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The (Un)Likely Emergence of a "Right to Die" under the European Convention on Human Rights

Camelia-Claudia Mureşan
Master of Laws, International Human Rights Law, School of Law and Social Justice, University of Liverpool, United Kingdom; Former Trainee, European Court of Human Rights; correspondence address: Chatham Street, Liverpool, United Kingdom; e-mail: claudiacmuresan@gmail.com
https://orcid.org/0009-0005-1618-7273

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Abstract: This article discusses the question of whether the right to die is likely to emerge under the European Convention on Human Rights. In recent decades, several member states of the Council of Europe have changed their legal frameworks by decriminalizing the offences of physician-assisted suicide and euthanasia. This development is particularly significant for individuals with terminal illnesses who, in these jurisdictions, are granted the possibility to choose when and how to die with dignity. For this reason, this article focuses on the implications of these trends for the European Convention. Following an analysis of provisions of the Convention and its case law, this article concludes that a right to die cannot emerge under Articles 2 and 8 of the Convention.

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1. Introduction

> Death has dominion because it is not only the start of nothing but the end of everything, and how we think and talk about dying – [dying with 'dignity'] – shows how important it is that life ends appropriately, that death keeps faith in the way we have to have lived.[1]

More than three decades later, Ronald Dworkin's work continues to exert a significant influence on end-of-life issues. His theoretical framework[2] lends support to the recognition of a right to euthanasia[3] and physician-assisted suicide,[4] or, put simply, a right to die.[5] The path to legalization offers individuals who are suffering from an irreversible medical condition a choice of how and when to end their life.[6] There is growing acceptance that these individuals should be able to choose "how they wish to live or cease to live"[7] as it is an aspect that interferes with the enjoyment of their private life. However, these developments raise significant legal and moral issues because legalization creates conflicting interests with the obligation to protect the right to life.[8] Additionally, this entails the tightening of legislation, which may not

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1 Ronald Dworkin, *Life's Dominion: An Argument About Abortion and Euthanasia* (London: Harper Collins, 1993), 199.

2 John A. Robertson, "A Review of Autonomy's Dominion: Dworkin on Abortion and Euthanasia, by Ronald Dworkin," *Law & Social Inquiry* 19, no. 2 (1994): 481, http://www.jstor.org/stable/828630.

3 "The intentional and active termination of a person's life, at that person's explicit request, which is performed by a doctor." See: The Netherlands, The State Commission on Euthanasia, *Rapport van de Staatscommisic Euthanasie*, vol. 1 (The Hague: Staatsuitgeverij, 1985), 26.

4 "A form of support in which a doctor advises the patient about ways in which they can end their life and provides the necessary medication to enable the patient to administer the drug themselves." See: Miriam Cohen and Jasper Hortensius, "A Human Rights Approach to End of Life? Recent Developments at the European Court of Human Rights," accessed July 15, 2025, https://www.echr.coe.int/documents/d/echr/COHEN-2018-A_human_rights_approach_to_end_of_life.

5 Note that palliative sedation may also be included under the scope of the right to die, but due to its different character it will remain outside the scope of this article.

6 See: Dworkin, *Life's Dominion*.

7 Supreme Court of Canada, Judgment of 6 February 2015, Carter v. Canada (Attorney General) [2015] SCC 5.

8 John Keown, *Euthanasia, Ethics and Public Policy: An Argument Against Legalisation* (Cambridge: Cambridge University Press, 2002), 35–89.

effectively protect the individual,[9] opening a "slippery slope" for abuse that targets vulnerable individuals.[10] With the legalization of these two procedures in several member states of the Council of Europe,[11] there is considerable interest in investigating how these developments could influence the emergence of a right to die under the European Convention on Human Rights.[12] Against this background, the main question this article aims to answer is the following: considering recent legislative developments in member states of the Council of Europe, how likely is it that a right to die may emerge under Articles 2 and 8 of the European Convention on Human Rights?

