

Scientific
Journal of
**Applied
Social and
Clinical
Science**

EUTHANASIA AS PART OF THE RIGHT TO LIFE

Caroline de Paula Cavalcante Parahyba

Lawyer and Master's student in

Constitutional Law at the Federal University
of Ceará

<http://lattes.cnpq.br/3098580576550964>

All content in this magazine is licensed under a Creative Commons Attribution License. Attribution-Non-Commercial-Non-Derivatives 4.0 International (CC BY-NC-ND 4.0).



Abstract: This article aims to investigate the possibility of legalizing the practice of euthanasia, from the perspective that a dignified death is part of the very right to life. Without forgetting, however, to make conceptual and general considerations about euthanasia, analyze Brazilian legislation, the arguments for and against the practice of euthanasia in Brazil, in addition to conducting a study on the practice of euthanasia in Colombia. In addition, it is an exploratory and explanatory research carried out through a bibliographic review, using the hypothetical-deductive scientific method and revealing itself, in the field of results, in qualitative research, as it will lend itself to increasing knowledge., by the researcher and the reader on the topic addressed. Finally, the article is justified in view of the gaps in the law in relation to the practice of active euthanasia and the possibility of inserting, in the Brazilian legal system, a law that regularizes the subject, considering the perspective of personality rights, especially considering that in Brazil, orthothanasia (passive euthanasia) is already accepted, based on Administrative Resolution No. 1805/06 of the Federal Council of Medicine.

Keywords: Euthanasia, Dignified Death, Right to life.

INTRODUCTION

Euthanasia is a practice of providing a dignified death to a person who is affected by an incurable disease, whose evolution of the disease causes suffering. In some countries, such as the Netherlands, Belgium, Luxembourg, Colombia and Spain, the practice of euthanasia is legalized, however, the same does not occur in Brazil, and the agent who commits this practice on another is subject to penalization for the crime of homicide.

In Brazil, this criminalization has the consequence that many health professionals

perform procedures that prolong the life of terminal patients a little longer, often against their will, not only for fear of affecting the chances of negligence if they fail to do so, but also on the grounds of trying to save their lives at any cost.

Thus, much is said about the inviolable right to life as one of the main arguments in opposition to the legalization of euthanasia, however, the right to life and the right to a dignified death are not conflicting, they must be analyzed from the perspective of personality rights, which are essential to the dignity and integrity of the human person, as they seek to protect the intrinsic attributes of the person, such as life, honor, privacy, image, intimacy, among countless others.

In this context, this article aims to investigate the possibility of legalizing the practice of euthanasia, given that a dignified death is part of the very right to life. Without forgetting, however, to make conceptual and general considerations about euthanasia, analyze Brazilian legislation, the arguments for and against the practice of euthanasia in Brazil, in addition to conducting a study on the practice of euthanasia in Colombia.

In addition, it is an exploratory and explanatory research carried out through a bibliographic review, using the hypothetical-deductive scientific method and revealing itself, in the field of results, in qualitative research, as it will lend itself to increasing knowledge., by the researcher and the reader on the topic addressed.

Finally, the article is justified in view of the gaps in the law in relation to the practice of active euthanasia and the possibility of inserting, in the Brazilian legal system, a law that regularizes the subject, considering the perspective of personality rights, especially considering that in Brazil, orthothanasia (passive euthanasia) is already accepted, based on Administrative Resolution No. 1805/06 of

the Federal Council of Medicine.

EUTHANASIA WITHIN THE PERSPECTIVE OF PERSONAL RIGHTS

Personality rights seek to protect the individual characteristics that are proper to each individual, that is to say, it protects the individual's particular attributes, as well as the attributes of these resulting from living in society. Therefore, the rights of the personality protect from the psychological field to the physical field of the individual.¹

Within this perspective of personality rights, psychophysical integrity and the right to life underlie the right to die with dignity.² Euthanasia is just one of the types of humanized death, which is why it is necessary to define this conduct and distinguish it from the others, to define the practice analyzed in the present work, as explained below.

EUTHANASIA CONCEPT AND DISTINCTION BETWEEN DYSTHANASIA, MYSTHANASIA AND ASSISTED SUICIDE

The word Euthanasia originates from the Greek and means "good death", thus, the practice consists of shortening the life of a terminally ill patient, in order to free him from intolerable suffering.³

This practice can occur through action or omission on the part of family members

or the doctor accompanying the patient. Thus, it is called active euthanasia, when an action is adopted, taking an attitude to end life and, consequently, the suffering of the patient, however, it is called passive euthanasia or orthothanasia, if the conduct is a non-compliance. act, limiting or suspending treatment that extend the life of the terminally ill patient, respecting the natural process of death and adopting only palliative measures to reduce the pain of symptoms.⁴

Orthothanasia is not to be confused with dysthanasia, it is characterized by the practice of extending clinical therapeutic treatment, knowing that this will not bring a cure, much less, an improvement for the sick patient, only prolonging his suffering.⁵

In the same way, mysthanasia also diverges from active euthanasia and orthothanasia, in fact, they are true opposites, since it is not even a dignified death. In mysthanasia, although life is also shortened, it does not occur due to the patient's autonomy or the natural course of the disease, but rather due to the lack or precariousness of medical and hospital care.⁶

Regarding the patient's consent and autonomy, euthanasia can be voluntary, which consists of when the practice occurs with the express, free and informed consent of the patient, regarding his/her will to end his/her own life, as it can also be non-voluntary, which are the cases in which the patient's family decides to shorten his life, since he is unable

1. DE FREITAS, Riva Sobrado; ZILIO, Daniela. Personality rights in the search for the dignity of living and dying: the right to (dignified) death as a corollary of the right to (dignified) life. *Journal of Fundamental Rights and Guarantees*, v. 17, no. 1, p. 174, 2016.

