socio-economic obligations.<sup>117</sup> Math and Chaturvedi argue that the state has a duty to protect the Right to Life but there are inefficient poor health systems in place and that people refusing treatment is passive euthanasia.<sup>118</sup> To a certain extent their arguments is reasonable.

Math and Chaturvedi said that euthanasia could lead to an uncivilized society.<sup>119</sup> Ubuntu in South Africa has many meanings and euthanasia could threaten the values of ubuntu if it leads to an uncivilised society.<sup>120</sup> Ubuntu contains values like compassion, respect, human dignity, conformity of norms.<sup>121</sup> Shaw implies that unlawful termination of pregnancy and euthanasia share the same religious and moral issues in society, yet abortion is more accepted than euthanasia.<sup>122</sup> If termination of pregnancy is acceptable in South African society and the Constitution today, then it is possible for euthanasia to be accepted someday.<sup>123</sup>

Countries either allow or reject euthanasia.<sup>124</sup> Stewart highlights that Bill C-14 in Canada does not hold people criminally liable if the requirements inside Bill C-14 are met.<sup>125</sup> Stewart points emphasizes that Bill C-14 in Canada is flawed because it excludes people with degenerative disease because their death is not reasonably foreseeable.<sup>126</sup> Stewart’s argument seems reasonable. Snyman emphasizes that unlike Canada a person will be criminally liable and charged with murder if they engaged in euthanasia in South Africa because it is a serious criminal offence.<sup>127</sup>

In conclusion there is a lot of literature on euthanasia but there is scarcity as authors have never versed the Right to Life against the Right to Dignity and never explored how euthanasia affects ubuntu which will be provided in my research. In this review there was a discussion regarding the forms of euthanasia, religious objection of euthanasia, the state’s duty to protect life, euthanasia affecting ubuntu and South Africa’s position on euthanasia.

---

<sup>114</sup> Dying With Dignity Canada “Bringing up MAID in Canada” January 2022 blog at <https://www.dyingwithdignity.ca/education-resources/conference-bringing-up-maid-in-canada-january2022/> [Accessed on 31 May 2022].

<sup>115</sup> Math, SB & Chaturvedi, SK “Euthanasia: Right to Life vs Right to Die” 2012 *PMCID* (6) 899.

<sup>116</sup> Math, SB & Chaturvedi, SK “Euthanasia: Right to Life vs Right to Die” 2012 *PMCID* (6) 899.

<sup>117</sup> Math, SB & Chaturvedi, SK “Euthanasia: Right to Life vs Right to Die” 2012 *PMCID* (6) 899.

<sup>118</sup> Math, SB & Chaturvedi, SK “Euthanasia: Right to Life vs Right to Die” 2012 *PMCID* (6) 899.

<sup>119</sup> Math, SB & Chaturvedi, SK “Euthanasia: Right to Life vs Right to Die” 2012 *PMCID* (6) 899.

<sup>120</sup> Rautenbach et al *Introduction to Legal Pluralism in South Africa* 28.

<sup>121</sup> Rautenbach et al *Introduction to Legal Pluralism in South Africa* 29.

<sup>122</sup> Shaw, AB “Two challenges to the double effect doctrine: euthanasia and abortion” 2022 *ISSN* (28) 103.

<sup>123</sup> Shaw, AB “Two challenges to the double effect doctrine: euthanasia and abortion” 2022 *ISSN* (28) 103.

<sup>124</sup> Stewart, K “A Legislation Review: Bill C-14 Euthanasia or assisted dying” 2017 *ISSN* (2) 1.

<sup>125</sup> Stewart, K “A Legislation Review: Bill C-14 Euthanasia or assisted dying” 2017 *ISSN* (2) 1.

<sup>126</sup> Stewart, K “A Legislation Review: Bill C-14 Euthanasia or assisted dying” 2017 *ISSN* (2) 2.

<sup>127</sup> Hocter, SV & Snyman, CR *Snyman’s Criminal Law* 7<sup>th</sup> ed (2017) 104, 169, 387, 389.

## CHAPTER 3:

### LEGISLATION

**3.3** This chapter will focus on legislation. The rights in the Constitution, legislation and options in Project 86 which relates to whether euthanasia should be legalised in South Africa will be explored.

#### The Constitution

Section 10 **Right to Dignity** ensures 'everyone contains inherent dignity which must be respected and protected.'<sup>128</sup> Human dignity is the independent, self-standing right.<sup>129</sup> The right implies that there must be protection from conditions or treatment that offends somebody's worth inside society.<sup>130</sup> Treatment that is abusive, degrading, humiliating and demeaning violates this right.<sup>131</sup> Treating someone less than human is contrary to s 10.<sup>132</sup> The heart of human dignity has an assumption that every human contains incalculable human worth regardless of situations.<sup>133</sup> Dignity is a personal right associated with someone's identity, autonomy or moral agency.<sup>134</sup> Dignity as a value is different from dignity as a right.<sup>135</sup> Human Dignity as a value has been put in many different settings as it is used for interpretation of other rights.<sup>136</sup> When human dignity has been offended it simultaneously offends other rights.<sup>137</sup> Human dignity is important where none of the other rights protects an interest.<sup>138</sup> Human dignity evokes a right to have agency respected and protected meaning that that the right will be implicated if people are treated in a way that limits their ability to make meaningful choices regarding their lives.<sup>139</sup> Human dignity concerns itself with personal feelings of someone that has been treated badly.<sup>140</sup> Human dignity contains a right not to be degraded and devalued.<sup>141</sup> Human dignity is closely linked to the Right to Privacy.<sup>142</sup>

**The Right to Life** under s 11 says that "everyone has the Right to Life."<sup>143</sup> *S v Makwanyane*<sup>144</sup> said that the Right to Life is not just an organic matter that the Constitution is cherishing but the it includes that right to live as a human, to be a part of a community and to share those experiences of humanity.<sup>145</sup> This human life concept is the middle of Constitutional values.<sup>146</sup> That Right to Life is central within a society.<sup>147</sup> It incorporates that Right to Dignity which makes the Right to Life and the Right to Dignity entwined.<sup>148</sup> The Right to Life is more than mere

---

<sup>128</sup> The Constitution.

<sup>129</sup> De Vos et al *South African Constitutional Law in Context* 562.

<sup>130</sup> De Vos et al *South African Constitutional Law in Context* 562.

<sup>131</sup> De Vos et al *South African Constitutional Law in Context* 562.

<sup>132</sup> De Vos et al *South African Constitutional Law in Context* 562.

<sup>133</sup> De Vos et al *South African Constitutional Law in Context* 562.

<sup>134</sup> De Vos et al *South African Constitutional Law in Context* 562.

<sup>135</sup> De Vos et al *South African Constitutional Law in Context* 563.

<sup>136</sup> De Vos et al *South African Constitutional Law in Context* 564.

<sup>137</sup> De Vos et al *South African Constitutional Law in Context* 565.

<sup>138</sup> De Vos et al *South African Constitutional Law in Context* 565.

<sup>139</sup> De Vos et al *South African Constitutional Law in Context* 566.

<sup>140</sup> De Vos et al *South African Constitutional Law in Context* 566.

<sup>141</sup> De Vos et al *South African Constitutional Law in Context* 567.

<sup>142</sup> De Vos et al *South African Constitutional Law in Context* 569.

<sup>143</sup> The Constitution.

<sup>144</sup> 1994 (4) SA 674 (W).

<sup>145</sup> 1994 (4) SA 674 (W) 48.

<sup>146</sup> 1994 (4) SA 674 (W) 48.

<sup>147</sup> 1994 (4) SA 674 (W) 48.

<sup>148</sup> 1994 (4) SA 674 (W) 48.

existence as it contains a right to be treated like a human being with dignity.<sup>149</sup> The Constitution is basically trying to improve everyone's quality of life and the Right to Life does guarantee a right to quality of life.<sup>150</sup> It contributes to a meaningful life within a democratic country.<sup>151</sup> The Right to Life is a God-given right.<sup>152</sup> Like the Right to Dignity it is a non-derogable right which cannot be suspended.<sup>153</sup> The Right to Life encompasses the individualised claim to the basic quality of life and that opportunity to share within that experience of being human.<sup>154</sup> To identify what a life worth living in a rainbow nation is a problem.<sup>155</sup> The state cannot deprive someone of their Right to Life and they must improve quality of life.<sup>156</sup> In the dissertation it will be argued that the Right to Life and the Right to Dignity will be versed against each other and it will be argued that Right to Life is more than just mere physical existence and it involves a life worth living.<sup>157</sup>

Section 12(1)(e), **The Right to Freedom and Security** of a person ensures that a person should not be punished or treated within a cruel or degrading manner.<sup>158</sup> Section 12(2)(b), says that everyone will have the right to bodily and psychological integrity that includes security in and control over their own body.<sup>159</sup> There is a general freedom grounded in physical integrity and a definite right to bodily and physical integrity.<sup>160</sup> This right protects people from intrusion of the state and it does not just protect the individuals physical integrity and allows them to make choices over their body.<sup>161</sup>

The s 14 **Right to Privacy** ensures everyone will have the Right to Privacy.<sup>162</sup> This relates to private intimacy and autonomy.<sup>163</sup> This right is a right to be left alone and to live a life that have minimum interference from the state or other parties.<sup>164</sup> Privacy will become intense when as it moves closer to intimate personal life of people which is why privacy and dignity are related like in euthanasia.<sup>165</sup> Privacy is breached if someone is not treated with concern or respect.<sup>166</sup>

Section 15(1) is the **Freedom of Religion, Belief and Opinion** and ensures that individuals has a right to freedom of conscience, religion, thought, belief and opinion.<sup>167</sup> This is the freedom to hold religious views and opinions about moral issues well as freedom to practice their beliefs.<sup>168</sup> This right protects people with diverse beliefs and opinions like in the case of euthanasia.<sup>169</sup> It will accommodate this diversity which might conflict like in the case of euthanasia.<sup>170</sup>

---

<sup>149</sup> 1994 (4) SA 674 (W) 48.

