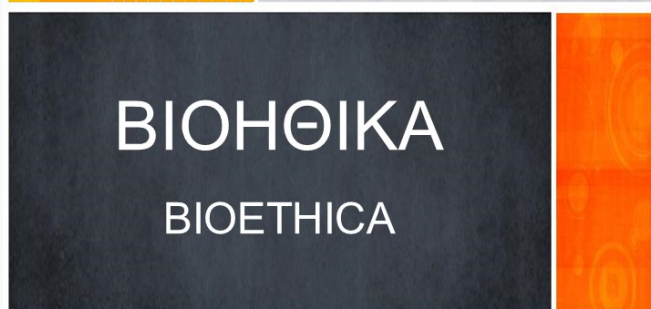


## Bioethica

Vol 8, No 2 (2022)

Bioethica



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doi: [10.12681/bioeth.31783](https://doi.org/10.12681/bioeth.31783)

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#### To cite this article:

Alves, A.-S. (2022). Steps Towards Legalization of Euthanasia in Portugal. *Bioethica*, 8(2), 85–96.  
<https://doi.org/10.12681/bioeth.31783>

## Steps Towards Legalization of Euthanasia in Portugal

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### Abstract

In a world where everyone has their own beliefs and opinions, sometimes being extremely polarized, the subject of Euthanasia raises a lot of uncertainties and questions. It is way more than just a medical ethical problem, legal, religious, political, and philosophical arguments are brought into the discussion. As societies evolve, the way this topic is viewed changes, for this reason the number of countries which have legalized euthanasia or assisted suicide is growing. Despite of the different perspectives, either side of this debate has the same concern: the respect for the principle of human dignity.

Portuguese society has been considering this topic for a long time, the prospect of having a law that allows patients in a situation of permanent and unbearable suffering to end their lives was brought to parliament being approved for the first time in January 2021 and then declared unconstitutional by the Constitutional Court and vetoed by the President of The Republic in March 2021. Subsequently, after a change in the decree that clarified the initial doubts that led to its rejection, the document was again vetoed by President Marcelo in November 2021. More recently, in June 2022 a new version of the decriminalization of euthanasia was approved, the opinions are divided, and the country is awaiting a response from its President, who has already affirmed that everything is open.

Therefore, it is relevant to understand the legal aspects related to this subject. For the purpose of this research, it is necessary to comprehend the Portuguese legal order and Portuguese thoughts and views leading to a possible future decriminalization.

**Keywords:** euthanasia, portuguese legal order, human and fundamental rights, criminal law, constitutional law.

## Βήματα προς τη νομιμοποίηση της ευθανασίας στην Πορτογαλία

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### Περίληψη

Το θέμα της ευθανασίας εγείρει πολλές αβεβαιότητες και ερωτήματα, καθώς ιατρικά, νομικά, θρησκευτικά, πολιτικά και φιλοσοφικά επιχειρήματα εισάγονται στη συζήτηση. Με την πάροδο του χρόνου, ο αριθμός των χωρών που έχουν νομιμοποιήσει την ευθανασία ή την υποβοήθηση της αυτοκτονίας αυξάνεται. Παρά τις διαφορετικές προσεγγίσεις και τις διαφωνίες, πάντως, κάθε πλευρά αυτής της συζήτησης διατηρεί την ίδια ανησυχία για τον σεβασμό της αρχής της ανθρώπινης αξιοπρέπειας.

Η πορτογαλική κοινωνία εξετάζει αυτό το θέμα εδώ και πολύ καιρό, πρόσφατα όμως η ευθανασία απασχολεί και τον νομοθέτη. Η προοπτική ενός νόμου που επιτρέπει σε ασθενείς να τερματίσουν τη ζωή τους όταν βιώνουν μια κατάσταση μόνιμης και αφόρητης ταλαιπωρίας υιοθετήθηκε για πρώτη φορά από το κοινοβούλιο τον Ιανουάριο του 2021, ωστόσο ο νόμος αυτός κηρύχθηκε αντισυνταγματικός. Τον Ιούνιο του 2022 προβλήθηκε μια νέα εκδοχή για την αποποινικοποίηση της ευθανασίας. Οι απόψεις δίστανται και η χώρα αναμένει τη θέση του Προέδρου της Δημοκρατίας. Για τους σκοπούς αυτής της παρουσίασης, είναι απαραίτητο να κατανοήσουμε την πορτογαλική έννομη τάξη και τις απόψεις που μπορεί να οδηγήσουν τον νομοθέτη σε μια τόσο ριζική αλλαγή.