2. Ibid, p. 180.

3. Siqueira Batista, Rodrigo; Schramm, Fermin Roland. **On the banks of Acheron: finitude, autonomy, protection and compassion in the bioethical debate on euthanasia**. Rio de Janeiro, 2006.p.2. Doctoral Thesis – Oswaldo Cruz Foundation, National School of Public Health.

4. TIBUSCKI, Diogo; PSCHIEDT, Ana Cássia Gatelli. Right to choose to die versus right to life: reflections on euthanasia. *Academy of Law*, vol. 2, p. 213, 2020.

5. BRANDÃO, Ana Flávia Bacelar; THEODORO, Ana Laura Teixeira Martelli. The self-determination of the individual and the right to die. *ETIC-SCIENTIFIC INITIATION MEETING-ISSN 21-76-8498*, v. 17, no. 17, 2021, p.7.

6. SIQUEIRA, Sandro Feitosa et al. Misthanasia or social euthanasia: the unhappy death in the sus and the violation of the principle of human dignity. *Graduation Notebook-Human and Social Sciences-UNIT-SERGIPE*, v. 6, no. 2, p. 103, 2020.

to consent to the euthanasia practice and has not expressed his desire for the shortening of life, while conscious, if he were in a terminal health condition, such as the patient in a deep coma.⁷

In this sense, the priority is always the autonomy of the patient, that is, in cases where the patient in terminal conditions has the discernment to choose, another person will never be able to decide, for him, for the euthanasic practice, under penalty of homicide.⁸

Unlike euthanasia, in which benign death is caused by family members or the assistant physician of the terminally ill patient, assisted suicide occurs when the incurable patient asks the doctor for help to shorten his life and he himself uses the prescribed medication and commits suicide.⁹

Therefore, assisted suicide is distinguished from euthanasia by the figure of the agent that causes death, since this is caused by the doctor or family members and that by the terminally ill patient himself.

Assisted suicide is legal in several countries such as Switzerland, Germany, Canada, South Africa, Colombia and the US states of Oregon, Washington, Montana, Vermont and California, where it usually occurs through a dose of liquid sodium pentobarbital., in which the person falls asleep in just 5 minutes and goes into a deep coma, dying soon after.

7. McCONNELL , Terrance . **inalienable rights: the limits of consent in medicine and the law** . Oxford: Oxford University, 2000. p. 88.

8. TIBUSCKI, Diogo; PSCHIEDT, Ana Cássia Gatelli. Right to choose to die versus right to life: reflections on euthanasia. **Academy of Law**, vol. 2, p. 214, 2020.

9. CAMPOS, Patricia Barbosa; MEDEIROS, Guilherme Luiz. Euthanasia and the constitutional principle of human dignity. **Electronic Journal Law, Justice and Citizenship**, v. 2, no. 1, 2011, p.14. Available at: < http://www.facsaoorogue.br/novo/publicacoes/pdfs/patricia_drt_2011.pdf >. Accessed on: 02 Feb. 2022

10. BAPTISTA, Diego. Death Capsule: Switzerland approves use of assisted suicide pods. **Connected world**. Publication on: 12/01/2021. Available at: < <https://mundoconectado.com.br/noticias/v/22003/capsula-da-morte-suica-aprova-uso-de-pods-de-suicidio-assistido> >. Accessed on: 04 Feb.2022.

11. BAPTISTA, Diego. Death Capsule: Switzerland approves use of assisted suicide pods. **Connected world**. Publication on: 12/01/2021. Available at: < <https://mundoconectado.com.br/noticias/v/22003/capsula-da-morte-suica-aprova-uso-de-pods-de-suicidio-assistido> >. Accessed on: 04 Feb.2022.

12. euthanasia CAPSULE passes 'legal review' in Switzerland, announces manufacturer; expected to start using it next year.

With the advancement of technology, in December 2021, the company Exit International has obtained legal approval to operate in Switzerland a device made by a 3D printing, called “ Sarco ”, whose name derives from sarcophagus and became known as “death capsule”. The purpose of the machine is its use in assisted suicide procedures, as it provides a painless and quick death, of 30 seconds, due to hypoxia, since nitrogen is released inside the capsule in order to empty the oxygen.¹⁰

The approval to operate the “ Sarco “ in assisted suicide procedures, even though this is not the modality object of study, highlights the increasing importance of personality rights, such as patient autonomy, since one of the greatest characteristics of the new equipment is that patients control almost all aspects of this assisted suicide, being one of the future projects of the company Exit International, the development of an online program, through artificial intelligence, to determine the psychiatric capacity of the person who wants to undergo the assisted suicide procedure, so that the review by a psychiatric doctor is no longer necessary.¹¹

In addition to the patient's autonomy, within the personality rights, the right to a dignified death is also highlighted, since the “ Sarco “ was designed to be moved to a place of preference for patients who will undergo the assisted suicide procedure¹², all with the

intention of providing dignity in the last moment of human life.