<sup>150</sup> Serfontein, EM "The nexus between the right to life and to a basic education in South Africa" 2015 *ISSN* (18) 1.

<sup>151</sup> Serfontein, EM "The nexus between the right to life and to a basic education in South Africa" 2015 *ISSN* (18) 1.

<sup>152</sup> Serfontein, EM "The nexus between the right to life and to a basic education in South Africa" 2015 *ISSN* (18) 1.

<sup>153</sup> Serfontein, EM "The nexus between the right to life and to a basic education in South Africa" 2015 *ISSN* (18) 1.

<sup>154</sup> Serfontein, EM "The nexus between the right to life and to a basic education in South Africa" 2015 *ISSN* (18) 1.

<sup>155</sup> Serfontein, EM "The nexus between the right to life and to a basic education in South Africa" 2015 *ISSN* (18) 1.

<sup>156</sup> Serfontein, EM "The nexus between the right to life and to a basic education in South Africa" 2015 *ISSN* (18) 1.

<sup>157</sup> Serfontein, EM "The nexus between the right to life and to a basic education in South Africa" 2015 *ISSN* (18) 1.

<sup>158</sup> The Constitution.

<sup>159</sup> The Constitution.

<sup>160</sup> De Vos et al *South African Constitutional Law in Context* 568.

<sup>161</sup> De Vos et al *South African Constitutional Law in Context* 572.

<sup>162</sup> The Constitution.

<sup>163</sup> De Vos et al *South African Constitutional Law in Context* 587.

<sup>164</sup> De Vos et al *South African Constitutional Law in Context* 587.

<sup>165</sup> De Vos et al *South African Constitutional Law in Context* 588.

<sup>166</sup> De Vos et al *South African Constitutional Law in Context* 588.

<sup>167</sup> The Constitution.

<sup>168</sup> De Vos et al *South African Constitutional Law in Context* 614.

<sup>169</sup> De Vos et al *South African Constitutional Law in Context* 614.

<sup>170</sup> De Vos et al *South African Constitutional Law in Context* 614.

Section 36 is the **Limitation clause** ensures all rights in the Bill of Rights are limited if they are laws of general application if the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account factors like the nature of the right, the importance of that purpose of limitation, nature and extent of the limitation, relation between the limitation and its purpose.<sup>171</sup> Section 36(2) says that except what is in subsection (1) or in any other provision of the Constitution, no law can limit any right within the Bill of Rights.<sup>172</sup> The clause reminds us that rights are not absolute and can be limited in circumstances to promote public interests or even protect people.<sup>173</sup>

Section 39(1) interprets the Bill of Rights and says any that interpretation of the Bill of Rights from the courts, forum or even tribunal involves promoting values underlying our open democratic society which would then be based on equality, human dignity and freedom.<sup>174</sup> Section 39(1)(c) is clear that judges can consider foreign laws but they have to consider international laws under s 39(1)(b).<sup>175</sup> Section 39(2) makes it clear that interpretation of legislation must be done in a way that promotes the spirit, object and purport under the Bill of Rights.<sup>176</sup>

## Legislation

In *Stransham-Ford v Minister of Justice and Correctional Services and Others*<sup>177</sup> the case emphasized the purpose of s 2(1)(e) of the **Animals Protection Act**<sup>178</sup> read with ss 5(1) and 8(1)(d), which provides the owner of an animal is obliged to destroy that animal that is seriously injured or even diseased or has a physical condition that to prolong its life is cruel and would cause such animal unnecessary suffering.<sup>179</sup> Applicant pointed out the problem that will be highlighted in the research which is that allowing an injured or sick animal to suffer is cruel and a crime yet the same dignity is not afforded to people.<sup>180</sup>

The **Choice on Termination of Pregnancy Act**<sup>181</sup> has a purpose under of s 2(b)(iii) of Act, as it allows termination of pregnancy because of rape.<sup>182</sup> Even though the foetus is not considered human in law this act is important for the research because it proves that the right to life is not absolute as it allows termination of life.<sup>183</sup>

The **National Health Care Act**<sup>184</sup> This is because act serves a purpose of allowing someone to withdrawal or withholding of medical treatment, or the withholding or withdrawal of such medical treatment within a living will, and it is not invalid or unlawful to refuse, withdraw or withhold medical treatment even though it will hasten natural death of the creator of the living will.<sup>185</sup> This important in the dissertation to aid the argument that euthanasia should be allowed if people are allowed to refuse or withdraw treatment.<sup>186</sup>

---

<sup>171</sup> The Constitution.

<sup>172</sup> The Constitution.

<sup>173</sup> De Vos et al *South African Constitutional Law in Context* 430.

<sup>174</sup> The Constitution.

<sup>175</sup> The Constitution.

<sup>176</sup> The Constitution.

<sup>177</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP).

<sup>178</sup> S 2(1)(e) of Act 71 of 1962.

<sup>179</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 27.

<sup>180</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 27.

<sup>181</sup> Act 92 of 1996.

<sup>182</sup> S 2(b)(iii) of Act 92 of 1996.

<sup>183</sup> Shaw, AB "Two challenges to the double effect doctrine: euthanasia and abortion" 2022 *ISSN* (28) 103.

<sup>184</sup> Act 61 of 2003.

<sup>185</sup> S 7(1)(e)(5) of Act 61 of 2003.

<sup>186</sup> S 7(1)(e)(6) of Act 61 of 2003.

The **Termination of Life on Request and Assisted Suicide Act**<sup>187</sup> is Dutch law which serves a purpose of permitting euthanasia in the Netherlands as it sets out requirements for euthanasia.<sup>188</sup> The criteria says the doctors need to make sure the patients request for euthanasia is 'voluntary/ well considered, the suffering is unbearable and wont improve; the patient has been informed of his situation and prognosis, there must be a discussion with the patient and doctor where they come to a conclusion that there is no reasonable solution, there needs to be a consultation with another physician that has zero connection to the case and he has to see the patient and assess the state in writing which the attending physician must satisfy the due care criteria listed within the first 4 points; lastly there must be exercise of care when terminating the patients life and assisting his/her suicide.'<sup>189</sup> This act prevents doctors from being prosecuted as long as they satisfy the criteria and notify death as non-natural causes to that euthanasia committee.<sup>190</sup> The Termination of Life on Request and Assisted Suicide Act<sup>191</sup> is proof that the Dutch government is not turning a blind eye to the issue of euthanasia which can be an example for our country, which is needed for considering if euthanasia should be legalised in South Africa and it can be used to gather a recommendation.<sup>192</sup>

The purpose of the Chapter II of the **Belgian Act on Euthanasia**,<sup>193</sup> sets out the requirements for lawful euthanasia which is that:

The patient is an age of majority or is a emancipated minor who is legally competent including conscious when they made the request, the request is voluntary, well-considered, repeated, no pressures, there is medically futile condition which includes physical or mental suffering, there is a serious or incurable disorder caused through illness or accident and the conditions and procedures are respected.<sup>194</sup> The request for euthanasia needs to be in writing and signed by the patient.<sup>195</sup> Patients that are not just physically suffering but also mentally suffering can be euthanized.<sup>196</sup> This act is important in the research for considering whether euthanasia should be legalised and it will be used to provide a recommendation.

In Canada, **Bill C-14** is a new clause and it has a purpose of allowing voluntary euthanasia which is that administration by the medical practitioner or nurse of medication which will result in that patients death if they requested.<sup>197</sup> In this case the medical assistance in dying results directly in that patients death.<sup>198</sup> A person will be eligible for medical assistance in dying if they meet the criteria:<sup>199</sup>

They are an adult (18 or older) and mentally competent to make health care decisions themselves, they have a grievous and irremediable medical condition, they made a voluntary request for the medical assistance in dying which never came from external pressure, they

---

<sup>187</sup> Act of 2001.

<sup>188</sup> Act of 2001.

<sup>189</sup> Act of 2001.

<sup>190</sup> Act of 2001.

<sup>191</sup> Act of 2001.

<sup>192</sup> Act of 2001.

<sup>193</sup> S 3(1) Act of 2002.

<sup>194</sup> S 3(1) Act of 2002.

<sup>195</sup> S 2(3) Act of 2002.

<sup>196</sup> Smets, TMA Bilsen, J Cohen, J Rurup, ML Deliens, L "Legal Euthanasia in Belgium Characteristics of All Reported Euthanasia Cases" 2010 (48) 187.

<sup>197</sup> Department of Justice "Legislative Background: Medical Assistance in Dying (Bill C-14)" June 2016 website at <https://www.justice.gc.ca/eng/rp-pr/other-autre/ad-am/p2.html> [Accessed on 13 September 2022].

<sup>198</sup> Department of Justice "Legislative Background: Medical Assistance in Dying (Bill C-14)" June 2016 website at <https://www.justice.gc.ca/eng/rp-pr/other-autre/ad-am/p2.html> [Accessed on 13 September 2022].