To answer this question, this article employs a positive approach in the analysis of European human rights law. It analyzed provisions from the European Convention on Human Rights (ECHR or the Convention), case law from the European Court of Human Rights (ECtHR or the Court), and scholarly articles. The first section provides a framework for understanding the logic of the ECHR system, explaining the rationale of the relevant provisions and the methods utilized by the Court for interpreting its jurisprudence. The second section presents the jurisprudence of the ECtHR concerning end-of-life issues under Articles 2 and 8. The final section investigates the likelihood of a right to die to emerge under the Convention, employing the Court's interpretative methods. The conclusion asserts that it is unlikely for a right to die to be recognized under Articles 2 and 8 of the Convention.

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9 Ibid., 67–89.

10 Ibid.

11 See: Act of May 28, 2002, The Belgium Act on Euthanasia; Act of April 1, 2002, The Netherlands Termination of Life on Request and Assisted Suicide (Review Procedures); Act of February 20, 2008, Luxembourg's Bill on the Right to Die with Dignity; Act of June 25, 2021, Spain's Organic Law for the Regulation of Euthanasia; Act of May 25, 2023, Portugal's Euthanasia Law. Moreover, the French and British Parliaments recently voted in favor of the creation of bills to legalize assisted dying, see: Le Monde, AP, and AFP, "French Lawmakers Approve Assisted Dying Bill," May 27, 2025, accessed August 18, 2025, https://www.lemonde.fr/en/france/article/2025/05/27/french-lawmakers-approve-assisted-dying-bill_6741744_7.html; Federica Marsi, "UK Parliament Approves Assisted Dying Bill: How Would It Work?," Al Jazeera, June 21, 2025, accessed August 18, 2025, https://www.aljazeera.com/news/2025/6/21/uk-parliament-approves-assisted-dying-bill-how-would-it-work.

12 See: Council of Europe, European Convention on Human Rights and Fundamental Freedoms, Rome, 4 November 1950, as amended by Protocols Nos. 11 and 14 supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, ETS No. 5: ETS No. 009, 4: ETS No. 046, 6: ETS No. 114, 7: ETS No. 117, 12: ETS No. 177 (hereafter: ECHR).

2. Understanding the ECHR

2.1. Articles 2 and 8 of the Convention

It is argued that a right to die under the European Convention could fall under the scope of, *inter alia*,[13] the right to life and the right to a private life. Article 2, the right to life, is the most fundamental right of all, as without it, all rights become "redundant."[14] Under this provision, the state has positive obligations to: provide a regulatory framework to protect the lives of people within its jurisdiction, and to carry out an effective investigation into alleged breaches of this substantive right.[15] Although it may not be derogated from in times of war or emergencies which threaten the life of the nation,[16] Article 2 provides an exhaustive set of circumstances in which deprivation of life is justified. These include self-defense from unlawful violence, lawful arrest or prevention of the escape of a person lawfully detained, or putting an end to a riot or insurrection.[17] When these exceptions are engaged, the Court applies a "stricter and more compelling test than normal" to protect human life.[18] Consequently, the restrictive framework of Article 2 does not reveal how a right to die may be construed under this provision.

A right to die may be more easily construed under Article 8 due to its broader scope. Article 8 prescribes that everyone has the right to respect for their private life, which may include the right to decide the manner of one's death.[19] However, Article 8 is not absolute; Article 8(2) enshrines

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13 It could potentially fall under the scope of Article 3 of the European Convention too, but this article limits itself to analyzing it under Articles 2 and 8.

14 Juliet Chevalier-Watts, "A Rock and a Hard Place: Has the European Court of Human Rights Permitted Discrepancies to Evolve in Their Scrutiny of Right to Life Cases?," *International Journal of Human Rights* 14, no. 2 (2010): 301, https://doi.org/10.1080/13642980802538405; See also: Gregor Puppinck and Claire de La Hougue, "The Right to Assisted Suicide in the Case Law of the European Court of Human Rights," *International Journal of Human Rights* 18, no. 7–8 (2014): 739, https://doi.org/10.1080/13642987.2014.926891.

15 ECtHR Judgment of 17 July 2014, Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], application no. 47848/08, para. 130.