Among the nomenclatures exposed above, it is observed that dysthanasia and mysthanasia, although the spelling is similar to that of euthanasia, do not even constitute a form of dignified death. Active and passive euthanasia (orthothanasia), as well as assisted suicide are forms of dignified death, distinguished from each other by the way in which their procedures occur.

Thus, we seek to explore the right to die, in a dignified way, consequently, the right to life and personality rights, which reflect the dignity of the human person, as explained below.

DIGNIFIED DEATH AS PART OF THE RIGHT TO LIFE

According to Darwinism, human beings are born, grow, evolve, can reproduce and die.¹³ Death, as well as birth, are part of the cycle of life and the human being has no interference when they will happen, however, when facing a terminal illness, with great suffering, it would be possible, given the right to life, does the individual anticipate death?

If, on the one hand, the inviolability of the right to life is guaranteed by the Federal Constitution of 1988, on the other hand, this right must comply with another constitutionally guaranteed right, namely, the dignity of the human person.¹⁴

Therefore, although there is talk of the right to life, it cannot be maintained without any

dignity, imposing intolerable suffering on its holder. Prolonging life is only justified if there really is a chance of cure or improvement in symptoms that can provide a quality of life for the patient, if this is not the case, death, which is the last stage of life, must be accepted and must occur with dignity, respecting the autonomy of the individual.¹⁵

Indeed, despite the law protecting the rights of the unborn child from conception, due to an expectation of law, the legal personality of the human being begins with the live birth, detected with the newborn's ability to breathe away from the mother's womb, and ends with absence of brain activity.

In other words, as long as there is no cessation of brain activity, even if the patient is in the "process of dying" with a terminal illness and being maintained by machines, due to the advance of technological medicine, the patient is alive and, as long as that lasts., in the same way that his dignity was protected throughout the development of his life, it must also be guaranteed at the end of it, in order not to violate this constitutionally guaranteed fundamental right.¹⁶

The key point of the debate on euthanasia is precisely to consider that death is intrinsic to life itself, which must occur in all its fullness with dignity, including death.

Thus, dignified death corresponds to autonomy and self-determination over the body of those patients with terminal illnesses to choose the end of their life to preserve what

G1, December 6, 2022. Available at: <<https://g1.globo.com/mundo/noticia/2021/12/06/capsula-de-eutanasia-e-aprovada-em-analise-legal-na-suica-anuncia-fabricante-previsao-and-what-use-starts-next-year.ghtml>>. Accessed on: 04 Feb.2022.

13. MACEDO, Ermelinda et al. Educating for death and promoting mental health. 2010.

14. DADALT, Luciana. Dignified death for whom? The fundamental right to choose your own end. **Think-Journal of Legal Sciences**, v. 24, no. 3, p. 8, 2019.

15. DE FREITAS, Riva Sobrado; ZILIO, Daniela. Personality rights in the search for the dignity of living and dying: the right to (dignified) death as a corollary of the right to (dignified) life. **Journal of Fundamental Rights and Guarantees**, v. 17, no. 1, p. 180, 2016.

16. GARCIA, Fabiana Parisi Martins. Right to die against the inviolability of the right to life. **ETIC-SCIENTIFIC INITIATION MEETING-ISSN 21-76-8498**, v. 13, no. 13, 2017, p.4.

they understand to be their personal dignity.¹⁷

EUTHANASIA IN BRAZIL

In Brazil, the practice of euthanasia is not admitted in the Brazilian legal system, the agent who commits such conduct is liable for intentional homicide, in which the application of the cause of reduction of sentence is possible, provided that the relevant social or moral value of the conduct, thus, the practice of euthanasia is typified as a crime of privileged homicide.¹⁸

Notwithstanding the criminalization of euthanasia in the current Brazilian Penal Code, there have already been attempts to decriminalize euthanasia, the draft of the Special Part of the Penal Code of 1984, in its article 121, paragraph 3, provided for an exemption from the penalty for the doctor, who shorten life and alleviate the patient's suffering, provided that with the patient's consent or, in the case of its impossibility, of his family, but provided that imminent death was certified by another doctor. However, the draft was abandoned, due to dissent on the subject.¹⁹

In 1996, Senator Gilvam Borges drafted a Bill No. 125/1996 to regulate the practice of Euthanasia in Brazil, the objective was to authorize painless death in some specific cases provided for by Law, so that, for euthanasia to occur, a board composed of five physicians was

required to certify the ineffectiveness of the patient's physical and psychological treatment, as well as the free and informed consent of the patient, but in the case of this impossibility, of his family members. However, the project was not even voted on and, today, it is shelved.²⁰