<sup>199</sup> Department of Justice "Legislative Background: Medical Assistance in Dying (Bill C-14)" June 2016 website at <https://www.justice.gc.ca/eng/rp-pr/other-autre/ad-am/p2.html> [Accessed on 13 September 2022].

gave informed consent to receive that medical assistance in dying and they are eligible for the health services that are funded by the government.<sup>200</sup> Grievous and irremediable medical condition includes having any serious incurable illness, disease, disability, being in that state of irreversible decline in capacity, experiencing physical or psychological suffering due to illness, disease or disability and cannot be relieved, or even when the natural death has become foreseeable.<sup>201</sup>

Bill C-14 does have faults because it is not open to everyone suffering, for example it excludes people suffering from degenerative diseases because the Bill has a criteria that an individual's death must be reasonably foreseeable.<sup>202</sup> The criteria serves a purpose of providing people that are suffering an option to peaceful medical assistance in dying instead of having a painful undignified life.<sup>203</sup> This provides a recommendation for this dissertation when considering if euthanasia should be legalised in South Africa.<sup>204</sup>

**Project 86** sets out 3 options for euthanasia in South Africa.<sup>205</sup> In option 1 rejection of voluntary euthanasia is an option if people have a social responsibility to care for elderly, dying or disabled persons.<sup>206</sup> The responsibility will exist even though there is inevitable constraints on health care resources and it would be impossible to prevent abuse.<sup>207</sup> Option 2 provides that practice of active euthanasia in legislation should allow the medical practitioner to use safeguards to prevent abuse and may allow the request of a patient through administering or providing that lethal agent to that patient.<sup>208</sup> Option 3 is requesting that the practice of active euthanasia is regulated through legislation an euthanasia should be done according to the criteria that the multi-disciplinary panel or even the committee provided through legislation which is similar to the Netherlands but committees must be informed before euthanasia had been performed.<sup>209</sup>

In this chapter the focus was on the Constitution, and it was pointed out that the Right to Life and The Right to Dignity are entwined. Legislation and options in Project 86 which relates to whether euthanasia should be legalised in South Africa was explored.

---

<sup>200</sup> Department of Justice "Legislative Background: Medical Assistance in Dying (Bill C-14)" June 2016 website at <https://www.justice.gc.ca/eng/rp-pr/other-autre/ad-am/p2.html> [Accessed on 13 September 2022].

<sup>201</sup> Department of Justice "Legislative Background: Medical Assistance in Dying (Bill C-14)" June 2016 website at <https://www.justice.gc.ca/eng/rp-pr/other-autre/ad-am/p2.html> [Accessed on 13 September 2022].

<sup>202</sup> Stewart, K "A Legislation Review: Bill C-14 Euthanasia or assisted dying" 2017 ISSN (2) 1.

<sup>203</sup> Department of Justice "Legislative Background: Medical Assistance in Dying (Bill C-14)" June 2016 website at <https://www.justice.gc.ca/eng/rp-pr/other-autre/ad-am/p2.html> [Accessed on 13 September 2022].

<sup>204</sup> Department of Justice "Legislative Background: Medical Assistance in Dying (Bill C-14)" June 2016 website at <https://www.justice.gc.ca/eng/rp-pr/other-autre/ad-am/p2.html> [Accessed on 13 September 2022].

<sup>205</sup> South African Law Commission Report, "Euthanasia and The Artificial Preservation Of Life", *Project 86* 1998 xi.

<sup>206</sup> South African Law Commission Report, "Euthanasia and The Artificial Preservation Of Life", *Project 86* 1998 xi.

<sup>207</sup> South African Law Commission Report, "Euthanasia and The Artificial Preservation Of Life", *Project 86* 1998 xii.

<sup>208</sup> South African Law Commission Report, "Euthanasia and The Artificial Preservation Of Life", *Project 86* 1998 xii.

<sup>209</sup> South African Law Commission Report, "Euthanasia and The Artificial Preservation Of Life", *Project 86* 1998 xii.

## CHAPTER 4:

### CASE LAW

**4.4** The decision as to whether euthanasia should be legalised was considered in case law. In this chapter a discussion on case law that should be considered for determining if euthanasia should be legalised in South Africa will be discussed.

In *S v Makwanyane*<sup>210</sup> the court abolished the death penalty punishment.<sup>211</sup> It was mentioned that the recognition and the protection of human dignity is that touchstone of our new political order and it is fundamental to our new Constitution.<sup>212</sup> Even though this case did not speak on euthanasia it interpreted the Right to Life and The Right to Dignity.<sup>213</sup> The Right to Life is connected with Right to Dignity which means they are entwined.<sup>214</sup> The Right to Life is more than just the existence it is a right to be treated at as human with dignity.<sup>215</sup> The court also said that death is the extreme form of punishment and it puts an end to all rights and it cannot be undone.<sup>216</sup> This case is also mentions that nobody including a criminal should be treated in an inhumane, cruel degrading manner which is important to note for this research.<sup>217</sup> The state is a role model in society and they must respect human life and dignity and therefore must not take life.<sup>218</sup> This case also said ubuntu balances interest of society with the individuals interest to maintain law and is not used for dehumanising and degrading persons.<sup>219</sup>

*Minister of Home Affairs v Fourie and Another*<sup>220</sup> it was pointed out that Freedom of Religion and Conscience and that freedom to have views on religious and moral issues as well as practicing those beliefs is the heart of our democracy.<sup>221</sup> Religious beliefs must be respected which is an essential argument in euthanasia.<sup>222</sup> Religious belief has capacity to awaken concepts like human dignity.<sup>223</sup> For believers, their relationship with God is central to them in meaningful ways.<sup>224</sup> Beliefs aid what is right and wrong.<sup>225</sup>

*S v Lawrence, S v Negal; S v Solberg*<sup>226</sup> said that the starting point of understanding the Right to Freedom of Religion is to acknowledge that the Constitution does not require the separation of state and religious bodies.<sup>227</sup> The essence of the right involves the right to entertain beliefs as one chooses freely meaning that the individual must be free from pressure of the state.<sup>228</sup> People have the right to engage in practices associated with their religion, these practices are protected even if it is not approved by everyone.<sup>229</sup> The court in this case pointed out that the

---

<sup>210</sup> 1994 (4) SA 674 (W).

<sup>211</sup> 1994 (4) SA 674 (W) 95.

<sup>212</sup> 1994 (4) SA 674 (W) 329.

<sup>213</sup> 1994 (4) SA 674 (W) 48.

<sup>214</sup> 1994 (4) SA 674 (W) 48.

<sup>215</sup> 1994 (4) SA 674 (W) 48.

<sup>216</sup> 1994 (4) SA 674 (W) 26.

<sup>217</sup> 1994 (4) SA 674 (W) 26.

<sup>218</sup> 1994 (4) SA 674 (W) 222.

<sup>219</sup> 1994 (4) SA 674 (W) 250.

<sup>220</sup> 2006 SA 524 (CC).

<sup>221</sup> De Vos et al *South African Constitutional Law in Context* 614.

<sup>222</sup> De Vos et al *South African Constitutional Law in Context* 614.

<sup>223</sup> 2006 SA 524 (CC) 89.

<sup>224</sup> 2006 SA 524 (CC) 89.

<sup>225</sup> 2006 SA 524 (CC) 89.

<sup>226</sup> 1997 ACC 11; 1997 (4) SA 1176 (CC); 1997 (10) BCLR 1348 (CC) 119.

<sup>227</sup> 1997 ACC 11; 1997 (4) SA 1176 (CC); 1997 (10) BCLR 1348 (CC) 119.

<sup>228</sup> 1997 ACC 11; 1997 (4) SA 1176 (CC); 1997 (10) BCLR 1348 (CC) 92.

<sup>229</sup> 1997 ACC 11; 1997 (4) SA 1176 (CC); 1997 (10) BCLR 1348 (CC) 92.

Right to Freedom of Religion would be infringed by direct or indirect coercion, which is happening in euthanasia.<sup>230</sup>

*Soobramoney v Minister of Health, KwaZulu-Natal*<sup>231</sup> is a case that dealt with the right not to be refused emergency medical treatment through s 27(3) of Constitution and the words "emergency medical treatment" within s 27(3) extends to broad construction which includes ongoing treatment to prolong life.<sup>232</sup> In reality there is no meaningful way to define the Right to Life constitutionally achieve the right indefinitely to evading death of someone.<sup>233</sup> Dying is part of life which is an important argument in euthanasia.<sup>234</sup> We could still influence that manner we die with our mortality in euthanasia.<sup>235</sup>

*Clarke v Hurst*<sup>236</sup> dealt with the issue of passive euthanasia.<sup>237</sup> The court said that the issue depends on the patients quality of life that has remained (which speaks to euthanasia).<sup>238</sup> That decision whether it is wrongful to discontinue the artificial feeding of the patient leading to the patient's death depends on those *boni mores* of society.<sup>239</sup> The court said that the patient's brain permanently lost the capacity to induce that physical and mental existence that qualified as human life, and the feeding no longer supported human life.<sup>240</sup> The court emphasized that the *curator personae* needs to act within the best interest of that patient.<sup>241</sup> The court still approached the best interest of the patients life with a strong view of preservation of life but they never required that life should be maintained at all costs irrespective of the quality of life.<sup>242</sup> The court said the patient expressed wishes to be euthanized which have to be considered.<sup>243</sup> The court allowed Mrs Clarke to discontinue that life-sustaining treatment.<sup>244</sup>

*S v Hartmann*<sup>245</sup> emphasized that mercy-killing is unlawful in South Africa and amounts to murder and if someone is engaging in it he/she will be criminally liable.<sup>246</sup> The accused charged with the murder for euthanizing his father who suffering from carcinoma of the prostate.<sup>247</sup> The court had found that the accused did not have a desire to end his father's life and his motive was compassionate as he wanted to relieve his fathers pain.<sup>248</sup> He knew that the act would inevitably terminate his father's life which meant he had intention and this was enough for murder.<sup>249</sup> The patient was in severe and continuous pain.<sup>250</sup> The patient was in extreme misery due to bodily wasting and depended on attendants for his simplest needs.<sup>251</sup> The patient's quality of life became meaningless to himself due to misery of pain and physical debility and he needed effects of the potent drugs used to free him of it.<sup>252</sup> A conflict was

---

<sup>230</sup> 1997 ACC 11; 1997 (4) SA 1176 (CC); 1997 (10) BCLR 1348 (CC) 120.

<sup>231</sup> 1998 (1) SA 765 (CC).

<sup>232</sup> 1998 (1) SA 765 (CC) 766.

<sup>233</sup> 1998 (1) SA 765 (CC) 57.

<sup>234</sup> 1998 (1) SA 765 (CC) 57.