**Λέξεις κλειδιά:** ευθανασία, πορτογαλική έννομη τάξη, θεμελιώδη δικαιώματα, Ποινικό Δίκαιο, Συνταγματικό Δίκαιο.

## INTRODUCTION

We live in an era of great scientific and technological advances; medical progression has made it possible to increase the average life expectancy and quality of life. Despite this, we all know that death is inevitable, yet for many people it is very difficult to accept this fact. Perhaps for this reason euthanasia is such a disputed subject.

When it comes to understand whether euthanasia is acceptable or not, Portuguese society is divided.

Euthanasia is considered to be “the practice of ending the life of a patient to limit the patient’s suffering. The patient in question would typically be terminally ill or experiencing great pain and suffering.” The word “euthanasia” itself comes from the Greek words “*eu*” (good) and “*thanatos*” (death)<sup>1</sup>. The concept of shortening the life of someone who is in unbearable suffering, because of a disease, allowing a “dignified death” causes discordance.

The legalization of euthanasia in some European countries, educational progressions and a greater importance given to individual freedom, have stimulated another perspective on this issue, moving towards more acceptance by most people. However, this generates a lot of discussion that involves ethical, moral, legal, religious, and social arguments.

Portugal is a democratic State that prioritizes the principle of human dignity; therefore, euthanasia legalization has been

heavily discussed over the years, raising many contradictions and convictions. In result, the decriminalization of medically assisted death was approved in parliament in January 2021, then in February the President of the Republic sent to the Constitutional Court the diploma that decriminalizes medically assisted death, for preventive inspection of its constitutionality. As a result, it was rejected by the Constitutional Court, consequently the President vetoed the law in March. A few months later, in November, the President vetoed for the second time the new decriminalization proposal, affirming that his veto was political and not legal, claiming that the intentions of the legislator must be clear and with no contradictions.

However, these decisions were not enough to end this controversial debate. Thus, in 2022 the Portuguese parliament proved again that the majority of the deputies are in favour of medically assisted death, approving euthanasia once again. Political parties say this is a cautious and sensible law and warn that it is time to move forward with the law, which has already been blocked twice.

## DIFFERENT FORMS OF EUTHANASIA

When the subject is euthanasia, it is essential to make some distinctions.

There is active euthanasia and passive euthanasia. The first one consists in using methods that lead directly to the death of the person, for example, through the injection of a lethal drug. On other hand, passive euthanasia involves letting a patient die not prolonging artificial life, cutting steps that preserve their life.

It can also be distinguished between voluntary and involuntary. Voluntary euthanasia is when the patient asked to be killed, so there is consent. In other hand, involuntary euthanasia is performed without the consent of the patient, the person is unable to express his will and desire to die and, therefore, the decision is made by someone

<sup>1</sup> Euthanasia. School of Medicine of University of Missouri. [Online] Available from: <https://medicine.missouri.edu/centers-institutes-labs/health-ethics/faq/euthanasia> [Accessed on 14/04/2022].

else. Some ethicists distinguish between “involuntary” (against the patient’s wishes) and “nonvoluntary” (without the patient’s consent but wishes are unknown) forms<sup>2</sup>.

There is also a difference between euthanasia and assisted suicide. It is important to clarify that assisted suicide consists in the act of someone taking their own life while being assisted by someone else, when it comes to euthanasia the doctor takes the steps that will end the patient’s life.

### PORTUGUESE LEGISLATION RELATED TO THIS ISSUE

The basic principles of the Constitution of the Portuguese Republic of 1976 are the right to life and respect for human dignity. In this sense, the Constitution of the Portuguese Republic states in its article 24 that human life is inviolable.

