

Received: October 2023 Accepted: December 2023

DOI: <https://doi.org/10.58262/ks.v12i1.313>

## Euthanasia as a Legal Alternative for a Dignified Death

### La Eutanasia Como Alternativa Legal Para Una Muerte Digna

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#### Abstract

*Euthanasia is a sensitive and controversial topic that holds great importance and interest, as it involves various nuances concerning freedom, life, and death. Dignified life is always associated with the idea of death without suffering. However, due to many adverse situations, a person may suffer from a terminal and painful illness, firmly believing that euthanasia or assisted death is the alternative to end their suffering. This is a topic that many have been paving the way towards decriminalization. The objective of this work was to conduct a legal analysis regarding the inclusion of euthanasia in Ecuadorian legislation as the right to a dignified death. The following methods were employed: historical to identify relevant aspects surrounding euthanasia as the right to a dignified death; logical analysis applied to the definition of fundamental concepts related to the topic to determine their peculiarities, rights, and guarantees of individuals, as well as the respect and protection by relevant authorities; and analytical-legal-comparative, applied to Ecuadorian and international legislation to determine elements related to the right to a dignified death. As a scientific research technique, document analysis was used to determine the arguments of studies conducted on the subject. As a proposed solution, the development of a draft reform to the Comprehensive Organic Penal Code and the Organic Health Law was suggested to incorporate the recognition of the right to a dignified death.*

**Keywords:** Dignified life, terminal illness, euthanasia, assisted death

#### Resumen

*La eutanasia es un tema sensible y polémico que reviste de mucha importancia e interés, ya que se conjugan diversos matices entre la libertad, la vida y la muerte. La vida digna siempre se asocia con el ideal de una muerte sin sufrimiento. Sin embargo, por muchas situaciones adversas una persona puede padecer una enfermedad terminal y dolorosa, y creer firmemente que la alternativa para terminar con su sufrimiento es la eutanasia o muerte asistida. Este es un tema que muchos han ido abriendo caminos hacia la despenalización. El objetivo de este trabajo fue realizar un análisis jurídico acerca de la inclusión de la eutanasia en la legislación ecuatoriana como derecho a una muerte digna. Se emplearon los métodos: histórico para identificar los aspectos relevantes*

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*entorno a la eutanasia como derecho a una muerte digna; el análisis lógico aplicado a la definición de conceptos fundamentales relacionados con el tema para determinar sus particularidades, derechos y garantías de las personas y el respeto y protección por parte de las autoridades pertinentes; y analítico-jurídico-comparado, aplicado a la legislación ecuatoriana e internacional para determinar los elementos relacionados con el derecho a la muerte digna. Como técnica de investigación científica se utilizó el análisis de documentos que permitan determinar los argumentos de estudios realizados sobre el tema. Como propuesta de solución se planteó elaborar un anteproyecto de ley reformativa al Código Orgánico Integral Penal y a la Ley Orgánica de Salud, para incorporar el reconocimiento del derecho a una muerte digna.*

**Palabras Clave:** *Vida digna, enfermedad terminal, eutanasia, muerte asistida.*

**Palabras Clave:** *988 Legal Analysis of Compound Interest in Ecuador*

## Introduction

Euthanasia is a term that has carried a negative emotional charge in our society, yet paradoxically, it originates from the Greek words eu (good) and thánatos (death). That is, good death or a good dying, which means providing death to a person who freely requests it to liberate themselves from irreversible and intolerable suffering. However, due to the atrocities committed by the Nazis, this word is considered cursed by some, as it refers to the murder of thousands of individuals with mental disorders or disabilities, parallel to the Jewish genocide.

It has been demonized as homicide, touching particularly sensitive chords from religious, moral, and legal perspectives. However, what it means for science and for those who have dedicated their lives to understanding the enigma of death and routinely dealing with it has not been fully considered.