<sup>235</sup> 1998 (1) SA 765 (CC) 57.

<sup>236</sup> 1992 (4) SA 630 (D).

<sup>237</sup> 1992 (4) SA 630 (D) 631.

<sup>238</sup> 1992 (4) SA 630 (D) 632.

<sup>239</sup> 1992 (4) SA 630 (D) 632.

<sup>240</sup> 1992 (4) SA 630 (D) 632.

<sup>241</sup> 1992 (4) SA 630 (D) 632.

<sup>242</sup> 1992 (4) SA 630 (D) 632.

<sup>243</sup> 1992 (4) SA 630 (D) 632.

<sup>244</sup> 1992 (4) SA 630 (D) 659.

<sup>245</sup> 1975 (3) SA 532 (C).

<sup>246</sup> 1975 (3) SA 532 (C) 533.

<sup>247</sup> 1975 (3) SA 532 (C) 533.

<sup>248</sup> 1975 (3) SA 532 (C) 535.

<sup>249</sup> 1975 (3) SA 532 (C) 535.

<sup>250</sup> 1975 (3) SA 532 (C) 537.

<sup>251</sup> 1975 (3) SA 532 (C) 537.

<sup>252</sup> 1975 (3) SA 532 (C) 537.

pointed out within the ethical principle namely to save life and to relieve pain and suffering in this euthanasia case.<sup>253</sup> The accused said that he acted within the best interest of his father.<sup>254</sup> Whether Hartmann's father consented to death was not a defence to escape that criminal liability.<sup>255</sup> If euthanasia is encouraged it would be detrimental to the safety of hospital patients, encourage other people to act in the same manner as had the accused and the practice of euthanasia provides opportunities to unscrupulous persons to further their own interests.<sup>256</sup> Hartmann was only sentenced to one year of imprisonment for murder which highlights South Africa's position on euthanasia.<sup>257</sup>

*Stransham-Ford v Minister of Justice and Correctional Services and Others*<sup>258</sup> "Stransham-Ford" dealt with physician assisted suicide and voluntary active euthanasia which is where the medical practitioner will assist and administer lethal drugs to the patient and the doctor will not be held criminally liable.<sup>259</sup> The court declared that the patient was a competent adult, that freely and voluntarily, without undue influence requested if he can be assisted in suicide.<sup>260</sup> The applicant was terminally ill, suffering and only had a few weeks to live.<sup>261</sup> The court said the applicant is to be entitled to be assisted but the doctor who is willing to end his life by administration of that lethal agent or he can provide that applicant with that lethal agent to administer death himself.<sup>262</sup> The court said that if the doctor engages in that request of the applicant he is not acting unlawfully.<sup>263</sup> The court held that prohibition of assisted suicide and voluntary active euthanasia were unjustifiable limitations of Mr Stransham-Ford's Right to Dignity and Right to Freedom to Bodily and Psychological Integrity.<sup>264</sup> In *Stransham-Ford* the court emphasized that Sachs J in *Soobramoney v Minister of Health, KwaZulu-Natal* said that it is a fundamental human right to be able to die with dignity which our courts are obliged in terms of ss 1(a), 7(2) and 8(3)(a) of the Constitution to advance, respect, protect, promote and fulfil.<sup>265</sup> The court in *Stransham-Ford* agreed contention.<sup>266</sup> This is a ground breaking recent case in South Africa, even though the courts never legalised euthanasia they emphasized that euthanasia is not unlawful.<sup>267</sup>

Unlike *S v Hartmann*<sup>268</sup> that saw euthanasia as murder, the court in *Stransham-Ford* said that common law crimes such as murder and culpable homicide in terms of medical practitioners should not be affected.<sup>269</sup> The court also acknowledged that suicide and attempted suicide are not crimes in South Africa.<sup>270</sup> It was emphasized that the state cannot fulfil socioeconomic demands, so it does not make sense to tell an individual of sound mind that is severely ill that he should still suffer indignity of the severe pain, and is not allowed to die within a dignified

---

<sup>253</sup> 1975 (3) SA 532 (C) 537.

<sup>254</sup> 1975 (3) SA 532 (C) 537.

<sup>255</sup> 1975 (3) SA 532 (C) 535.

<sup>256</sup> 1975 (3) SA 532 (C) 537.

<sup>257</sup> 1975 (3) SA 532 (C) 537.

<sup>258</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP).

<sup>259</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 51.

<sup>260</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 45.

<sup>261</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 45.

<sup>262</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 45.

<sup>263</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 45.

<sup>264</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 59.

<sup>265</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 62.

<sup>266</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 62.

<sup>267</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 45.

<sup>268</sup> 1975 (3) SA 532 (C).

<sup>269</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 53.

<sup>270</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 67.

manner.<sup>271</sup> If one can make choices regarding his life then he should be allowed to make a choice regarding his death.<sup>272</sup> Both cases looked at euthanasia differently.

### **Foreign Cases**

*In Carter v Canada*<sup>273</sup> This case is essential to euthanasia because it emphasized that laws are forcing people to take their own life because they will be afraid of getting to a point where suffering is intolerable.<sup>274</sup> The court also mentioned that the right to life is impinged when the law is imposing death or increased risk of death on individuals either directly or even indirectly.<sup>275</sup> The court said that the prohibition under assisted dying is not arbitrary as it helps protect people from being forced to commit suicide.<sup>276</sup> Rights of security of someone speaks to quality of life.<sup>277</sup> The individuals response to grievous and irremediable medical condition is critical to their dignity.<sup>278</sup> That prohibition stopping persons from that right to actually make decisions about their bodily integrity or medical care is infringing on their liberty.<sup>279</sup> The court said that s 241(b) and s 14 of the Criminal Code is void because it prohibits physician death for those adults that are competent and consented to termination of life, has a grievous and irremediable medical condition that caused enduring suffering which is intolerable to that person.<sup>280</sup>

*Cruzen v Director, Missouri Department of Health*,<sup>281</sup> dealt with the Right to Die in United States.<sup>282</sup> The court refused to order termination of life-support because there was no evidence showing the patient would have chosen that.<sup>283</sup> The case emphasized that even family members will not always act in the best interest of the patient in euthanasia.<sup>284</sup> During these times the state has to protect the patient from such abuses.<sup>285</sup> The court emphasized that preservation of life is a valid interest of the state.<sup>286</sup> This case is important in the research to show that the state has the interest in preservation of life and no one can assume the choice of the patient.<sup>287</sup>

The Postma Case was about a physician that had administered lethal dose of morphine to her mother that was deaf and partially paralyzed and kept asking her daughter to end her life.<sup>288</sup> The doctor had been convicted of death due to the request but was sentenced to 12 year imprisonment.<sup>289</sup> The case discussed active physician suicide and Dr Postmas goal was to cause death of the patient.<sup>290</sup> The court said that under such circumstances euthanasia and assisted suicide would be justifiable even if they are offences in criminal laws.<sup>291</sup> The Postma

---

<sup>271</sup> *Stranham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 63.

<sup>272</sup> *Stranham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 63.

<sup>273</sup> (AG) 2015 5 (SCC).

<sup>274</sup> (AG) 2015 5 (SCC) 11.

<sup>275</sup> (AG) 2015 5 (SCC) 11.

<sup>276</sup> (AG) 2015 5 (SCC) 11.

<sup>277</sup> (AG) 2015 5 (SCC) 11.

<sup>278</sup> (AG) 2015 5 (SCC) 11.

<sup>279</sup> (AG) 2015 5 (SCC) 11.

<sup>280</sup> (AG) 2015 5 (SCC) 8.

<sup>281</sup> 1990 U.S. 497 (SCC).

<sup>282</sup> 1990 U.S. 497 (SCC) 1.

<sup>283</sup> 1990 U.S. 497 (SCC) 2.

<sup>284</sup> 1990 U.S. 497 (SCC) 3.

<sup>285</sup> 1990 U.S. 497 (SCC) 3.

<sup>286</sup> 1990 U.S. 497 (SCC) 3.

<sup>287</sup> 1990 U.S. 497 (SCC) 3.

<sup>288</sup> The Postma Case.

<sup>289</sup> The Postma Case.

<sup>290</sup> The Postma Case.

<sup>291</sup> The Postma Case.

case is important as it changed the consciousness on euthanasia in Dutch law which led to legalisation in the Netherlands.<sup>292</sup>

In this chapter there was a discussion on case law that should be considered for determining if euthanasia should be legalized in South Africa. It was emphasized through *S v Hartmann*<sup>293</sup> that in South Africa euthanasia is a ground for murder.<sup>294</sup>

---

<sup>292</sup> The Postma Case.

<sup>293</sup> 1975 (3) SA 532 (C).

<sup>294</sup> 1975 (3) SA 532 (C) 537.

## CHAPTER 5:

### APPLICATION

**5.5** Chapter 5 discusses the position of the Constitution, legislation and case law regarding legalisation of euthanasia in South Africa. A discussion on the position of people's rights under the Constitution will prevail. The arguments for and against legalisation of euthanasia will be explored together with a discussion of the legislations position regarding these arguments. There will be a discussion on what case law has said regarding South Africa's legal position and the arguments for and against legalisation of euthanasia under case law.