In the same vein, Federal Senator Gerson Camata drafted the Bill No. 116/2000, which aimed to amend the Penal Code to exclude orthothanasia from being unlawful. It is stated on the website of the Federal Senate that on December 19, 2019, the project was approved by a committee in a terminative decision, then it was sent to the Chamber of Deputies, where it has been without movement since December 22, 2009.²¹

Bill 236/2012, which aims to reform the Brazilian Penal Code, authored by Senator José Sarney, outlines in one of its articles the typification of euthanasia, however, providing for a milder penalty of 2 to 4 years, which may, in some cases, the judge fails to apply the penalty, once evaluating the circumstances, as well as the kinship relationship or close ties of affection between the agent and the victim.²²

The project to reform the Brazilian Penal Code also decriminalizes orthothanasia, provided that this circumstance is previously attested by two doctors and there is consent from the patient, or, if this is not possible, from the ascendant, descendant, spouse, partner or sibling.²³

17. DADALT, Luciana. Dignified death for whom? The fundamental right to choose your own end. **Think-Journal of Legal Sciences**, v. 24, no. 3, p. 9, 2019.

18. SANTANA, Elayne Costa; SANTANA, Samene Batista Pereira. EUTHANASIA AND THE EXERCISE OF BIOPOWER: AN ANALYSIS OF THE FILM GIRL GIRL. **Review and Critique of Law**, v. 7, no. 1, p. 11PDF, 2019.

19. CALDAS, Isabele Cristina Alves. ORTHOTANASIA AND THE RIGHT TO A Dignified Death: THE PRINCIPLE OF THE DIGNITY OF THE HUMAN PERSON. **Legal Content**. Published on: 22 Nov.2021. Availability at: <<https://conteudojuridico.com.br/consulta/artigos/57545/ortotansia-eo-direito-morte-digna-o-principio-da-dignidade-da-pessoa-humana>>. Accessed on: 05 Feb.2022.

20. HERINGER, Astrid; PERIM, Sabrina Fontoura. Euthanasia in Brazil. **Law and Justice Magazine: Socio-legal Reflections**, v. 8, no. 11, p. 24, 2008.

21. BRAZIL. Federal Senate. Senate Bill No. 116, 2000. Available at: < <https://www25.senado.leg.br/web/atividade/materias/-/materia/43807>>Accessed on: 6 Feb. of 2022.

22. SANTANA, Elayne Costa; SANTANA, Samene Batista Pereira. EUTHANASIA AND THE EXERCISE OF BIOPOWER: AN ANALYSIS OF THE FILM GIRL GIRL. **Review and Critique of Law**, v. 7, no. 1, p. 13PDF, 2019.

23. BRAZIL. Federal Senate. Senate Bill No. 116, 2000. Available at: < <https://www25.senado.leg.br/web/atividade/materias/-/>

In view of this scenario, in which Brazil still does not have specific legislation to deal with the subject, the Federal Council of Medicine (CFM) enacted, on November 9, 2006, a Resolution number procedures and treatments that prolong the life of the patient in the terminal phase of serious and incurable diseases, provided that the will of the patient or his legal representative is respected, and, during the process, palliative care is guaranteed to alleviate the symptoms that lead to suffering, from the perspective of comprehensive care.²⁴

When orthothanasia was authorized by Resolution n° 1.805/2006 promulgated by the CFM, the Federal Public Prosecutor's Office filed a public civil action n° 2007.34.00. to life and the professionals who practiced the conduct of orthothanasia would be committing the crime of homicide, because of this, it also requested the suspension, in the seat of injunctive relief, of the Medical Resolution, which was successful.²⁵

A posteriori, the Federal Public Ministry itself, in accordance with the opinion of the Attorney General's Office, changed the previous understanding, in the sense that it recognizes that orthothanasia does not violate the 1988 Constitution.²⁶

Subsequently, the public civil action was dismissed by the federal judge of the 14th VF/DF and, consequently, the preliminary decision was revoked and Resolution No. 1,805/2006 enacted by CFM returned to produce its effects.²⁷

materia/106404 >Accessed on: 6 Feb. of 2022.

24. **Resolution** No. 1,805/2006. Brasília: DF, 2006. FEDERAL COUNCIL OF MEDICINE (CFM - Brazil). Normative Resolutions.

25. DE ANDRADE, Otávio Morato. Legal status of euthanasia and orthothanasia in Brazil. **Magazine of the Judiciary Section of Rio de Janeiro**, v. 23, no. 47, p. 102, 2020.

26. Ibid.

27. BOMTEMPO, Tiago Vieira. **Resolution no. 1805/2006 of the Federal Council of Medicine: realization of the right to die with dignity**. Available at: <https://www.ipebj.com.br/docdown/_5a0.pdf> Accessed: 06 Feb. from 2022

28. **Resolution** No. 1,995/2012. Brasília: DF, 2006. FEDERAL COUNCIL OF MEDICINE (CFM - Brazil). Normative Resolutions.

29. HERINGER, Astrid; PERIM, Sabrina Fontoura. Euthanasia in Brazil. **Law and Justice Magazine: Socio-legal Reflections**, v. 8, no. 11, p. 21, 2008.