16 ECHR, Article 15.

17 ECHR, Article 2(2).

18 ECtHR Judgment of 27 September 1995, McCann and Others v. the United Kingdom, application no. 18984/91, paras 146–147.

19 ECtHR Judgment of 29 April 2002, Pretty v. the United Kingdom, application no. 2346/02, para. 67 (hereafter: Pretty v. the United Kingdom); European Court of Human Rights, "Guide on Article 8 of the European Convention on Human Rights: Right to Respect for

that public authorities may interfere with this right in accordance with the law and for reasons necessary in a democratic society. This right can be restricted "in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."[20] Following a comparison of the two provisions, it is *prima facie* easier to construct a right to die under Article 8 of the Convention. The next subsection will outline the interpretative methods of the Court, which play a significant part in how such a right may emerge.

2.2. Methods of Interpretation of Jurisprudence

In various areas of case law, including end-of-life issues, the Court relies on interpretative mechanisms to support its analysis. Among these are the living instrument, European consensus and the margin of appreciation doctrines. Since the Convention is a living instrument, it must be interpreted according to present-day conditions and attitudes prevailing in the democratic states of the Council of Europe.[21] Consequently, the ECtHR noted that such attitudes are changing concerning the decriminalization of euthanasia and assisted suicide,[22] with the effect that it had to examine whether a European consensus emerged on the applicable standards.

The Court noted on various occasions that there is a lack of European consensus on end-of-life issues. Although it has left the concept of European consensus undefined,[23] in practice, the Court conducts an inquiry into the existence or non-existence of an accepted standard in the member states, which is determined through a comparative survey of their laws and

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Private and Family Life, Home and Correspondence," accessed 17 August 2025, https://ks.echr.coe.int/documents/d/echr-ks/guide_art_8_eng; ECtHR Judgment of 20 January 2011, Haas v. Switzerland, application no. 31322/07, para. 51 (hereafter: Haas v. Switzerland).

20 ECHR, Article 8(2).

21 ECtHR Judgment of 25 April 1978, Tyrer v. the United Kingdom, application no. 5856/72, para. 31.

22 ECtHR Judgment of 13 June 2024, Dániel Karsai v. Hungary, application no. 32312/23, para. 143 (hereafter: Dániel Karsai v. Hungary).

23 See: Kanstantsin Dzehtsiarou, *European Consensus and the Legitimacy of the European Court of Human Rights* (Cambridge: Cambridge University Press, 2015). On different occasions, it utilises variations of the expression as such: 'common European standard', 'general trend', and so forth.

practices.[24] This comparative survey leads to three results: (1) the finding of European consensus, (2) the lack of European consensus, or a third situation, (3) where neither can be established.[25] The Court establishes a European consensus where a trend or similarity is identified in a majority of member states.[26] A lack of consensus is established if there is a discrepancy in the legal regulations.[27] Lastly, the Court can neither establish a European consensus nor a lack of consensus where only a very limited number of states enacted laws regulating an issue.[28] Thereafter, on the issue of euthanasia and assisted suicide, the Court decided that there is a lack of European consensus, which influences how the Court applies its mechanism of margin of appreciation.

The margin of appreciation doctrine gives European states the flexibility to enact their legal framework based on their cultural and legal traditions.[29] Since it is rooted in the Court's subsidiarity principle, it enables the Court to fulfill its obligations with minimal intervention, without substituting its assessment for the assessment of national authorities.[30] Where a European consensus exists on a legal issue, the margin of appreciation presumably given to the state is narrow and the state's standards will be analyzed against the standards of the member states of the Council of Europe.[31] That said, where there is no European consensus, the margin of appreciation afforded

24 See: Alexander Morawa, "The 'Common European Approach', 'International Trends', and the Evolution of Human Rights Law. A Comment on Goodwin and I. v. the United Kingdom," *German Law Journal* 3, no. 8 (2002): E4, https://doi.org/10.1017/S2071832200015248.

25 See: Dzehtsiarou, *European Consensus*.

26 See: Dzehtsiarou, *European Consensus*. Note that it is not clear what constitutes a majority of member states.

27 Ibid.

28 Ibid.

29 See: Howard Charles Yourow, *The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence* (The Hague: Kluwer Academic Publishers, 1996); ECHR, Protocol No. 15, Article 1.