#### 5.5.1 Legislation

The Right to Life and The Right to Dignity are entwined but the Constitution fails to consider the Right to die with dignity in s 11.<sup>295</sup> A right to live with dignity which is vital to the Right to Life.<sup>296</sup> The Right to Life is at the top and individuals cannot limit another person of their Right to Life unless it is necessary under s 36.<sup>297</sup> Under the Constitution terminally humans must not be treated in a cruel, degrading way which is expressed in s 12(1)(e).<sup>298</sup> In section 12(2)(b) the Constitution allows everyone to make choices over their body.<sup>299</sup> The Constitution also grants people the Right to Privacy under s 14.<sup>300</sup> If terminally ill patients are being treated without concern or respect from others then their right to privacy is breached.<sup>301</sup> In the Constitution persons have a right to freedom of conscience, religion, thought, belief and opinion under Section 15(1).<sup>302</sup> All these rights are not absolute and are limited by s 36.<sup>303</sup>

#### Why Euthanasia Should Be Legalized in South Africa and What Are The Criticisms of Euthanasia?

In South African law animals are allowed to be euthanized but human beings are not.<sup>304</sup> Through *Stransham-Ford*<sup>305</sup> we understand s 2(1)(e) of the **Animals Protection Act**<sup>306</sup> read with ss 5(1) and 8(1)(d), allows animals that are suffering to die with dignity but human beings that are alive and suffering cannot be euthanized.<sup>307</sup> When an animal is euthanatized it is merciful but when a person is euthanatized it is murder in South African law.<sup>308</sup>

Another argument supporting euthanasia is that the Right to Life is not really an absolute right.<sup>309</sup> The **Choice on Termination of Pregnancy Act**<sup>310</sup> has a purpose under of s 2(b)(iii), clearly allows abortion in rape cases.<sup>311</sup> In law a human being that was killed must have been alive which is why the life of the foetus is not protected.<sup>312</sup> In South Africa the foetus is not

---

<sup>295</sup> Konstant, A "Euthanasia Case in South Africa: Does the Right to Life include the Right to Die with Dignity?" June 2015 website at <https://ohrh.law.ox.ac.uk/euthanasia-case-in-south-africa-does-the-right-to-life-include-the-right-to-die-with-dignity/> [Accessed 22 April 2022].

<sup>296</sup> Srivastava, PK "Right to Live with Dignity: Constitutional Provision and Judicial Interpretation" ISSN (1) 25.

<sup>297</sup> Srivastava, PK "Right to Live with Dignity: Constitutional Provision and Judicial Interpretation" ISSN (1) 28.

<sup>298</sup> The Constitution.

<sup>299</sup> De Vos et al *South African Constitutional Law in Context* 572.

<sup>300</sup> The Constitution.

<sup>301</sup> De Vos et al *South African Constitutional Law in Context* 588.

<sup>302</sup> The Constitution.

<sup>303</sup> The Constitution.

<sup>304</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 27.

<sup>305</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP).

<sup>306</sup> S 2(1)(e) of Act 71 of 1962.

<sup>307</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 27.

<sup>308</sup> *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) 27.

<sup>309</sup> Shaw, AB "Two challenges to the double effect doctrine: euthanasia and abortion" 2022 ISSN (28) 103.

<sup>310</sup> Act 92 of 1996.

<sup>311</sup> S 2(b)(iii) of Act 92 of 1996.

<sup>312</sup> Hocter, SV & Snyman, CR *Snyman's Criminal Law* 7<sup>th</sup> ed (2017) 388.

regarded as human in law, but their life can be terminated which proves that Right to Life is not absolute.<sup>313</sup>

Euthanasia should be legalised because people in our law can choose to refuse or withdraw any medical treatment under the **National Health Care Act**.<sup>314</sup> Every person in South Africa is entitled to refuse medical treatment even where it will hasten their death.<sup>315</sup>

Euthanasia should be legalised because suicide and attempted suicide is not a crime in South Africa.<sup>316</sup> People commit suicide in South Africa daily.<sup>317</sup> This means that in South Africa if an individual attempts to commit suicide and fails, there will be no legal consequences because our law allows that.<sup>318</sup> If a person on the other hand assists or puts another person in the position to commit suicide they will be criminally liable in law.<sup>319</sup>

Euthanasia is a moral issue and most people criticise it because it is against their religion.<sup>320</sup> In South Africa that no human being has authority to kill another.<sup>321</sup> In light of the Right to Freedom of religion, belief and opinion, we must all respect each other's religious beliefs, opinions and not force it on each other.<sup>322</sup> Religious beliefs and opinions should not influence what our laws say because South Africa has a multicultural society where we have diverse opinions and beliefs on euthanasia.<sup>323</sup> Euthanasia is against the doctrine of sanctity of life which states that all human life has equal intrinsic value.<sup>324</sup> Life is a gift from god which must be cherished, therefore human beings should be valued no matter age, sex, gender etc.<sup>325</sup> Religion protects the Right to Life.<sup>326</sup>

Abuse of euthanasia can threaten principles like **ubuntu** in South Africa.<sup>327</sup> Ubuntu which is an African philosophy is the critical values of society such as respect, compassion, human dignity, which is very similar to elements of mercy killing.<sup>328</sup> Additionally it involves respecting people as humans.<sup>329</sup> Ubuntu should support the argument that euthanasia should be legalised because its principles such as human dignity, compassion and respect aligns with euthanasia.<sup>330</sup> However there are definitely situations where euthanasia has been abused in the countries that it is legal.<sup>331</sup> In Belgium for example deaf twins had been euthanized at their request when they went blind.<sup>332</sup> Abuse would definitely undermine the value of ubuntu

---

<sup>313</sup> Shaw, AB "Two challenges to the double effect doctrine: euthanasia and abortion" 2022 *ISSN* (28) 103.

<sup>314</sup> S 7(1)(e)(5) of Act 61 of 2003.

<sup>315</sup> Skeen, A "Living Wills and Advance Directives in South African Law" 2004 *Med Law* 937.

<sup>316</sup> Hocter, SV & Snyman, CR *Snyman's Criminal Law* 7<sup>th</sup> ed (2017) 388.

<sup>317</sup> Macrotrends "South Africa Suicide Rate" April 2022 website at <https://www.macrotrends.net/countries/ZAF/south-africa/suicide-rate> [Accessed on 21 April 2022].

<sup>318</sup> Hocter, SV & Snyman, CR *Snyman's Criminal Law* 7<sup>th</sup> ed (2017) 388.

<sup>319</sup> Hocter, SV & Snyman, CR *Snyman's Criminal Law* 7<sup>th</sup> ed (2017) 388.

<sup>320</sup> Institute of Clinical Bioethics "Religious Perspectives on Euthanasia" March 2011 website at <https://sites.sju.edu/icb/religious-perspectives-on-euthanasia/> [Accessed 18 October 2022].

<sup>321</sup> Institute of Clinical Bioethics "Religious Perspectives on Euthanasia" March 2011 website at <https://sites.sju.edu/icb/religious-perspectives-on-euthanasia/> [Accessed 18 October 2022].

<sup>322</sup> De Vos et al *South African Constitutional Law in Context* 614.

<sup>323</sup> De Vos et al *South African Constitutional Law in Context* 614.

<sup>324</sup> Perret, R "Buddhism, euthanasia and the sanctity of life" 1996 *PMCID* 310.

<sup>325</sup> Perret, R "Buddhism, euthanasia and the sanctity of life" 1996 *PMCID* 310.

<sup>326</sup> Perret, R "Buddhism, euthanasia and the sanctity of life" 1996 *PMCID* 310.

<sup>327</sup> Vivre Dans LA DIGNITE "Arguments Against Euthanasia" December 2016 website at <https://vivredignite.org/en/against-euthanasia/> [Accessed 18 October 2022].

<sup>328</sup> Rautenbach et al *Introduction to Legal Pluralism in South Africa* 29.

<sup>329</sup> Rautenbach et al *Introduction to Legal Pluralism in South Africa* 29.

<sup>330</sup> Rautenbach et al *Introduction to Legal Pluralism in South Africa* 29.

<sup>331</sup> Vivre Dans LA DIGNITE "Arguments Against Euthanasia" December 2016 website at <https://vivredignite.org/en/against-euthanasia/> [Accessed 18 October 2022].

<sup>332</sup> Vivre Dans LA DIGNITE "Arguments Against Euthanasia" December 2016 website at <https://vivredignite.org/en/against-euthanasia/> [Accessed 18 October 2022].

because its creating an impression that some lives are worth less than others which degrades and dehumanizing people.<sup>333</sup>

### **Recommendations and Suggestions Gathered in Other Countries for Legalisation of Euthanasia in South Africa**

Through Termination of Life on Request and Assisted Suicide Act<sup>334</sup> that allows euthanasia in the Netherlands, we must note that in Dutch law euthanasia has stayed as a criminal offence, but the act allows this offence and doctors are protected as long as they have fulfilled the requirements in the act.<sup>335</sup> The **Belgian Act on Euthanasia**,<sup>336</sup> suggests if euthanasia is ever legalised then people who are physically and mentally ill and suffering should have access to it and it proved that most people that engage in euthanasia are terminally ill.<sup>337</sup> Unlike Belgium, Bill C-14 that permits euthanasia in Canada but is seen as faulty because it is not open to everyone terminally ill that are suffering, people have to meet the requirements under the act to have access.<sup>338</sup>

**Project 86** would assists terminally ill patients in South Africa, but it has been completely ignored by Parliament.<sup>339</sup> Project 86 proposed 3 options for euthanasia in South Africa and if euthanasia is ever legalised in South Africa it would be regulated under legislation.<sup>340</sup> It recommended that persons who are terminally ill have to be of sound mind and mentally competent to make and communicate their decision to possibly be euthanized which is similar to requirements in the above mentioned countries.<sup>341</sup> The proposed legislation under Project 86 would limit abuse of euthanasia in South Africa whilst assisting the terminally ill patient but Project 86 does not have effect in our law.<sup>342</sup>

### **5.5.2 CASE LAW**

In light of **S v Makwanyane**<sup>343</sup> the Right to Dignity mutually supports the Right to Life and the two cannot be mutually exclusive because they are intertwined.<sup>344</sup> Through **S v Makwanyane**<sup>345</sup> we understand everyone should not be treated in a cruel, inhuman degrading way.<sup>346</sup> **S v Makwanyane**<sup>347</sup> versed the fact that the state has a duty to preserve life against the Right to Dignity and in the end still favoured the Right to Life.<sup>348</sup>

### **South Africa's Current Legal Position Regarding Euthanasia**

In Stransham-Ford the HC had legalised voluntary active euthanasia but the SCA overturned the HC judgement due to technical grounds and but not merits.<sup>349</sup> This means that the South African courts could be approached again in future and consider legalising voluntary active

---

<sup>333</sup> Vivre Dans LA DIGNITE "Arguments Against Euthanasia" December 2016 website at <https://vivredignite.org/en/against-euthanasia/> [Accessed 18 October 2022].