According to Jorge Miranda, when discussing the decriminalization of euthanasia, we would be compromising the principle of the inviolability of human life, expressed in article 24 of the Constitution of the Portuguese Republic. Since human life is inviolable, the prohibition of killing is clear.<sup>3</sup> However, the question arises as to whether the principle of respect for human dignity cannot justify the decriminalization of euthanasia. Guaranteeing that human beings not only have the right to

life, but also to death, can reflect their autonomy and personal dignity. A conscious and informed choice regarding death ensures that human dignity is respected.

The Portuguese Penal Code declares that active euthanasia is considered a crime, although configurable either as a privileged homicide, stipulated for and punished by article 133° of the Penal Code, or as a homicide at the request of the victim, provided for in article 134° of the Penal Code.

In the first case, which is based on the appreciable reduction of the agent's guilt, the prison sentence is reduced, when compared to that applied to simple homicide, to 1 to 5 years. According to Professor Figueiredo Dias, the agent acts dominated by a "state of affection linked to solidarity or compassion in the suffering of another person", significantly diminishing his guilt.

In the second case, which constitutes a specific type of homicide with an even greater attenuation of the applicable abstract penalty, the agent is “determined by serious, instant and express request” of the victim, being punished with imprisonment for up to 3 years. It is considered that in this case the fault is small, justifying the benevolence of the legislator. It has to be a serious, instant, express and current request and the agent has to act completely motivated by this request. It must be valid at the time of death, or it will be part of a simple homicide expressed in article 131°.

Article 135° enshrines the crime of aiding suicide, appears as assisted suicide in the medical context. "Whoever incites another person to commit suicide, or helps him to that end, is punished with imprisonment for up to 3 years, if the suicide is actually attempted or consummated."

Therefore, while in article 134° it is another person who provides the tools for suicide, in article 135° it is the patient who performs the acts that end his life.

The Portuguese Penal Code reflects that the legislator does not allow euthanasia, punishing those who practice, whatever the circumstances or level of guilt. Despite this, the decriminalization of euthanasia is a debate

<sup>2</sup> Euthanasia. *School of Medicine of University of Missouri*. [Online] Available from: <https://medicine.missouri.edu/centers-institutes-labs/health-ethics/faq/euthanasia> [Accessed on 14/04/2022].

<sup>3</sup> Teixeira, L. and Machado, I. (2021) Quidjup: A Constitucionalidade da Eutanásia. *Jornal Universitário do Porto*. [Online] 4th March. Available from: <https://www.juponline.pt/politica/artigo/38254/quidjup-a-constitucionalidade-da-eutanasia.aspx> [Accessed on 15/04/2022].

that has been going on for a long time in Portugal. It is stipulated that in ten years, from 2009 to 2019, seven Portuguese resorted to euthanasia in Switzerland, supported by Dignitas, a non-profit association that "helps people to die with dignity".

It is important to realize that many patients feel trapped in their own bodies, due to a terminal illness or illness that causes unbearable pain that is difficult to relieve. No one is indifferent to the suffering of another human being. For this reason, political parties brought their propositions to the assembly for euthanasia to be legalized.

### **A PARLIAMENTARY WITH A PRESIDENTIAL COMPONENT FORM OF GOVERNMENT**

In order to have a better understanding, it is important to understand the Portuguese form of government. It differs from the French one since the President of the Republic does not lead the executive. In times of political stability, the President has a plain and modest role. Reason why we cannot designate the form of government as semi-presidential, doing this would accentuate the presidential component instead of the parliamentary component.

In Portugal, the form of government is denominated as parliamentary with a presidential component.

According to article 182° of the Constitution of the Portuguese Republic, the government is the sovereign constitutional body endowed with political autonomy over the President of the Republic.

Although the President can control the political action of the government, he cannot force them to act in a certain way.

In this sense, the President of the Republic has powers of political intervention that allow him to intervene and condition the political decisions of the State.

As guarantor of the regular functioning of democratic institutions the President has control to:

- Politically veto and enact laws, according to article 136° of the CPR.

- Dissolve the Assembly of the Republic and dismiss the government, article 133° e) and g) CPR.
- Nominate the prime minister, article 187° CPR.
- Address messages to the Assembly of the Republic, article 133° d) CPR.
- The right to be informed by the Government about the political condition of the country, article 201°/1 c) CPR.
- Request the inspection of the constitutionality of laws (both preventively and successively), article 278°/1, 281°/2 CPR.
- Call a referendum, article 115°/1 CPR.
- Declare a state of war and a state of emergency.