30 Ibid. The Court's machinery of protection is subsidiary to that of the national authorities as they are in principle better placed to assess their own national laws.

31 ECtHR Judgment of July 8, 2004, Vo v. France [GC], application no. 53924/00, para. 82; ECtHR Judgment of April 10, 2007, Evans v. the United Kingdom [GC], application no. 6339/05, para. 77; Dzehtsiarou, *European Consensus*, 34.

to the state will be wide, however, not unlimited.[32] Lastly, where no such consensus or lack of consensus can be established, the Court will not consider the margin of appreciation in its analysis. Consequently, states are given a wide margin of appreciation concerning euthanasia and assisted suicide. Having explained the rationale of Articles 2 and 8 of the ECHR, and the Convention's interpretative mechanisms, this article will now analyze the Court's jurisprudence on medically assisted death.

3. Jurisprudence on Medically Assisted Death

The Court has consistently decided that a right to die cannot emerge under Article 2 of the Convention. In *Pretty v. the United Kingdom*, it determined that the state did not violate the applicant's rights under Article 2 by refusing to allow assisted suicide.[33] The Court, echoing Lord Hoffman's view in *Airedale NHS Trust v. Bland*,[34] held that "no right to die, whether at the hands of a third person or with the assistance of a public authority, can be derived from Article 2."[35] Further, it asserted that Article 2 does not create a diametrically opposite right, nor does it create a "right to self-determination to choose death rather than life."[36] Therefore, the Court rejected the possibility of a right to die emerging under Article 2 of the Convention.

Despite all of this, the Court held that being denied a right to die could interfere with the quality of one's life under Article 8.[37] In *Haas v. Switzerland*, it was asserted that individuals have the right to decide how and when their life should end, provided they are capable of making such a decision.[38] Therein, the Court considered it appropriate to frame the measure to permit a dignified suicide as a positive obligation.[39] The Chamber justified this finding by setting out a harmonizing approach which takes into account the obligations under Articles 2 and 8 as the "Convention must be read

32 ECtHR Judgment of December 16, 2010, A, B and C v. Ireland [GC], application no. 25579/05, para. 238.
33 Pretty v. the United Kingdom, paras 35–42.
34 House of Lords of the United Kingdom, Airedale National Health Service Trust v. Bland [1993] AC 789 (Hoffman LJ).
35 Pretty v. the United Kingdom, para. 40.
36 Ibid., para. 39.
37 Ibid., paras 65–67.
38 Haas v. Switzerland, para. 51.
39 Ibid., para. 53.

as a whole."[40] In practice, however, this harmonizing approach creates two conflicting obligations for the state: whether to provide assisted suicide or to protect life, and the question remains how to balance these interests.[41]

This dilemma crystallized in *Gross v. Switzerland*, where the Chamber found a violation under the procedural limb of Article 8. The Court held that Swiss law was not sufficiently clear regarding the extent of an individual's right to obtain a lethal substance.[42] Since the state did not grant the applicant the license to obtain the lethal dose, it was found to be in breach of its obligations. However, as argued by the three dissenting judges in the case,[43] Swiss law was foreseeable in that it provided that assisted suicide could not be granted outside the limited exceptions, namely, suffering from a terminal illness.[44] The European Centre for Law and Justice argued that the effect of the Court's harmonizing approach is the reversal of the hierarchical structure of the provisions of the Convention, with Article 8 at the top and Article 2 at the bottom.[45] Consequently, it appears that the Court "solved" this dilemma by balancing interests in favor of the protection of the autonomy of the person.

In *Mortier v. Belgium*, the ECtHR held that Article 2 does not prohibit the conditional decriminalization of euthanasia.[46] As such, states' duties under Article 8 will be consistent with Article 2 when the following safeguards are met:

(1) Where a legislative framework for pre-euthanasia procedures exists and meets the requirements of Article 2 of the Convention.

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40 Ibid., para. 54.