<sup>334</sup> Act of 2001.

<sup>335</sup> South Australian Voluntary Euthanasia Society "Voluntary Euthanasia in the Netherlands" 2017 1.

<sup>336</sup> S 3(1) of Act of 2002.

<sup>337</sup> Smets, TMA Bilsen, J Cohen, J Rurup, ML Deliens, L "Legal Euthanasia in Belgium Characteristics of All Reported Euthanasia Cases" 2010 (48) 187.

<sup>338</sup> Stewart, K "A Legislation Review: Bill C-14 Euthanasia or assisted dying" 2017 ISSN (2) 1.

<sup>339</sup> Ingle, R "End-of-life decisions" 2008 ISSN (98) 1.

<sup>340</sup> South African Law Commission Report, "Euthanasia and The Artificial Preservation Of Life" 1998 Project 86 (Xii)

<sup>341</sup> South African Law Commission Report, "Euthanasia and The Artificial Preservation Of Life" 1998 Project 86 233.

<sup>342</sup> Ingle, R "End-of-life decisions" 2008 ISSN (98) 1.

<sup>343</sup> 1994 (4) SA 674 (W).

<sup>344</sup> Steinmann, R "The core meaning of human dignity" 2016 ISSN (19) 1.

<sup>345</sup> 1994 (4) SA 674 (W).

<sup>346</sup> De Vos et al *South African Constitutional Law in Context* 581.

<sup>347</sup> 1994 (4) SA 674 (W).

<sup>348</sup> Steinmann, R "The core meaning of human dignity" 2016 ISSN (19) 1.

<sup>349</sup> Jordaan, DW "Human Dignity and the Future of the Voluntary Active Euthanasia debate in South Africa" 2017 ISSN (5) 383.

euthanasia.<sup>350</sup> Three corrective principles identified was that human dignity is voidable, human suffering will violate human dignity and the natural causes of suffering from terminal illness will not exclude applying human dignity.<sup>351</sup> This case focused on the Right to Life and The Right to Dignity and the Right to Control Ones Body.<sup>352</sup> In *Stransham-Ford* the court gave more weight to the Right to Dignity than to the Right to Life.<sup>353</sup> In South Africa the position is that euthanasia is considered a crime against life.<sup>354</sup> If X gave Y (who has cancer and in excruciating pain) a lethal injection to release him from the pain he will be liable for murder.<sup>355</sup> Murder is considered killing that is unlawful with intention.<sup>356</sup> *S v Hartmann*<sup>357</sup> said that mercy killing and active voluntary euthanasia is unlawful and there will be rise of a murder conviction.<sup>358</sup> Consenting to euthanasia is not a defence.<sup>359</sup> Therefore it is clear that euthanasia is illegal under South Africa's legal position.<sup>360</sup>

### Why Euthanasia Should Be Legalised in South Africa and What Are The Criticisms of Euthanasia?

Under *Clarke v Hurst*<sup>361</sup> it is clear that people in South Africa have a choice to discontinue that life-sustaining treatment which will hasten their death, which supports why euthanasia should be legalised.<sup>362</sup> Through this case it is clear that the terminally ill patients quality of life remaining should be considered under euthanasia.<sup>363</sup> The best interest of the terminally ill patient should also be considered in euthanasia.<sup>364</sup> The courts were not of the opinion that life should be maintained at all costs irrespective of the quality of life.<sup>365</sup> If the terminally ill patient has expressed wishes to be euthanized these wishes must be acknowledged.<sup>366</sup> *Soobramoney v Minister of Health, KwaZulu-Natal*<sup>367</sup> supports legalising of euthanasia because it emphasizes that we should not turn a blind eye to the fact that dying is part of life.<sup>368</sup> Terminally ill patients should therefore have a say in that manner they die in euthanasia because it is their life.<sup>369</sup>

It has been established that some are against euthanasia because of their religious beliefs but *S v Lawrence, S v Negal; S v Solberg*<sup>370</sup> points out that under the Right to Freedom of Religion people are allowed to choose their religion and beliefs freely and should not be pressured from the state.<sup>371</sup> Terminally ill patients cannot be direct and indirect coerced because they are judged by religious people's views against euthanasia.<sup>372</sup> In light of *Minister of Home Affairs v Fourie and Another*<sup>373</sup> regarding legalisation of euthanasia it is clear that

<sup>350</sup> Jordaan, DW "Human Dignity and the Future of the Voluntary Active Euthanasia debate in South Africa" 2017 *ISSN* (5) 383.

<sup>351</sup> Jordaan, DW "Human Dignity and the Future of the Voluntary Active Euthanasia debate in South Africa" 2017 *ISSN* (5) 383.

<sup>352</sup> Jordaan, DW "Human Dignity and the Future of the Voluntary Active Euthanasia debate in South Africa" 2017 *ISSN* (5) 383.

<sup>353</sup> Steinmann, R "The core meaning of human dignity" 2016 *ISSN* (19) 1.

<sup>354</sup> Hocter, SV & Snyman, CR *Snyman's Criminal Law* 7<sup>th</sup> ed (2017) 387.

<sup>355</sup> Hocter, SV & Snyman, CR *Snyman's Criminal Law* 7<sup>th</sup> ed (2017) 387.

<sup>356</sup> Hocter, SV & Snyman, CR *Snyman's Criminal Law* 7<sup>th</sup> ed (2017) 387.

<sup>357</sup> 1975 (3) SA 532 (C).

<sup>358</sup> Hocter, SV & Snyman, CR *Snyman's Criminal Law* 7<sup>th</sup> ed (2017) 103.

<sup>359</sup> Hocter, SV & Snyman, CR *Snyman's Criminal Law* 7<sup>th</sup> ed (2017) 103.

<sup>360</sup> Hocter, SV & Snyman, CR *Snyman's Criminal Law* 7<sup>th</sup> ed (2017) 387.

<sup>361</sup> 1992 (4) SA 630 (D).

<sup>362</sup> 1992 (4) SA 630 (D) 659.

<sup>363</sup> 1992 (4) SA 630 (D) 632.

<sup>364</sup> 1992 (4) SA 630 (D) 632.

<sup>365</sup> 1992 (4) SA 630 (D) 632.

<sup>366</sup> 1992 (4) SA 630 (D) 632.

<sup>367</sup> 1998 (1) SA 765 (CC).

<sup>368</sup> 1998 (1) SA 765 (CC) 57.

<sup>369</sup> 1998 (1) SA 765 (CC) 57.

<sup>370</sup> 1997 ACC 11; 1997 (4) SA 1176 (CC); 1997 (10) BCLR 1348 (CC) 119.

<sup>371</sup> 1997 ACC 11; 1997 (4) SA 1176 (CC); 1997 (10) BCLR 1348 (CC) 92.

<sup>372</sup> 1997 ACC 11; 1997 (4) SA 1176 (CC); 1997 (10) BCLR 1348 (CC) 120.

<sup>373</sup> 2006 SA 524 (CC).

there must be freedom to hold religious and moral views which have to be respected.<sup>374</sup> Some people criticise against euthanasia because of their religious views but even these views must be respected, but where a terminally ill patient is a non-believer and believes that euthanasia will put an end to their pain/suffering (rejects the religious views on euthanasia) then this belief must be respected to.<sup>375</sup> All views on euthanasia must be respected in the democracy of South Africa.<sup>376</sup>

***Cruzen v Director, Missouri Department of Health***,<sup>377</sup> showed us that we cannot end life sustaining treatment for an individual without a living will because no person can assume the choice of that person.<sup>378</sup> The case illustrated that euthanasia should not be legalised because incompetent persons is not constitutionally protected as the competent individual who can refuse treatment which applies to euthanasia.<sup>379</sup> The state in these cases will protect vulnerable individuals.<sup>380</sup>

### **Recommendations and Suggestions Gathered in Other Countries for Legalisation of Euthanasia**

***Carter v Canada***<sup>381</sup> taught us that legislation preventing euthanasia forces people to take their own life because they avoid getting to that point where suffering is intolerable.<sup>382</sup> The right to life is impinged if law imposes death or increases risk of death.<sup>383</sup> The court noted that legalizing euthanasia could lead to abuse and to minimize that abuse the court recommended legislation to govern euthanasia and said that it must be performed by a licensed doctor.<sup>384</sup>

**The Postma Case** paved the way for legalization of euthanasia in the Netherlands.<sup>385</sup> Postma had been found guilty of assisting her mother to die she was only granted a one week suspension sentence as well as 12 months probation.<sup>386</sup> The court took into account doctors act in the best interest of that patient in euthanasia.<sup>387</sup> After this case the Dutch legislation got created to administer euthanasia which led to Termination of Life on Request and Assisted Suicide (Review Procedures) Act<sup>388</sup> was enacted in 2002.<sup>389</sup>

**5.5.3** In South Africa the legislation is very clear that mercy killing for human beings is a crime against life and it is not allowed in the Republic even though suicide and attempted suicide is allowed.<sup>390</sup> People are allowed to commit suicide but where an individual has assisted another or puts another individual in the position to commit suicide then that person will be criminally liable in the law for murder.<sup>391</sup> *S v Hartmann*<sup>392</sup> showed us that mercy-killing is unlawful within South Africa, it is considered murder and any human being who is participating in it will be

<sup>374</sup> De Vos et al *South African Constitutional Law in Context* 614.

<sup>375</sup> De Vos et al *South African Constitutional Law in Context* 614.

<sup>376</sup> De Vos et al *South African Constitutional Law in Context* 614.