The President of the Republic is elected by the citizens, by direct and universal suffrage, for a term of 5 years, and cannot be re-elected for a third consecutive term. As a result of the presidential election, in the beginning of 2021 Marcelo Rebelo de Sousa was re-elected President of the Republic with 60.7% of the votes in the first presidential round.

### **DECRIMINALIZATION ATTEMPTS**

In May 2018, the People, Animals and Nature Party, the Socialist Party, the Left Bloc, and the Ecologist Party, the Greens (PEV) presented diplomas that defended the decriminalization of euthanasia. However, the law was rejected in general.

Only later, in January 2021, decriminalization of euthanasia was approved in parliament with 136 votes in favour, 78 against and 4 abstentions.

Left Bloc party understand that the debate over euthanasia is about compassion. Reaffirming that the people are the ones who define dignity, for this reason we should not have a law that chooses for us, but a law that gives us freedom to choose.

The Social Democratic Party reaffirmed that this approval cannot mean less investment in palliative care.



For the Socialist Party, the important thing is to give each person the necessary conditions so that they can freely and independently choose their life project.

In contrast, the far-right party, Chega, declared that "a country where there is no palliative care, in a Parliament that refuses to criminalize the abandonment of the elderly, will now decriminalize their death and will now allow them to have the so-called assisted death"

CDS-PP, a conservative Portuguese political party inspired by Christian democracy, says that the decriminalization of euthanasia is a civilizational setback, arguing that whenever a doctor approaches a patient, it should only be to take care of him and never to kill him.

The Ecologist Party, the Greens, guaranteed that the decriminalization of euthanasia in no way reduces the State responsibility to guarantee patients access to palliative care.

The President of the Republic has the generic competence to request from the Constitutional Court the preventive control of the constitutionality of diplomas submitted to him. In this way, after its preventive inspection the Constitutional Court declared the euthanasia diploma unconstitutional due to "insufficient regulatory density" of article 2.º, which established the terms for medically assisted death to cease to be punishable.

This was what happened the first time the law was blocked. After a pronouncement decision of unconstitutionality by the Constitutional Court, the President must obligatorily veto the diploma.

The parliament reconsidered the decree and approved a new version in November. The Parliament vote culminated in a result of 138 in favour and 84 against, with five abstentions, counting on votes, in favour of the majority, of the Socialist Party (PS) and Left Bloc (BE), the People, Animals and Nature Party (PAN), the Ecologist Party, the Greens (PEV), Liberal Initiative (IL), 13 deputies of the Social Democratic Party and non-party deputies Joacine Katar Moreira e Cristina Rodrigues.

The Portuguese Communist Party (PCP), CDS-PP, Chega, seven deputies of the Socialist Party and the majority of the deputies of the Social Democratic Party (PSD) voted against. The at the time leader Rui Rio voted in favour, against the vast majority of his party members.

It is important to understand under what conditions a patient could request euthanasia. The patient had to be of legal age, medical opinions would be required, including a specialist in the disease the person suffers from. The request must correspond to a free, serious, and informed will of the person, in lasting and unbearable suffering. The patient could revoke the decision at any time, and according to the projects, if the person becomes unconscious, the process is stopped immediately.

The review was not enough for the President that politically vetoed the law, culminating in the return of the law that decriminalizes medically assisted death to parliament, stating that the conditions for permitting medically assisted death were too vague and possibly too radical.

A political veto is a veto for reasons of opportunity and not for reasons of constitutionality. It is a negative judgment on the part of the President regarding the merit and political opportunity of the diploma.

The Portuguese head of state cannot use the political veto to preventively control rules that he considers unconstitutional. The Constitutional Court is the competent body to administer justice in matters of constitutional nature. For this reason, Marcelo Rebelo de Sousa made it clear that his veto was political and not a legal veto.