41 See: Olivier Bachelet, "Droit Au Suicide: Un Nouveau Jalon Posé Par La Cour Européenne," Européenne Dalloz Actualité, February 3, 2011, accessed July 15, 2025, https://www.dalloz-actualite.fr/essentiel/droit-au-suicide-un-nouveau-jalon-pose-par-cour-europeenne; Puppinck and de La Hougue, "The Right to Assisted Suicide," 739.

42 ECtHR Judgment of May 14, 2013, Gross v. Switzerland, application no. 67810/10; ECtHR Judgment of September 30, 2014, Gross v. Switzerland [GC], application no. 67810/10, para. 67 (hereafter: Gross v. Switzerland [GC]).

43 The Court found a violation 4–3.

44 Gross v. Switzerland [GC], Joint Dissenting Opinion of Judges Raimondi, Jočienė, and Karakaş.

45 Gross v. Switzerland [GC], The European Centre for Law and Justice third party submission, para. 55

46 ECtHR Judgment of October 4, 2022, Mortier v. Belgium, application no. 78017/17, paras 138–139 (hereafter: Mortier v. Belgium).

(2) Where the legislative framework is complied with.
(3) Where the post-euthanasia review affords all the safeguards required by Article 2.[47]

Even though the Chamber created a *de facto* legal framework enabling euthanasia and physician-assisted suicide, it did not recognize a right to die with dignity under Article 8. It has been argued that this was a missed opportunity,[48] although the framework undoubtedly serves as a useful basis for future jurisprudence. Regrettably, the implications of this framework suggest the need to carve out a new exception under Article 2, which is contrary to the Convention in its current form. In his dissenting opinion, Judge Serghides convincingly argued that the exceptions under Article 2(2) are exhaustive and therefore do not permit the emergence of a new one.[49] Additionally, since there have been no proposals for an additional protocol to govern these practices, there is no legal basis nor consent from member states for such a right to die to emerge. As a second point, the emergence of this framework is a product of the improper balancing exercise done by the Court of Articles 2 and 8.[50] Judge Serghides asserted that undertaking the balancing exercise would lead to the finding that obligations under Article 2 must always prevail. This is because the enjoyment of the rights of the Convention is dependent on the protection of the life of the person.[51] Hence, the right to a private life cannot be protected if there is no life. For this reason, the "yardstick" for comparison should have favored Article 2 obligations.[52]

In *Dániel Karsai v. Hungary*,[53] the Court held that the placing of a blanket ban by Hungary on medically assisted death was not disproportionate

47 Ibid., para. 141.
48 Sarthak Gupta, "Right to Self-Determined Death, European Court, and European Convention on Human Rights," Health and Human Rights Journal, July 3, 2024, accessed August 18, 2025, https://www.hhrjournal.org/2024/07/03/right-to-self-determined-death-european-court-and-european-convention-on-human-rights/.
49 Mortier v. Belgium, Partly Dissenting Opinion of Judge Serghides, para. 5 (hereafter: Judge Serghides).
50 Ibid.
51 Ibid.
52 Ibid.
53 Dániel Karsai v. Hungary, Partly Concurring, Partly Dissenting Opinion of Judge Wojtyczek, paras 3–4 (hereafter: Judge Wojtyczek).

nor contrary to state obligations under the Convention. Despite the previous judgments, the ECtHR returned to its position in *Pretty v. the United Kingdom*, which prioritized taking preventive measures to protect life. The ECtHR relied on its margin of appreciation and living instrument doctrine to come to these findings; however, not without its drawbacks. Two dissenting opinions were attached to the judgment by Judges Wojtyczek and Felici, illustrating the two conflicting positions on the interpretation of these obligations, using either a restrictive (Wojtyczek) or a progressive (Felici) interpretation.[54] Judge Wojtyczek echoed Judge Serghides' dissenting opinion in *Mortier v. Belgium*, highlighting the dangers of progressive interpretation.[55] This interpretation would reverse the primacy of Article 2 obligations and lead to a change of paradigm as to how life is conceptualized on a legal and moral basis. Contrastingly, the view put forward by Judge Felici is anchored in Ronald Dworkin's scholarship,[56] taking into account the changing laws and attitudes in member states towards prioritizing an individual's autonomy over his or her own body. Although this article takes the view of the restrictive interpretation, the Court's approach in *Dániel Karsai v. Hungary* appears to be *prima facie* incoherent with its earlier case law. Considering recent developments in the Court's jurisprudence, which do not demonstrate a coherent approach towards the emergence of a right to die, this article will consider whether it is possible for a right to die to emerge in the future.