<sup>377</sup> 1990 U.S. 497 (SCC).

<sup>378</sup> National Library of Medicine "Cruzen v Director, Missouri Department of Health" 1990 *PMID* 1.

<sup>379</sup> National Library of Medicine "Cruzen v Director, Missouri Department of Health" 1990 *PMID* 1.

<sup>380</sup> National Library of Medicine "Cruzen v Director, Missouri Department of Health" 1990 *PMID* 1.

<sup>381</sup> (AG) 2015 5 (SCC).

<sup>382</sup> (AG) 2015 5 (SCC) 11.

<sup>383</sup> (AG) 2015 5 (SCC) 11.

<sup>384</sup> Chan, B & Sommerville, M "Converting The 'Right to Life' To The 'Right To Physician-Assisted Suicide And Euthanasia': An Analysis of Carter v Canada (Attorney General), Supreme Court Of Canada" 2016 *Medical Law Review* (24) 143.

<sup>385</sup> South Australian Voluntary Euthanasia Society "Voluntary Euthanasia in the Netherlands" 2017 1.

<sup>386</sup> South Australian Voluntary Euthanasia Society "Voluntary Euthanasia in the Netherlands" 2017 1.

<sup>387</sup> South Australian Voluntary Euthanasia Society "Voluntary Euthanasia in the Netherlands" 2017 1.

<sup>388</sup> Act of 2001.

<sup>389</sup> South Australian Voluntary Euthanasia Society "Voluntary Euthanasia in the Netherlands" 2017 1.

<sup>390</sup> Hocter, SV & Snyman, CR *Snyman's Criminal Law* 7<sup>th</sup> ed (2017) 388.

<sup>391</sup> Hocter, SV & Snyman, CR *Snyman's Criminal Law* 7<sup>th</sup> ed (2017) 388.

<sup>392</sup> 1975 (3) SA 532 (C).

criminally liable.<sup>393</sup> Section 11 in the Constitution does not include a right to die with dignity for human beings even though the Right to Life and The Right to Dignity are intertwined.<sup>394</sup>

In this chapter the position of the Constitution, legislation and case law in terms of whether euthanasia should be legalised in South Africa was discussed. The position of the terminally ill patients' rights under the Constitution was discussed. The arguments for and against legalisation of euthanasia was discussed with the legislations position regarding those arguments. The case law was mentioned and South Africa's legal position regarding euthanasia and lastly the case law under the arguments for and against legalisation of euthanasia was discussed.

---

<sup>393</sup> 1975 (3) SA 532 (C) 533.

<sup>394</sup> Konstant, A "Euthanasia Case in South Africa: Does the Right to Life include the Right to Die with Dignity?" June 2015 website at <https://ohrh.law.ox.ac.uk/euthanasia-case-in-south-africa-does-the-right-to-life-include-the-right-to-die-with-dignity/> [Accessed 22 April 2022].

## CHAPTER 6:

### CONCLUSION

**6.6** Chapter 6 will conclude whether euthanasia should be legalised in South Africa and which right triumphs between the Right to Life and the Right to Dignity. To achieve this all research questions will be answered and the interpretation of the Right to Life and the Right to Dignity will be discussed. The recommendations/suggestions in law in Netherlands, Belgium and Canada will be mentioned. Project 86 will be mentioned following a conclusion thereafter.

Euthanasia is the state and a personal responsibility issue.<sup>395</sup> Whether euthanasia should be legalised in South Africa is clearly not a straightforward answer. It is evident that euthanasia complicates life in society, philosophy, theology, ethics, medicine and even jurisprudence.<sup>396</sup> In euthanasia it seems the conflict is the choice between the Right to Life and the Right to Dignity.<sup>397</sup>

Under South Africa's current legal position, euthanasia is illegal.<sup>398</sup> Euthanasia should be legalised because people should be treated with the same dignity to die a merciful death as animals are under the **Animals Protection Act**,<sup>399</sup> women can deprive the foetus of life under the **Choice on Termination of Pregnancy Act**,<sup>400</sup> everybody has a choice to withdraw or even refuse treatment under the **National Health Care Act**,<sup>401</sup> and committing suicide is allowed.<sup>402</sup> The criticism against euthanasia stems from religion but it is wrong to force such beliefs on one another in a diverse country.<sup>403</sup> Ubuntu would stand with legalising euthanasia because they have the same principles but any abuse of euthanasia automatically undermines ubuntu values.<sup>404</sup>

When interpreting the Bill of Rights the court must promote values which underlie our open and democratic society which is based on equality freedom and human dignity.<sup>405</sup> Section 39 also mentions that the court has to consider international law and may consider the foreign law.<sup>406</sup> Every interpretation of legislation includes promoting that spirit purport and objects of our Bill of Rights.<sup>407</sup> With that said the Right to Life and The Right to dignity stand entwined.<sup>408</sup> *S v Makwanyane*<sup>409</sup> made that very clear.<sup>410</sup> Even though in euthanasia there is a conflict, these rights cannot under any circumstances be mutually exclusive to one another in interpretation.<sup>411</sup> Human dignity has to support the Right to Life and without dignity there is no life.<sup>412</sup> With regards to interpretation these rights must therefore not compete with one another

---

<sup>395</sup> Hoxhaj, O "Euthanasia- The Choice between The Right to Life and Human Dignity" 2014 *ISSN* (3) 280.

<sup>396</sup> Hoxhaj, O "Euthanasia- The Choice between The Right to Life and Human Dignity" 2014 *ISSN* (3) 280.

<sup>397</sup> Hoxhaj, O "Euthanasia- The Choice between The Right to Life and Human Dignity" 2014 *ISSN* (3) 280.

<sup>398</sup> Hocter, SV & Snyman, CR *Snyman's Criminal Law* 7<sup>th</sup> ed (2017) 388.

<sup>399</sup> S 2(1)(e) of Act 71 of 1962.

<sup>400</sup> Act 92 of 1996.

<sup>401</sup> S 7(1)(e)(5) of Act 61 of 2003.

<sup>402</sup> Hocter, SV & Snyman, CR *Snyman's Criminal Law* 7<sup>th</sup> ed (2017) 388.

<sup>403</sup> Institute of Clinical Bioethics "Religious Perspectives on Euthanasia" March 2011 website at <https://sites.sju.edu/icb/religious-perspectives-on-euthanasia/> [Accessed 18 October 2022].

<sup>404</sup> Rautenbach et al *Introduction to Legal Pluralism in South Africa* 29.

<sup>405</sup> The Constitution.

<sup>406</sup> The Constitution.

<sup>407</sup> The Constitution.

<sup>408</sup> Steinmann, R "The core meaning of human dignity" 2016 *ISSN* (19) 1.

<sup>409</sup> 1994 (4) SA 674 (W) 326.

<sup>410</sup> 1994 (4) SA 674 (W) 326.

<sup>411</sup> Steinmann, R "The core meaning of human dignity" 2016 *ISSN* (19) 1.

<sup>412</sup> Rebus, De "Law and human dignity at odds over assisted suicide" October 2015 website at <https://www.derebus.org.za/law-human-dignity-odds-assisted-suicide/> [Accessed 20 July 2022].

even in conflicts such as euthanasia.<sup>413</sup> *S v Makwanyane*<sup>414</sup> also proves that in this conflict where the Right to Life versus the Right to Dignity, the Right to Life exceeds the Right to Dignity.<sup>415</sup> Through s 39(2) it is clear that these rights should be read in a way that supports each other and that will uplift the Bill of Rights.<sup>416</sup>

The Right to Life will Triumph the Right to Dignity in the Republic of South Africa.<sup>417</sup> Even though Project 86 is proposed legislation, it creates hope that euthanasia in South Africa is possible for terminally ill patients which is why there needs to be a decision made regarding Project 86.<sup>418</sup> It is a problem that there is a huge gap in our law in relation to euthanasia.<sup>419</sup> Continuation of not legalising euthanasia to preserve the Right to Life is denying terminally ill patients that are suffering a right to die in dignity in South Africa because it just prolongs their suffering.<sup>420</sup> ***Carter v Canada***<sup>421</sup> also highlighted that legislation preventing euthanasia forces individuals to take their own life because they do not want a life of intolerable continued suffering and these legislations ultimately increase suicide.<sup>422</sup> Guaranteeing a terminally ill patient a dignified life till the very end is still better than formally protecting the Right to Life.<sup>423</sup> Therefore, euthanasia should be allowed for terminally ill patients in South Africa.

From the Netherlands, the Termination of Life on Request and Assisted Suicide Act<sup>424</sup> we gather that euthanasia can remain criminal offence but be allowed in legislation and doctors would be protected from prosecution as long as they follow all requirements, which is a good recommendation for legalisation of euthanasia in South Africa.<sup>425</sup> In Belgium, the **Belgian Act on Euthanasia**,<sup>426</sup> we gather that terminally ill people that are suffering as well as people suffering mentally can access euthanasia, this is a good suggestion that can be considered for legalisation of euthanasia in South Africa.<sup>427</sup> Even though Bill C-14 in Canada is faulty it still allows euthanasia in Canada for people that are terminally ill as long as they meet requirements in the act which is still a good recommendation for South Africa.<sup>428</sup>

In Conclusion euthanasia should be legalised in South Africa for terminally ill patients even though the Right to Life triumphs the Right to Dignity. The research questions have been answered in this chapter. There was a discussion regarding interpretation of the Right to Life and the Right to Dignity through s 39 and *S v Makwanyane* aiding the conclusion.<sup>429</sup> There was also a discussion on project 86. The recommendations/suggestion from Netherlands, Belgium and Canada have been mentioned. There was lastly a conclusion drawn that euthanasia should be legalised for terminally ill patients in South Africa.

---

<sup>413</sup> Steinmann, R "The core meaning of human dignity" 2016 *ISSN* (19) 1.

<sup>414</sup> 1994 (4) SA 674 (W) 326.