Years later, the Federal Council of Medicine, in order to protect the patient's will, as well as protect the doctor who practiced orthothanasia, enacted on August 9, 2012, Resolution No. patients' will.²⁸

In this context, it is clear that there is a large gap in the legislation to deal with euthanasia and even though the practice of orthothanasia is regulated by Resolution No. great insecurity about how to act in the face of terminal patients or patients with incurable diseases, who do not want to live the time they have left confined to a hospital room or undergo treatments that do not even bring an improvement, since in addition to dealing with a resolution administrative, does not specify exactly how to act, leaving the conduct liable to penalty.²⁹

Therefore, the absence of legalization occurs mainly due to the lack of information on terminological differences, as well as because it is a controversial and interdisciplinary subject, since it involves several subjects such as religion, politics, morals, law, psychology, sociology and medicine, among others, society cannot reach a consensus on the subject, being always divided between people who are in favor of euthanasia and people who are against it, under the most diverse arguments, as explained below.

Among the arguments in favor of euthanasia, the fact that it is a sick patient with an irreversible disease, whose evolution causes unbearable pain to the patient, to the point of taking away the quality and dignity of

life, is the suffering experienced much worse than death itself.³⁰

Another argument used by defenders of the legalization of euthanasia focuses on the patient's autonomy, his right to choose what he understands to be a dignified and quality life to be lived. end his life with dignity, but guarantees to give effect to the principle of autonomy of will, self-determination and, especially, the dignity of the human person, given that it puts an end to the suffering of a process of a slow and painful death of the patient, which he no longer lives with dignity, and yet, he promotes a dignified death, without pain, alongside people dear to him and in the environment of his desire.³¹

Although the main pro-euthanasia argument is the end of an existence of suffering imposed by an irreversible disease, based on the patient's own self-determination, there are those who still argue about the high recurrent expenses that are made, even though they know that there is no irreversibility of the clinical picture.³²

As for the opponents of euthanasia, they argue that palliative care would be enough to alleviate suffering, and that it could no longer be available as a first option, in the face of euthanasia, or even there could be a disincentive to its development.³³

There are still those who are against euthanasia, from the perspective of religion, since life is divine, it is given and taken by God, with no human interference in death. However, in spite of this argument of a

religious nature, it must be considered that Brazil is a secular state and must not guide the legislation by religious principles.³⁴

Another justification against euthanasia centers on the vulnerability that would come to exist in the relationships between doctors and patients, in which they would no longer believe that doctors supposedly had already exhausted all possibilities to save their lives.³⁵

In addition, defenders claim that although legalization is only carried out to allow euthanasia in certain cases, this does not prevent future abuses of the law and changes in social paradigms, making euthanasia a practice used, in a discretionary way.³⁶

Thus, it appears that in Brazil there is no legislation on euthanasia itself, and, as much as there is in relation to orthothanasia, this is an administrative rule, which does not specify well the way of acting on the part of health professionals, who they make them, due to the insecurity of constituting the crime of homicide, practice dysthanasia, using therapeutic methods and technological medicine, to extend biological life, even though there is no longer any dignity for the holder of that life.

Next, in order to broaden the discussion on the subject, it is necessary to analyze the criteria established by Colombia, the only country in Latin America to legalize the practice of euthanasia, in order to draw a position on whether this practice, according to the 1988 Constitution, could be legalized.

30. DE ANDRADE, Otávio Morato. Legal status of euthanasia and orthothanasia in Brazil. **Magazine of the Judiciary Section of Rio de Janeiro**, v. 23, no. 47, p. 103, 2020.

31. GARCIA, Fabiana Parisi Martins. Right to die against the inviolability of the right to life. **ETIC-SCIENTIFIC INITIATION MEETING-ISSN 21-76-8498**, v. 13, no. 13, 2017, p.15.

32. Ibid.

33. MENDONÇA, Maria Teresa Correia Matos Carmona. **Euthanasia: a bioethical look**. 2015. p.18. Doctoral thesis. Faculty of Medicine of the University of Coimbra.

34. GARCIA, Fabiana Parisi Martins. Right to die against the inviolability of the right to life. **ETIC-SCIENTIFIC INITIATION MEETING-ISSN 21-76-8498**, v. 13, no. 13, 2017, p.16.

35. MENDONÇA, Maria Teresa Correia Matos Carmona. **Euthanasia: a bioethical look**. 2015. p.18. Doctoral thesis. Faculty of Medicine of the University of Coimbra.p.22

36. Ibid.p.23

A STUDY ON THE PRACTICE OF EUTHANASIA IN COLOMBIA

The practice of euthanasia is legalized in countries such as the Netherlands, Belgium, Luxembourg, Colombia and Spain, however, an analysis will be carried out in this study aimed at the legalization of euthanasia in Colombia.

The choice criterion was based on the fact that, in addition to Colombia being the first country in Latin America to legalize the practice of euthanasia, the country also faced a historical process of colonization similar to that of Brazil, that is, of an exploitation colony, which resulted in similarities between the countries in terms of culture, economy, the strong influence of the Judeo-Christian religion, social problems, among others, that go far beyond geographic and climatic similarity.