4. The Unlikely Emergence of a Right to Die under the ECHR

From recent jurisprudence, a trend of cases emerged which would point towards a potential emergence of a right to die. While a framework regulating euthanasia and physician-assisted suicide was created in *Mortier v. Belgium*, the Court has not recognized a right to die with dignity under Article 8 as such. Even if it is believed that a right to die may emerge, at present, there is a stark inconsistency in the case law. On the one hand, in *Haas v. Switzerland*, *Gross v. Switzerland*, and *Mortier v. Belgium*, the Court prioritized

54 Gabriela García Escobar, "Palliative Care and Assisted Suicide at the ECtHR: Dániel Karsai v. Hungary," EJIL:Talk!, July 12, 2024, accessed August 18, 2025, https://www.ejiltalk.org/palliative-care-and-assisted-suicide-at-the-ecthr-daniel-karsai-v-hungary/.

55 Judge Wojtyczek.

56 Dániel Karsai v. Hungary, Dissenting Opinion of Judge Felici.

the right to a private life and autonomy; on the other hand, in *Pretty v. the United Kingdom* and *Karsai v. Hungary*, it prioritized the right to life. It is believed that these cases evolved as such due to the wide margin of appreciation given to the states based on a lack of European consensus.[57] This ultimately reveals that there is no accepted standard in the member states of the Council of Europe about the right to die. Moreover, the emergence of a right under the Convention is dependent on whether the right is universal and seen as such by a majority of member states.[58] Consequently, the practice of member states does not point towards the emergence of a right to die.

To the contrary, most states prohibit euthanasia and physician-assisted suicide, illustrating a European consensus against legalization. The Court conducted a comparative survey covering forty-two member states of the forty-six total in *Dániel Karsai v. Hungary*,[59] concluding that only twelve member states have laws permitting these procedures. Since thirty member states still criminalize these procedures, it can be inferred that a European consensus exists based on the practice of the majority of member states. European consensus on the prohibition of euthanasia and assisted suicide has also been highlighted in resolutions from the Parliamentary Assembly of the Council of Europe: Recommendation 779 (1976),[60] Recommendation 1418 (1999),[61] and Resolution 1859 (2012).[62] For example, paragraph five of the last Resolution notes that "euthanasia (…) must always be prohibited." Lastly, the respondents[63] also argued in their submissions that

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57 Haas v. Switzerland, para. 55; Gross v. Switzerland [GC], paras 7–8; Mortier v. Belgium, para. 123.

58 See: Adam McCann, "Assisted Dying in Europe: A Comparative Law and Governance Analysis of Four National and Supranational Systems" (PhD Diss., University of Groningen, 2016), 1–317.

59 Dániel Karsai v. Hungary, paras 58–60.

60 See: Council of Europe, Parliamentary Assembly Recommendation 779 of 27 January 1976 (23rd sitting), Rights of the sick and dying (1976), https://pace.coe.int/en/files/14813/html.

61 See: Council of Europe, Parliamentary Assembly Recommendation 1418 of 25 June 1999 (24th Sitting), Protection of the human rights and dignity of the terminally ill and the dying (1999), paras 9.3.1–9.3.3, https://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=16722&lang=en.

62 See: Council of Europe, Parliamentary Assembly Resolution 1859 of January 25, 2012 (6th Sitting), Protecting human rights and dignity by taking in account expressed wishes of patients (2012), para. 5, https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18064&lang=en.