In its second veto, Rebelo de Sousa raised the issue that the bill, in one clause, says permission for anticipated death requires a "fatal disease" but widens it elsewhere to 'incurable disease' even if this is not fatal, and only 'serious disease' in another clause. In this sense, if the criteria for legalized euthanasia have fallen below a fatal disease, the President asked if this law "represents a vision that is more radical and drastic than the dominant view in Portuguese society?" Rebelo de Sousa

said he feared parliament's text would place Portugal alongside European countries that, he said, have more permissive laws on allowing assisted death, rather than lining up with a more restrictive approach approved in other countries. It is important to remember that, under Portugal's constitution, most executive power lies with the government, but the President can block laws he judges unconstitutional or order judicial reviews.

June 2022 brought a new law attempt, in this sense the Portuguese parliament approved for the third time the decriminalization of euthanasia. The bills of the Socialist Party, Liberal Initiative, Left Bloc and the People, Animals and Nature Party were passed. The socialist proposal received a total of 128 votes in favour, being the most voted, making clear the position of the majority, even though the vote was below previous polls with 138 and 136 votes in favour. There was no doubt as to the position of the members of parliament, they argue that this law should be accepted, without insisting on its unconstitutionality.

In this moment, Marcelo Rebelo de Sousa maintains all presidential powers: he can submit the diploma to the Constitutional Court, exercise his right of veto, or enact it. But, in the event of opting again for a political veto, the members of the parliament will have the option of executing the confirmation of the diploma, which would then oblige the President of the Republic to enact. Members of parliament reinforce that it is time to conclude this process.<sup>4</sup> For a better understanding of this

question, the political veto is susceptible to being overridden, through the confirmation of the decree by a majority of 2/3 of the members of the parliament present, provided that it is superior to the absolute majority of members effectively in functions. In this case, we are talking about a mandatory promulgation by the President to be carried out within 8 days.

The Assembly of the Republic, meanwhile, rejected the Chega resolution project that called for a referendum on the decriminalization of medically assisted death. This act generated revolt in the far-right party, that claimed being the only one not afraid to hear the opinion of the Portuguese people.<sup>5</sup>

At the moment, the expectation remains about what the President of the Republic will decide. Marcelo Rebelo de Sousa has not yet announced what he will do with the document, saying only that he "will decide quickly" when the final version arrives.

## POLITICAL AND LEGAL COMMUNITY OPINIONS

After the President of the Republic vetoed the law in March and then, vetoed for the second time in November 2021, lawmakers who supported the alteration demonstrated their displeasure, accusing the President's action of being motivated by his personal

<sup>4</sup> Francisco, S. (2022) Eutanásia novamente aprovada: "É tempo de concluir este processo."

*Diário de Notícias*. [Online]. 9<sup>th</sup> June. Available from: <https://www.dn.pt/politica/eutanasia-novamente-aprovada-e-tempo-de-concluir-este-processo-14931128.html> [Accessed 19/06/2022].

<sup>5</sup> Nascimento, F. (2022) Eutanásia aprovada pela terceira vez no Parlamento. Documentos seguem para a especialidade. *TSF Rádio Notícias*. [Online]. 9<sup>th</sup> June. Available from:

<https://www.tsf.pt/portugal/politica/eutanasia-aprovada-pela-terceira-vez-no-parlamento-documentos-seguem-para-a-especialidade-14929722.html> [Accessed 20/06/2022].



opposition to euthanasia rather than following the constitution.

Socialist deputy Isabel Moreira, author of the euthanasia decree, considered that the President vetoed the diploma for the second time because that was his personal will, since his doubts about the diploma could have been clarified by the Constitutional Court. The deputy also declared that despite being an apparent political veto, it is an atypical situation, as it is full of legal concerns that would usually be presented to the Constitutional Court.

In its turn, Pedro Filipe Soares of the Left Bloc party considered that it was a cynical veto. Stating that sooner or later euthanasia will be legal. Deputy José Manuel Pureza from the same party said that "the President of the Republic had already raised the issue of unconstitutionality, so the Constitutional Court rigorously identified the rules that needed to be clarified. This second veto is a position of conviction of the citizen Marcelo Rebelo de Sousa, who has every right not to want euthanasia, but I do not believe that this legal detail is valid to justify this veto."