The variability of terms used is noteworthy. For example, in the Netherlands, a pioneer country in its regulation, the euthanasia law (2002) is called "termination of life" on request, while in Belgium it is called "euthanasia law" (2002). In Oregon, assisted suicide is regulated by the "Death with Dignity Act" (Death with Dignity Act, 1998), and in California, by the "End of Life Option Act" (End of Life Option Act, 2015). In Canada, it is the "Medical Assistance in Dying Act" (Medical Assistance in Dying Act, 2016), and in Victoria (Australia) it is the "Voluntary Assisted Dying Act" (Federal Right to Die with Dignity Association, 2017).

Euthanasia is the act of inducing the death of a person to relieve their suffering. This definition conveys why it is one of the most controversial topics in the world. Voluntary death is a common occurrence, a complex behavior that society has medicalized to simplify, with the stigma that most suicides suffer from a mental disorder. With this, the clarity of those individuals at the moment of deciding on their lives is readily questioned

A concern that has preoccupied humanity since its origins is that of death, but today it has gained special relevance in many countries due to the nuance provided by assisted death, namely, euthanasia. Voluntary death has always existed; however, something has changed in recent decades to make euthanasia a majority social demand today. In many cases, this is due to the increase in degenerative chronic diseases associated with aging, as a high percentage of older adults suffer from Alzheimer's, as well as the lack of conditions to keep dependent individuals alive in those critical situations.

Euthanasia is a persistent issue in the history of humanity where diverse ideologies clash. A dignified death is a right to end life voluntarily, without suffering, whether one's own or others,

when medical science can do nothing to cure a terminal illness. Nowadays, the advancement of technical means, the obsession with health, and the prolongation of life expectancy in modern societies practically result in the denial of pain and death itself. This, more or less directly, brings the concept of Dignified Death, or the more classic one of Euthanasia, to the forefront of current affairs, discussion, and debate (Vázquez & Zamora, 2020).

Dying is a highly personal decision, as no one wishes to die unless convinced that their suffering is irremediable. Moreover, common sense dictates that laws enacted in different countries require considering all possible and available resources. In many cases, the most common reasons for choosing death include existential suffering, the inability to enjoy life, and the loss of autonomy.

Individuals may choose death not out of fear of pain, symptoms of agony, or any other type of pain that can be treated with palliative care but because they believe that living under those conditions is useless. Individual beliefs, often of a religious nature, in the sanctity of life are entirely respectable, but they cannot be imposed on society as a whole.

This attempt to influence society has been repeated time and again with each of the civil rights, instilling fear in the population with false arguments. The Catholic religion also disapproves of divorce, contraceptive methods, abortion, and same-sex marriage. In a pluralistic society, the response is clear: if you do not want to, do not do it—do not divorce, do not abort, do not request euthanasia—because the right to die, to marry, or to divorce does not impose an obligation on anyone to exercise it.

Palliative care should be available for everyone, and the sanctity of life is respectable. However, to what extent is it acceptable for palliative care to be used as a resource by a minority seeking to impose that sanctity on society as a whole, distorting reality? The meaning of life does not hinge on the symptoms treated by palliative care, such as pain, not even on anxiety or what is pretentiously called spiritual attention.

Voluntary death can be safely regulated; no euthanasia law is perfect, primarily due to the requirement of certain criteria. Medical assistance in dying should be legalized as just another medical act, with the sole condition being to document the individual's freedom to decide about their own life due to an incurable illness causing significant pain.

According to Fernando Marín Olalla (2017), a physician and activist for the Right to Die with Dignity (DMG) Foundation, who has advised and accompanied many individuals at the end of their lives, reaffirms his conviction that dying at home, in peace, with dignity, is a right and, above all, a personal achievement (Marín, 2017).

The right to a dignified death is a human right recognized by the World Health Organization (WHO), which states that every person has the right to a painless death and the highest possible quality of life. However, in many cases, illness or health conditions can make death a painful, prolonged process that affects the person's quality of life. In such situations, euthanasia may be considered as an alternative to ensure that the person passes away without suffering and in a dignified manner.