Regarding euthanasia in Colombia, it must be noted that before the practice was legalized, it was decriminalized by the Constitutional Court of Colombia on May 15, 1997, when it was decided that judges could exempt those who committed pious homicide, provided that the “prior and unequivocal consent” of the terminally ill patient.³⁷

Considered by some as a historic landmark in relation to the issue of individual rights in South America, the winning vote of the unprecedented decision was by Judge Carlos Gaviria³⁸ who upheld the right to live and die with dignity.

However, although the decriminalization of the act took place in 1997, it was only in

2015 that Colombia became the first country in Latin America to regulate euthanasia through Resolution No. legal and functional procedural guidelines were established to ensure terminally ill patients, in addition to palliative care, the right to a “dignified death”.³⁹

Also in 2015, the first legalized euthanasia in Latin America was carried out in Colombia, when 79-year-old Colombian Ovidio González, who was fighting terminal cancer in the mouth, opted for legal euthanasia, since until then, in the country, the practice was based on jurisprudence.⁴⁰

In this context, care was taken to create conditions so that the right to die with dignity could be recognized to the individual, among them, the need for the person to suffer from a terminal illness accompanied by many pains, while the patient is still able to understand the prognosis of their disease, in addition to the requirement of a technical report signed by a physician attesting to the possibility of euthanasia in that patient.⁴¹

In 2017, the Colombian Ministry of Health also regulated, through a resolution, the possibility of euthanasia in minors, establishing specific situations for different age groups, and analyzed by multidisciplinary committees, always under the condition that the disease is terminal and the patient's suffering is constant, unbearable and cannot be alleviated.⁴²

The indispensability of the patient's unequivocal consent to perform euthanasia excluded children under 6 years of age, as well as those with mental disabilities or

37. GUERRA, Yolanda M. Ley, jurisprudence and euthanasia. *Latin American Journal of Bioethics*, v. 77, p.79, 2013.

38. SIERRA, Jorge. Carlos Gaviria and his liberal defense euthanasia. *Academia.edu*. Available at: < (PDF) Carlos Gaviria and his liberal defense euthanasia | Jorge Sierra Merchan - Academia.edu >. Accessed on: 08 Feb.2022.

39. BENAVIDES, Lynda Lynda Lopez. The right to die with dignity in Colombia. *Forensic Res Criminol Int J.* _ 2018;6(6):426-429. DOI: 10.15406/frcij.2018.06.00239 . Publication on: 27 Nov.2018.

40. Ibid.

41. DE CASTRO, Mariana Parreiras Reis et al. Euthanasia and assisted suicide in western countries: a systematic review. *Bioethics Magazine*, v. 24, no. 2, p.347, 2016.

42. GAMBOA-BERNAL, Gilberto A. Itinerario de la euthanasia in Colombia. twenty years old after. *Persona and Bioethics*, v. 21, no. 2, p. 197-203, 2017.

psychiatric disorders, conditions that alter the competence to understand, reason and issue a reflective judgment.⁴³

The regulation then provided for the possibility of euthanasia for children between 6 and 12 years of age in exceptional cases, and between 12 and 14 years of age with the expression of the adolescent's will, although parental consent is mandatory. Only from the age of 14 onwards, the right to opt for euthanasia starts to count only on the adolescent's will.⁴⁴

The issue had a strong repercussion throughout South America, when the Colombian, Martha Sepúlveda, 51 years old, with amyotrophic lateral sclerosis -ALS, was granted the right to undergo euthanasia, despite not being a patient terminal, which expanded the right to a dignified death for people with intense physical or mental suffering, in the face of an incurable injury or disease, in the case of Martha, becoming the first in which euthanasia had been authorized without the patient had a terminal illness.

It must be noted that although the Colombian woman had had euthanasia, a priori, authorized and scheduled for October 10, 2021, hours before it was carried out, the procedure was suspended, after a review of her situation by the special committee of experts of the Ministry of Health, who understood that despite being a degenerative disease that affects the nervous system and causes progressive and irreversible paralysis, it did not meet the criterion of terminal illness that had been established by the first committee.⁴⁵

Dissatisfied, Martha walked the forensic corridors in search of her right to a dignified

death, and after a long legal battle she finally obtained authorization to perform euthanasia on January 9, 2022.⁴⁶

Given this, as can be seen, the practice of euthanasia in Colombia does not occur indiscriminately, there are serious criteria to be followed. is alive only from a biological point of view at the expense of high suffering, it is more humane to grant the right to die in a dignified way, especially because this is the last moment of life.

FINAL CONSIDERATIONS

In view of the bibliographic research carried out, it is understood that it is possible to have legislation that authorizes the practice of euthanasia in Brazil, considering that, although the Federal Constitution of 1988 guarantees the inviolability of the right to life, this right is not absolute and must always comply with the Principle of Human Dignity.

In this sense, a legislation that, perhaps, would legalize euthanasia for specific cases of patients with terminal diseases, would not be an unconstitutional law, since it is understood that death is part of life itself, so, considering that, during life, human dignity must be ensured, this must also occur at the end of it, when it is: In death.

Thus, in order to guarantee the effectiveness of human dignity, the rights of personalities must be protected, as they represent the most essential and unique aspects inherent to each individual, having repercussions in the most diverse spheres, such as the right to life, health, name, body, image, honor, among many other aspects.