In an open letter, 10 jurists expressed "frontal disagreement" with the political veto of Marcelo de Rebelo de Sousa. These jurists claim that the President based his decision to veto the law on legal grounds, namely the clarification of whether medically assisted death could be applied in the case of "fatal illness", or "serious illness" or "incurable illness" and whether these conditions are alternative or cumulative.

However, it should be noted that the "fatal", "serious" or "incurable" scenarios were not addressed by the Constitutional Court's judgment issued in March. What the Constitutional Court pointed out was a lack of objectivity in terms of "definite injury" or "extreme severity". It is important clarify that the members of parliament followed and responded what was pointed out by the Constitutional Court, ensuring legal certainty in a matter of great sensitivity.

In the opinion of the jurists, in the decree amended by the deputies, a type of incurable and fatal disease must be associated

with atrocious suffering, legally determined, as soon as this condition exists, the disease can either be incurable or fatal, since it is the exercise to personal self-determination.

They also mention that the Constitutional Court stipulated that each person has the power to make crucial decisions about how they intend to live their own life and how they do not intend to continue living it and the President decided to ignore the human suffering factor.<sup>6</sup>

In fact, with this being one of the most controversial topics on which Portuguese society is debating, opinions within the legal community are divided.

Before the President vetoed the decree, the Association of Catholic Jurists had already said that the veto would be the "most natural" step. According to the President of the Association, it was intended to define the concept of "definitive injury of extreme severity", but despite the attempt to define concepts, they only managed to raise new doubts with equally undetermined concepts. The President added that the fact that the political parties did not clarify their positions on such a significant subject during their election campaigns reason why they lack legitimacy to vote on a topic such as euthanasia.<sup>7</sup>

<sup>6</sup> Duarte, C. (2021) Carta aberta: 10 juristas manifestam "frontal discordância" com veto de Marcelo à eutanásia. *Observador*. [Online] 2<sup>nd</sup> December. Available from: <https://observador.pt/2021/12/02/carta-aberta-10-juristas-manifestam-frontal-discordancia-com-veto-de-marcelo-a-eutanasia/> [Accessed 18/04/2022].

<sup>7</sup> D'Avillez, F. & Branco, C. (2021) Eutanásia. Juristas católicos dizem que o "mais natural" é o veto político. *Renascença*. [Online] 5<sup>th</sup> November. Available from: <https://rr.sapo.pt/noticia/pais/2021/11/05/eutanasia-juristas-catolicos-dizem-que-o-mais-natural-e-o-veto-politico/259731/> [Accessed 07/05/2022].

## MEDICAL COMMUNITY

The performance of euthanasia in current societies always presupposes the active participation of the medical community. This is one of the many reasons why their view on the subject on the matter is so relevant.

A study were 251 physicians participated has shown that 58,2% were in favour of the legalization of euthanasia in Portugal.<sup>8</sup> It is important to emphasize that this study has a small sample, which results in some statistical limitations, however it brings important indicators in the physicians' thoughts.

It is believed that medicine can have a negative impact by trying to preserve biological existence at the expense of a meaningful personal life.<sup>9</sup>

There is a clear connection between religiosity and not being able to accept euthanasia. Physicians who believe that only God can end a life had a negative response in this study. In fact, Portugal is a secular state, so it is controversial that religious arguments can have such an important part in this debate, to the point where someone is obliged to extend their suffering beyond their will.

The code of Medical Ethics inhibits doctors from helping suicide, euthanasia and dysthanasia. And it recommends that in palliative care, the action of physicians focus

on the well-being of patients, avoiding the use of therapeutic means that can induce suffering without bringing any benefit.

It is important to note that all euthanasia decriminalization projects provide doctors with the right to conscientious objection, this means that the physicians can refuse to perform euthanasia based on their personal beliefs.

Studies and surveys show that younger doctors with less professional experience and no religious beliefs account for a significantly higher proportion in the favourable response to the legalization of euthanasia.

It is possible to affirm that among medical community the opinions are also divided. There is the belief that euthanasia can be a threat to those who are more vulnerable, believing that is an attempt against Human Rights. Often arguing that there is no better solution than betting and investing in palliative care. On the other hand, others defend that it is important to recognize dignity to those who have no other option then wait for death, finishing a period of extreme suffering that never can be seen as an inhuman act, but rather as a pious act. Doctor Bruno Maia defends that “compassion cannot be penalized”.