Passive euthanasia involves limiting, suspending, or instituting treatments for patients, and these actions lead to their death. These decisions involve the continuous participation of doctors, and their actions are guided by the ontological norms of their profession (Padovani, 2022).

Euthanasia involves consciously, intentionally, and voluntarily carrying out a medical procedure that ends the life of a terminally ill patient (with no expectation of improvement) to spare them additional suffering and pain (De Luna, 2019). According to many testimonies, euthanasia is not violence; it is an act of love.

This procedure requires the voluntary approval and explicit request of the patient or their legal representative in case they cannot express their own will (Merino & Pérez, 2021). In some countries and legal systems, it is also known as assisted suicide or assisted death.

Euthanasia has been a subject of debate due to ethical and moral concerns, including the right to life, the protection of vulnerable individuals, and the responsibility of medical personnel in deciding to end a patient's life. These concerns have led many countries to choose not to allow euthanasia in their legislation.

At a global level, seven countries have legalized euthanasia: the Netherlands, Belgium, Canada, Luxembourg, New Zealand, Colombia, and Spain. It is important to note that these legislations necessarily have parameters and requirements, defining who can or cannot access euthanasia, and in some cases, access is open.

A noteworthy case that became global news occurred in Belgium in 2012, which was condemned by the European Court of Human Rights, whose judgment on October 4, 2022, was related to euthanasia accepted for a woman experiencing severe depression. The depression was considered unsolvable, and this process was not known to her family, it was against her family's wishes, and against the wishes of her psychiatrist, who did not corroborate this decision. The court's judgment stated that the post-control provided for by Belgian law lacked guarantees of independence and impartiality. The court observed various defects, including the absence of the declaration of euthanasia request (Faro, 2022).

In 2006, the Swiss Federal Court ruled that doctors cannot be prosecuted for assisting someone in dying as long as the intention is to help a person who wishes to end their life due to unbearable physical or psychological suffering. This decision allowed doctors to assist patients suffering from terminal or painful illnesses to die, provided certain requirements were met, such as the existence of a trustworthy doctor-patient relationship and the informed consent of the patient (Velasco & Trejo, 2022).

In March 2021, Spain approved the Organic Law Regulating Euthanasia, becoming the fourth European country to legalize euthanasia after the Netherlands, Belgium, and Luxembourg. The law states that "patients suffering from a serious and incurable illness, or enduring intolerable suffering, may request medical assistance to die legally and safely. The decision must be made freely by the patient and must be validated by an independent medical committee" (Ministerio de Sanidad de España, 2021).

The law was published in the Official State Gazette (Boletín Oficial del Estado - BOE) on March 25, 2021, and came into effect on June 25, 2021. Additionally, it establishes that healthcare professionals have the right to conscientious objection, meaning they will not be obligated to participate in the euthanasia procedure if they do not wish to do so. The law also recognizes the right of patients to receive palliative care and stipulates that access to euthanasia should not interfere with access to these care services" (Ministerio de Sanidad de España, 2021).

In Colombia, euthanasia is not legalized, but the Constitutional Court has recognized the right of patients to die with dignity in certain exceptional circumstances, such as when the patient suffers from a terminal or incurable illness, and there is no reasonable possibility of recovery.

In 1997, the Constitutional Court issued Ruling C-239/97, establishing the right to die with dignity, and in 2015, Ruling T-970/14 set forth specific conditions that must be met for the practice of euthanasia to be considered legal. Even though physicians who perform euthanasia may face legal and disciplinary consequences, the jurisprudence of the Constitutional Court has established that patients have the right to die with dignity in certain exceptional situations (Delgado, 2017).

In Ecuador, the topic of euthanasia has not been discussed in the National Assembly. The last attempt to address this issue was in 2018 during the debate on the Health Code project by the Health Commission. The initial draft of the Health Code included aspects related to euthanasia, but it was withdrawn at the request of an assembly member. As euthanasia is not legal in Ecuador, using it as a means is considered a crime, even if the intention is to provide a dignified death.