43. TIBUSCKI, Diogo; PSCHIEDT, Ana Cássia Gatelli . Right to choose to die versus right to life: reflections on euthanasia. *Academy of Law*, vol. 2, p. 216, 2020.

44. *Ibid.* p.216.

45. EUTHANASIA returns to the debate in Latin America after the case of a Colombian woman. *Policy in focus MT*. Mato Grosso, October 23, 2021. Available at: < Euthanasia returns to the debate in Latin America after the case of a Colombian woman (politicaemfocomt.com.br) >. Accessed on: 10 Feb.2022.

46. AFTER court battle, Colombian Martha Sepúlveda dies of euthanasia. *Folha de S.Paulo* , São Paulo, jan. 9, 2022. Available at: < After a long legal battle, Colombian woman manages to die by euthanasia – Portal Viu >. Accessed on: 10 Feb.2022.

Within this perspective of personality rights, considering dignified death as part of the right to life, it is concluded that euthanasia must indeed be legalized in Brazil, since no one can want to impose on others the obligation to be alive, without any quality and life expectancy, feeling constant and increasing pain, both physical and psychological.

Accepting this type of suffering, which amounts to human torture, is much worse than death itself, especially if it can happen quickly and painlessly, however, while death is often reluctant to occur, the individual must have their autonomy of the respected will to die with dignity and stop that pain, which no longer allows them a dignified life.

Obviously, there is no agreement with the indiscriminate practice of euthanasia, the legislation must be specific and must authorize only for patients with incurable diseases, in a terminal stage or irreversible clinical condition, who truly suffer physical and psychological damage, as no one must be forced to live the last days of his life, in dissonance for what is meant by dignity.

Still on how the practice of euthanasia could be carried out, so that the patient could undergo the procedure, in addition to the indispensability of their consent or their family members, who must be aware that this would be their wish, the condition of the patient must be attested by a medical board, composed of three physicians specialized in the disease of the specific case, which must not include the assistant physician.

Therefore, without wanting to exhaust the debates on the subject, it is concluded that euthanasia can be legalized in Brazil, since it is considered that death is part of the cycle of life, and, therefore, its dignity must be ensured., since such a law cannot succeed, because not even the right to life is absolute, it must be in line with the principle of the

dignity of the person, even because there is no point in having the right to life if there is no dignity to live. -there.

REFERENCES

APÓS batalha judicial, colombiana Martha Sepúlveda morre de eutanásia. **Folha de S.Paulo**, São Paulo, 9 de jan. de 2022. Disponível em:< Após longa batalha judicial, colombiana consegue morrer por eutanásia – Portal Viu >. Acesso em: 10 de fev.2022.

BATISTA, Diogo. Cápsula da morte: Suíça aprova uso de pods de suicídio assistido. **Mundo Conectado**. Publicação em: 01/12/2021. Disponível em: < <https://mundoconectado.com.br/noticias/v/22003/capsula-da-morte-suica-aprova-uso-de-pods-de-suicidio-assistido> >. Acesso em:04 fev.2022.

BENAVIDES, Lynda Lynda Lopez. The right to die with dignity in Colombia. **Forensic Res Criminol Int J**. 2018;6(6):426-429. DOI: 10.15406/frcij.2018.06.00239. Publicação em: 27nov.2018.

BOMTEMPO, Tiago Vieira. **Resolução n. 1.805/2006 do conselho federal de medicina: efetivação do direito de morrer com dignidade**. Disponível em: <https://www.ipebj.com.br/docdown/_5a0.pdf> Acesso em: 06 de fev. de 2022

BRANDÃO, Ana Flávia Bacelar; THEODORO, Ana Laura Teixeira Martelli. A autodeterminação do indivíduo e o direito de morrer. **ETIC-ENCONTRO DE INICIAÇÃO CIENTÍFICA-ISSN 21-76-8498**, v. 17, n. 17, 2021, p.7.

BRASIL. Senado Federal. Projeto de Lei do Senado nº 116, de 2000. Disponível em: < <https://www25.senado.leg.br/web/atividade/materias/-/materia/43807>>Acesso em: 6 de fev. de 2022.

BRASIL. Senado Federal. Projeto de Lei do Senado nº 116, de 2000. Disponível em: < <https://www25.senado.leg.br/web/atividade/materias/-/materia/106404> >Acesso em: 6 de fev. de 2022.

CALDAS, Isabele Cristina Alves. ORTOTANÁSIA E O DIREITO À MORTE DIGNA: O PRINCÍPIO DA DIGNIDADE DA PESSOA HUMANA. **Conteúdo Jurídico**. Publicação em: 22 de nov.2021. Disponibilidade em: <<https://conteudojuridico.com.br/consulta/artigos/57545/ortotansia-e-o-direito-morte-digna-o-principio-da-dignidade-da-pessoa-humana>>. Acesso em: 05 de fev.2022.