## RELIGIOUS PERSPECTIVES ON EUTHANASIA

Portugal is a secular State, where freedom of religion prevails. Despite this, the Portuguese population is mostly Catholic.

Overall, the Catholic Church's perspective is against euthanasia. There is a belief that life is given by God, life is valuable because it is a gift from God and no one should interfere in the natural process that the Creator has written.

When the euthanasia law was approved in parliament for the first time, the Catholic Church expressed its sadness and indignation over the approval and pressured the President to appeal to the Constitutional Court.

The bishops pointed out that the fact that this law was passed during a deadly pandemic such as Covid-19 is a cause for

<sup>8</sup> Silva, C. S. F (2017) *Determinants in the opinion about euthanasia in a sample of portuguese physicians* [Master's thesis, Faculdade de Medicina da Universidade do Porto],

<https://core.ac.uk/download/pdf/302912369.pdf>.

<sup>9</sup> Have Ht. Eutanásia: objecções morais. In: Sampaio D, Callahan D, Correia CP, Caldas C, Crul BJ, Matos AC, et al, editors. *A Condição Humana*. Publicações Dom Quixote; 2009. p. 319-33.

concern. The Catholic Church says that one can never stop the fight against physical and psychological suffering. It cannot be accepted in this day and age that the answer lies within premeditated death. It is referred that we are facing an "unprecedented cultural setback" that is "characterized by the absolutization of the person's autonomy and self-determination".

At the time of approval of the law, the Catholic movement Stop Euthanasia also issued a statement also suggesting that the President of the Republic would have to intervene. "This vote is not yet the end of the legislative process. The diploma will be sent to the President of the Republic, Marcelo Rebelo de Sousa, who is a constitutionalist and with Christian values will be able to evaluate the diploma and verify the unconstitutionality of the law, by either vetoing it or sending it to the Constitutional Court" - reads in a statement. This organization also addressed to the fact that the approval came at the time of the pandemic, bringing more "death" to the Portuguese population.<sup>10</sup>

President Marcelo Rebelo de Sousa is openly Christian; the head of state always publicly assumed his faith. Consequently, many criticisms were based on the fact that the President may be taking a stance towards this law based on his religion. However, the President has always guided his conduct by seeking not to impose his personal convictions in the exercise of his public function.

## STANCE OF THE PORTUGUESE POPULATION

Among the Portuguese population, that believes to be fully informed about euthanasia, opinions differ. When it comes to people who are in favour of euthanasia, it is possible to distinguish two groups: those who believe that this law should come into force now and those who believe that the country is not ready yet due to a lack of real investment in palliative care. On the opposite side, we find those who are against the legalization of medically assisted death.

There are several concerns within this group of people, it is undeniable that religion plays a very important role, but it is not the only factor. We can find a common belief that a law of this nature can have severe social consequences for the most fragile and unprotected people, such as the elderly, where opting for death can become the most obvious solution for reasons of poverty, lack of information and difficulty in accessing health care.

The University Institute Egas Moniz carried out a study in 2020 in order to understand the position of the Portuguese population in relation to euthanasia. It was held between December 2019 and January 2020, 1695 people participated. The results told that more than half of the respondents are in favour of euthanasia (50.5%), a quarter are against it (25.6%) and the rest are indecisive about legalization (23.9%).

The researchers stated: "It was found that respondents with older ages, with a lower level of education, who identified as being religious, who considered themselves to have a poorer health status and reported having less information about euthanasia, are those who are part of the group of subjects with the most unfavourable attitudes towards euthanasia". On the other hand, the profile of respondents in favour of euthanasia was younger, with a high level of education, training and health status, and most do not identify as being religious.

It is important to notice that the sample may not be representative of the national reality, considering the age group and

<sup>10</sup> Henriques, J. P. (2021) Eutanásia. Igreja expressa "indignação" e pressiona Marcelo. *Diário de Notícias*. [Online] 29th January. Available from: <https://www.dn.pt/politica/eutanasia-igreja-expressa-indignacao-e-pressiona-marcelo-13293335.html> [Accessed 28/05/2022].

geographic location of the respondents, on the other hand it is still a crucial step towards better understanding the position and feelings of the population on this issue.