<sup>415</sup> Steinmann, R "The core meaning of human dignity" 2016 *ISSN* (19) 1.

<sup>416</sup> The Constitution.

<sup>417</sup> Steinmann, R "The core meaning of human dignity" 2016 *ISSN* (19) 1.

<sup>418</sup> South African Law Commission Report, "Euthanasia and The Artificial Preservation Of Life" 1998 *Project 86* 233.

<sup>419</sup> Hoxhaj, O "Euthanasia- The Choice between The Right to Life and Human Dignity" 2014 *ISSN* (3) 280.

<sup>420</sup> Hoxhaj, O "Euthanasia- The Choice between The Right to Life and Human Dignity" 2014 *ISSN* (3) 280.

<sup>421</sup> (AG) 2015 5 (SCC).

<sup>422</sup> (AG) 2015 5 (SCC) 11.

<sup>423</sup> Hoxhaj, O "Euthanasia- The Choice between The Right to Life and Human Dignity" 2014 *ISSN* (3) 281.

<sup>424</sup> Act of 2001.

<sup>425</sup> South Australian Voluntary Euthanasia Society "Voluntary Euthanasia in the Netherlands" 2017 1.

<sup>426</sup> S 3(1) of Act of 2002.

<sup>427</sup> Smets, TMA Bilsen, J Cohen, J Rurup, ML Deliens, L "Legal Euthanasia in Belgium Characteristics of All Reported Euthanasia Cases" 2010 (48) 187.

<sup>428</sup> Stewart, K "A Legislation Review: Bill C-14 Euthanasia or assisted dying" 2017 *ISSN* (2) 1.

<sup>429</sup> 1994 (4) SA 674 (W) 326.

## **REFERENCE LIST**

### **TABLE OF STATUTES**

Animals Protection Act 71 of 1962

Belgian Act on Euthanasia of May, of 2002.

Choice on Termination of Pregnancy Act 92 of 1996.

National Health Care Act 61 of 2003.

Termination of Life on Request and Assisted Suicide Act of 2001.

The Constitution of the Republic of South Africa 1996.

## **TABLE OF CASES**

*Clarke v Hurst* 1992 (4) SA 630 (D).

*Minister of Home Affairs v Fourie and Another* 2006 SA 524 (CC).

*S v Hartmann* 1975 (3) SA 532 (C).

*S v Lawrence, S v Negal; S v Solberg* 1997 ACC 11; 1997 (4) SA 1176 (CC); 1997 (10) BCLR 1348 (CC).

*S v Makwanyane* 1994 (4) SA 674 (W).

*Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) SA 765 (CC).

*Stransham-Ford v Minister of Justice and Correctional Services and Others* 2015 (4) SA 50 (GP).

### **Foreign Cases**

*Carter v Canada* (AG) 2015 5 (SCC).

*Cruzen v Director, Missouri Department of Health*, 1990 U.S. 497 (SCC).

The Postma Case.

## BOOKS

De Vos, P & Freedman, W (Eds) Boggenpoel, Z Lisa, D Gevers, C Govender, K Lenaghan, P Weeks, SM Namakula, C Ntlama, N Mailula, D Moyo, K Sibanda, S Stone, L *South African Constitutional Law in Context* 2<sup>nd</sup> ed (2021) Oxford: Cape Town.

Hocter, SV & Snyman, CR *Snyman's Criminal Law* 7<sup>th</sup> ed (2017) LexisNexis: Cape Town.

Rautenbach, C (ed) Waheeda, A Francette, G Chuma, H Najma, M Caroline, MW Nomtahndazo, NM Olivier, NJJ Fatima, O Devina, P Pienaar, JM Rautenbach, C Tshivhase, AE *Introduction to Legal Pluralism in South Africa* 6<sup>th</sup> ed (2021) LexisNexis: Cape Town.

## ARTICLES

Banovic, B & Turanjanin, V "Euthanasia: Murder or Not: A Comparative Approach" 2014 *PMCID* (43) 1.

Banovic, B & Turanjanin, V "Euthanasia: Murder or Not: A Comparative Approach" 2014 *PMCID* (43) 1.

Boudreau, JD & Somerville, MA "Euthanasia and assisted suicide: A physicians and ethicists perspective" 2014 1-4.

Chan, B & Sommerviller, M "Converting The 'Right to Life' To The 'Right To Physician-Assisted Suicide And Euthanasia': An Analysis of Carter v Canada (Attorney General), Supreme Court Of Canada" 2016 *Medical Law Review* (24) 143- 175.

Chris, L Smyre, BA John, D Yoon, MD Kenneth, A Rasinski, PD Farr, A Curlin, MD "Limits and responsibilities of physicians addressing spiritual suffering in terminally ill patients" 2015 (49) 561-569.

Firmansyah, Y Wijaya, H Setiadi, W "Two sides of euthanasia: mercy-killing or evil according to human rights, religion, ethics and the law" 2020 (6) *ISSN* 111-118.

Hoxhaj, O "Euthanasia- The Choice between The Right to Life and Human Dignity" 2014 *ISSN* (3) 279-284.

Ingle, R "End-of-life decisions" 2008 *ISSN* (98) 1.

Jacobs, RK "Legalizing physician-assisted suicide in South Africa: Should it even be considered" 2019 *ISSN* (11) 66.

Jordaan, DW "Human Dignity and the Future of the Voluntary Active Euthanasia debate in South Africa" 2017 *ISSN* (5) 383-383.

Kakadia, M & Kanaki, NS "Mercy Killing Methods in Animals" 2011 *ISSN* (2) 44-59.

Math, SB & Chaturvedi, SK "Euthanasia: Right to Life vs Right to Die" 2012 *PMCID* (6) 899-902.

National Library of Medicine "Cruzen v Director, Missouri Department of Health" 1990 *PMID* 1.

Pereira, J "Legalizing Euthanasia Or Assisted Suicide: The Illusion Of Safeguards And Control" 2012 *PMCID* 38-45.

Perret, R "Buddhism, euthanasia and the sanctity of life" 1996 *PMCID* 309-313.

Serfontein, EM "The nexus between the right to life and to a basic education in South Africa" 2015 *ISSN* (18) 1.

Shaw, AB "Two challenges to the double effect doctrine: euthanasia and abortion" 2022 *ISSN* (28) 102-103.

Shaw, AB "Two challenges to the double effect doctrine: euthanasia and abortion" 2022 *ISSN* (28) 102-103.

Skeen, A "Living Wills and Advance Directives in South African Law" 2004 *Med Law* 937.

Smets, TMA Bilsen, J Cohen, J Rurup, ML Deliens, L "Legal Euthanasia in Belgium Characteristics of All Reported Euthanasia Cases" 2010 (48) 187.

South African Law Commission Report, "Euthanasia and The Artificial Preservation Of Life" 1998 *Project 86* 1-237.

South Australian Voluntary Euthanasia Society "Voluntary Euthanasia in the Netherlands" 2017 1.

Srivastava, PK "Right to Live with Dignity: Constitutional Provision and Judicial Interpretation" 2018 *ISSN* (1) 25-31.

Steinmann, R "The core meaning of human dignity" 2016 *ISSN* (19) 1.

Stewart, K "A Legislation Review: Bill C-14 Euthanasia or assisted dying" 2017 *ISSN* (2) 1.

Stewart, K "A Legislation Review: Bill C-14 Euthanasia or assisted dying" 2017 *ISSN* (2) 1-4.

Van der Akker, B "Euthanasia and International Human Rights Law Prolegomena for International debate" 1997 *ISSN* 1.

## WEB RESOURCES

Chand, K "Why We Should Make Euthanasia Legal" July 2009 website at <https://www.theguardian.com/society/joepublic/2009/jul/01/euthanasia-assisted-suicide-uk> [Accessed 12 April 2022].

Cornell Law School "Blackletter Law" May 2020 website at [https://www.law.cornell.edu/wex/blackletter\\_law](https://www.law.cornell.edu/wex/blackletter_law) [Accessed on 21 April 2022].

Department of Justice "Legislative Background: Medical Assistance in Dying (Bill C-14)" June 2016 website at <https://www.justice.gc.ca/eng/rp-pr/other-autre/ad-am/p2.html> [Accessed on 13 September 2022].

Du Sart, A "Euthanasia – My Life My Choice?" October 2018 website at <https://www.lexology.com/library/detail.aspx?g=473ffd5d-7e02-439a-b20a-bef4d2cd866c> [Accessed 11 April 2022].

Dying With Dignity Canada "Bringing up MAID in Canada" January 2022 blog at <https://www.dyingwithdignity.ca/education-resources/conference-bringing-up-maid-in-canada-january2022/> [Accessed on 31 May 2022].

Institute of Clinical Bioethics "Religious Perspectives on Euthanasia" March 2011 website at <https://sites.sju.edu/icb/religious-perspectives-on-euthanasia/> [Accessed 18 October 2022].

Konstant, A "Euthanasia Case in South Africa: Does the Right to Life include the Right to Die with Dignity?" June 2015 website at <https://ohrh.law.ox.ac.uk/euthanasia-case-in-south-africa-does-the-right-to-life-include-the-right-to-die-with-dignity/> [Accessed 22 April 2022].

Macrotrends "South Africa Suicide Rate" April 2022 website at <https://www.macrotrends.net/countries/ZAF/south-africa/suicide-rate> [Accessed on 21 April 2022].

Rebus, De "Law and human dignity at odds over assisted suicide" October 2015 website at <https://www.derebus.org.za/law-human-dignity-odds-assisted-suicide/> [Accessed 20 July 2022].

Vivre Dans LA DIGNITE "Arguments Against Euthanasia" December 2016 website at <https://vivredignite.org/en/against-euthanasia/> [Accessed 18 October 2022].

## **Dissertations**

Grove *Framework For The Implementation of Euthanasia In South Africa* (University of Pretoria) 2007 5.