CAMPOS, Patrícia Barbosa; MEDEIROS, Guilherme Luiz. A eutanásia e o princípio constitucional da dignidade da pessoa humana. **Revista Eletrônica Direito, Justiça e Cidadania**, v. 2, n. 1, 2011, p.14. Disponível em: <http://www.facsao Roque.br/novo/publicacoes/pdfs/patricia_drt_2011.pdf>. Acesso em: 02 fev. 2022.

CÁPSULA de eutanásia é aprovada em ‘análise legal’ na Suíça, anuncia fabricante; previsão é que uso comece no ano que vem. **G1**, 6 de dez.2022. Disponível em:<<https://g1.globo.com/mundo/noticia/2021/12/06/capsula-de-eutanasia-e-aprovada-em-analise-legal-na-suica-anuncia-fabricante-previsao-e-que-uso-comece-no-ano-que-vem.ghtml>>. Acesso em: 04 fev.2022.

DADALTO, Luciana. Morte digna para quem? O direito fundamental de escolher seu próprio fim. **Pensar-Revista de Ciências Jurídicas**, v. 24, n. 3, p. 1-11, 2019.

DE ANDRADE, Otávio Morato. Status legal da eutanásia e ortotanásia no Brasil. **Revista da Seção Judiciária do Rio de Janeiro**, v. 23, n. 47, p. 96-109, 2020.

DE CASTRO, Mariana Parreiras Reis et al. Eutanásia e suicídio assistido em países ocidentais: revisão sistemática. **Revista Bioética**, v. 24, n. 2, p.347, 2016.

DE FREITAS, Riva Sobrado; ZILIO, Daniela. Os direitos da personalidade na busca pela dignidade de viver e de morrer: o direito à morte (digna) como corolário do direito à vida (digna). **Revista De Direitos E Garantias Fundamentais**, v. 17, n. 1, p. 171-190, 2016.

EUTANÁSIA volta ao debate na América Latina após caso de colombiana. **Política em foco MT**. Mato Grosso, 23 de outubro de 2021. Disponível em:< Eutanásia volta ao debate na América Latina após caso de colombiana (politicaemfocomt.com.br)>. Acesso em: 10 de fev.2022.

GAMBOA-BERNAL, Gilberto A. Itinerario de la eutanasia en Colombia. Veinte años después. **Persona y Bioética**, v. 21, n. 2, p. 197-203, 2017.

GARCIA, Fabiana Parisi Martins. Direito de morrer frente à inviolabilidade do direito à vida. **ETIC-ENCONTRO DE INICIAÇÃO CIENTÍFICA-ISSN 21-76-8498**, v. 13, n. 13, p. 1-25, 2017.

GUERRA, Yolanda M. Ley; jurisprudencia y eutanasia. **Revista Latino Americana de Bioética**, v. 77, p.79, 2013.

HERINGER, Astrid; PERIM, Sabrina Fontoura. A eutanásia no Brasil. **Revista Direito e Justiça: Reflexões Sociojurídicas**, v. 8, n. 11, p. 13-36, 2008.

MACEDO, Ermelinda et al. Educar para a morte e a promoção da saúde mental. 2010.

McCONNELL, Terrance. **Inalienable rights: the limits of consent in medicine and the law**. Oxford: Oxford University, 2000. p. 88.

MENDONÇA, Maria Teresa Correia Matos Carmona. **Eutanásia: um olhar bioético**. 2015. p.1- 41. Tese de Doutorado. Faculdade de Medicina da Universidade de Coimbra.

Resolução nº 1.805/2006. Brasília: DF, 2006. CONSELHO FEDERAL DE MEDICINA (CFM - Brasil). **Resoluções** Normativas.

Resolução nº 1.995/2012. Brasília: DF, 2006. CONSELHO FEDERAL DE MEDICINA (CFM - Brasil). **Resoluções** Normativas.

SANTANA, Elayne Costa; SANTANA, Samene Batista Pereira. A EUTANÁSIA E O EXERCÍCIO DO BIOPODER: UMA ANÁLISE DO FILME MENINA DE OURO. **Revista Reflexão e Crítica do Direito**, v. 7, n. 1, p. 1-19 (PDF), 2019.

SIERRA, Jorge. Carlos Gaviria y su defensa liberal de la eutanasia. **Academia.edu**. Disponível em: <(PDF) Carlos Gaviria y su defensa liberal de la eutanasia | Jorge Sierra Merchán - Academia.edu>. Acesso em: 08 fev.2022.

Siqueira Batista, Rodrigo; Schramm, Fermin Roland. **Às margens do Aqueronte: finitude, autonomia, proteção e compaixão no debate bioético sobre a eutanásia**. Rio de Janeiro, 2006.p.2. Tese de Doutorado – Fundação Oswaldo Cruz, Escola Nacional de Saúde Pública.

SIQUEIRA, Sandro Feitosa et al. Mistanásia ou eutanásia social: a morta infeliz no sus e a violação do princípio da dignidade da pessoa humana. **Caderno de Graduação-Ciências Humanas E Sociais-UNIT-SERGIPE**, v. 6, n. 2, p. 99-112, 2020.

TIBUSCKI, Diogo; PSCHIEDT, Ana Cássia Gatelli. Direito a escolher morrer versus direito à vida: reflexões sobre a eutanásia. **Academia de Direito**, v. 2, p. 211-227, 2020.