The euthanasia decriminalization survey presented 5 choices, the most voted (68% of the votes) was passive euthanasia, which shows a greater acceptance in the case where the patient dies because the physician stops performing a series of practices, not prolonging the patient's life. On its turn, active euthanasia, in which the patient dies from the administration of a lethal substance, in comparison this only had 59% of the respondents' support.

The third scenario represented a situation where the patients suffered dementia but signed the consent of medically assisted death still in a moment of lucidity. In this case, 51% of respondents were in favour.

The fourth option dealt with the condition in which the family asked for the death of an unconscious patient, this option had a lower acceptance, around 28%. Lastly, the scenario with less adherence (only 18%) illustrates a patient who requests euthanasia under intense psychological suffering, without having a diagnosed disease.<sup>11</sup>

The results reveal a strong appreciation for patients' self-determination and also reveal that there is a greater appreciation of physical suffering than of psychological suffering, as indicated by Jorge Cardoso, the coordinator of the study.

## CONCLUSION

Some ethical issues are truly fracturing, strongly dividing the society, which is applicable to the case of euthanasia. The decriminalization process will only be finalized in the next legislative session, in September, and whatever the outcome of this third approval of the law might be, it will be truly impossible to reach an universal consensus. There are many arguments and contradictions to consider. The principle of human dignity opens doors for those who are against and in favour of decriminalizing medically assisted death. This principle is mobilized differently by the two groups. Those in favour defend that human dignity includes the freedom to choose when to stop suffering by resorting to euthanasia. On the other hand, those who are against believe that it is an onus to maintain life until its natural end, when this is not respected human dignity is violated.

Fundamental rights emerge as the cultural expression of the time and society in which we are inserted. For some it is believed that the exercise of individual autonomy is largely connected to the issue of euthanasia. Thus, people should have the freedom to choose when to cease their suffering,

Its decriminalization does not force anyone to die, it just gives a choice to those who need it most. In this way, it respects the freedom of choice of each individual and enables the right to have a dignified death. By contrast, those who oppose euthanasia argue that autonomy cannot be exercised in its entirety, as we live in community and the decision carried by one can have effects on other people's lives. We all know that life is finite, however this reality is not easy for many of us to accept. Many mysteries, doubts and fears are linked to the fact that our existence will cease, reason why this topic requires deep reflection and great sensitivity.

An undeniable fact is that the Portuguese health system will have to undergo profound reforms, palliative care requires large investments and supply. This service needs the appropriate response to ensure end-of-life care for an increasingly aging population. The truth

<sup>11</sup> Pinto, I. L. (2020) Inquérito: portugueses são favoráveis à eutanásia e ao referendo. *JornalismoPortoNet*. [Online] 18h February. Available from: <https://www.jpn.up.pt/2020/02/18/inquerito-portugueses-sao-favoraveis-a-eutanasia-e-ao-referendo/> [Accessed 30/05/2022].

is that the practice of euthanasia is an increasingly close reality in Portugal, however, this can never mean neglecting palliative care.

In recent years, it has not been uncommon for those who have the economic possibilities to fulfill their desire to resort to euthanasia by travelling abroad to carry out this procedure, sometimes with the assistance of various Associations.<sup>12</sup>

The democratic State guides its actuation by the principle of proportionality as an instrument for measuring the rational justification for the restrictions imposed, by saying this we can conclude that a restriction on a fundamental right will only be valid if it is necessary, adequate, and balanced. To resolve this conflict between fundamental rights that medically assisted death raises, it is necessary to mobilize this principle, ensuring that today's choices will bring a better tomorrow.

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<sup>12</sup> Lusa. (2018) Eutanásia: Quando se vai morrer ao estrangeiro ou a morte chega pela internet. *Diário de Notícias*. [Online] 27th May. Available from: <https://www.dn.pt/lusa/eutanasia-quando-se-vai-morrer-ao-estrangeiro-ou-a-morte-chega-pela-internet-9383074.html>.