63 The United Kingdom and Hungary.

consensus exists against a right to die. In any event, even though the practice of thirty member states may not necessarily amount to European consensus, it should be recognized that a majority of states do not permit such procedures, to the effect that the Court should be careful to avoid double judicial standards in its case law.[64] In the future, however, standards could evolve so that a right to die could emerge.

With the gradual wave of decriminalization in the member states of the Council of Europe, this could happen sooner rather than later. Irrespective of that, as argued by Judges Serghides and Wojtyczek, the European Convention does not permit a right to die to emerge without further amendments being made to Article 2. It is difficult to believe that such amendments could be made today, since they would require unanimous ratification and acceptance from member states that the historical and fundamental value of life has changed. This belief is rooted in religious influence,[65] for example, the Judaist,[66] Christian,[67] and Islamic[68] religions, which consider life to be sanctimonious since life is a gift from God and we were made in His image.[69] Additionally, even in a secular society, life is seen as a necessary condition for a human being to conduct a moral life, thus acquiring intrinsic value.[70] Consequently, no proposals for amendments have been made to Article 2.

To deal with such procedural drawbacks, one might question whether a right to die may arise under Article 8 through the doctrine of the living instrument instead. Since society is becoming increasingly secular, and more countries around the world are starting to legalize the procedures, there is an argument that the Convention should adapt to benefit the living rather than the dead. While this argument is persuasive, the doctrine of the living instrument cannot be employed to negate a fundamental right such

64 Eyal Benvenisti, "Margin of Appreciation, Consensus, and Universal Standards," *Journal of International Law and Politics* 31 (1999): 844.

65 Michael Perry, *The Idea of Human Rights: Four Inquiries* (Oxford: Oxford University Press, 1998), 12.

66 Talmud, Avodah Zarah, 18a.

67 Bible 1, Corinthians, 6:19–20.

68 Quran, 2:195.

69 Cohen and Hortensius, "A Human Rights Approach to End of Life?," 195.

70 See generally: Immanuel Kant, *Lectures on Ethics*, eds. Peter Heath and J.B. Schneewind (Cambridge: Cambridge University Press, 1997), 27:371.

as the right to life.[71] When considering the Convention as a whole, it is necessary to interpret the right to life as a corollary of the enjoyment of other rights. As much as the ECtHR's harmonizing approach tries to reconcile the two paradigms, recognizing autonomy and protecting life, in practice, it can be observed that it has already created conflicting obligations for states. In conducting the balancing exercise, the ECtHR has prioritized the obligation to protect autonomy, finding it lawful for a patient with depression to end their life.[72] On the other side, it has also prioritized life, finding it lawful that a terminally ill patient was precluded from having access to such procedures due to a blanket ban.[73] An appropriate balancing approach would give more weight to Article 2, since the threshold to respect and protect life is much higher than the one to respect and protect private life. One of the reasons is that Article 2 cannot be derogated from under Article 15 while Article 8 can be, hence Article 2 must be respected and protected in all instances with the exception of the instances prescribed in Article 2(2). Another reason, and as noted by the Judges of the Court in their separate opinions, is the fundamental character of life itself. In the absence of the protection and fulfillment of the right to life, none of the rights and freedoms in the Convention can be respected, protected, and fulfilled. Thus, the primacy of obligations under the right to life must prevail. Therefore, a right to die cannot arise under Article 8 by virtue of the living instrument, as this would negate the primacy of state obligations under Article 2. For this reason, a right to die cannot emerge under Articles 2 and 8 without contravening the European Convention.

5. Conclusion

This article aimed to analyze the right to die in the jurisprudence of the ECHR. It concluded that a right to die is not likely to emerge under Articles 2 and 8 without contravening the Convention due to the primacy of obligations under Article 2 to protect life. Current developments in case law which depart from this view are a consequence of the Court's balancing approach and use of the margin of appreciation that, at times, creates

71 Judge Serghides, para. 9.
72 Mortier v. Switzerland.
73 Dániel Karsai v. Hungary.

double judicial standards. In this sense, the ECtHR should revise its current approach to appropriately balance obligations under Articles 2 and 8. Consequently, this article concludes that a right to die is unlikely to emerge under the Convention.

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