The right to life is a fundamental principle of the law; however, everyone will eventually die, and it is not inappropriate to discuss how. In Ecuador, the concept of "dying well" is not permitted by law. The Constitution of the Republic of Ecuador, starting with Article 1, declares Ecuador as a state of rights, plurinational, and secular. Article 54 states that every person is responsible for malpractice in the exercise of their profession, particularly when it jeopardizes the integrity or life of others. Article 66 of the same legal framework, in its first section, recognizes and guarantees the right to the inviolability of life for all individuals. However, subsequent sections of Article 66 guarantee the right to a dignified life, the right to personal integrity (physical, mental, moral, and sexual), and the right to free personal development. Thus, it is observed that the assurance of a dignified and integral life is an intrinsic part of the highest norm of the state, a right that is closely related to the type of life deemed dignified in the face of an incurable and painful illness (ASAMBLEA NACIONAL, 2008).

Article 358 discusses the health system, which will promote comprehensive healthy living, emphasizing bioethics as one of its principles. The Organic Health Law establishes administrative sanctions for healthcare personnel for clearly defined actions and omissions. Putting the patient's life in danger or causing their death will result in civil and criminal penalties as well (Asamblea, 2006). Additionally, in line with the Law of Patient Rights and Protection, patients have the right to choose whether to accept or decline medical treatment (Ecuador, Law of Patient Rights and Protection, 1995). Within the Comprehensive Organic Penal Code (COIP), there is an entire chapter on crimes against the inviolability of life. Notably, offenses such as Homicide (with a prison sentence of 10-13 years), Homicide (with a prison sentence of 3-5 years), and Homicide due to Malpractice (with a prison sentence of 3-5 years, and a special procedure established for re-entering the profession) are outlined. This indicates that the practice of euthanasia is prohibited in Ecuador, and the legal framework is designed to reject such procedures (ASAMBLEA NACIONAL, 2014).

## **Methods**

The following methods were employed: historical to identify relevant aspects surrounding euthanasia as the right to a dignified death; logical analysis applied to the definition of fundamental concepts related to the subject to determine their particularities, rights, and guarantees of individuals, as well as the respect and protection by relevant authorities; the analytical-juridical-comparative method, applied to Ecuadorian and international legislation to determine elements related to the right to a dignified death. As a scientific research technique, document analysis was used to determine the arguments of studies conducted on the topic.

## Results

The results of the research are conceptualized in a central aspect: the way euthanasia is condemned or approved is a reflection of the perspective on death and suffering. Respect for the autonomy of the individual and solidarity with their suffering should be taken into consideration when debating the legitimacy of euthanasia.

Although many people believe that legalizing euthanasia would be a declaration of social, political, and medical defeat in the face of the patient, it will not resolve the perplexities of life, death, or the moral doubts of doctors, patients, and family members.

Starting from the premise that human rights are a set of legal or juridical obligations of states established to create conditions for the entire population to enjoy a dignified life without discrimination or facing needs and limitations that hinder their development to their full potential, with well-being and happiness. They are part of an effort to build democratic societies where fundamental rights and freedoms are respected. These rights involve not only respect for life, political participation, freedom of expression and thought, freedom of religion, protection against arbitrary detention, and prevention of torture or mistreatment by authorities but also the conditions in which many people live.

Human rights belong to each individual without distinction of any kind. However, in the societies in which we live, we often see how social relationships are established that give importance to a person's possessions, appearance, or social, political, or economic position, among many other circumstances that are used to classify people, not for who they are, human beings.

## Discussion

It is common to hear about the decision to die in a context of desperation, extreme pain, and deterioration that may be inherent to palliative care but has nothing to do with reality. Many testimonies clarify that to understand euthanasia, one must first remove the lenses of the sanctity of life and instead put on those of respect for plurality.

Dying with dignity allows people facing great suffering to decide when it is enough. However, it cannot be ignored that the central fact in euthanasia is that one human being deliberately and consciously causes the death of another, no matter how presumably noble or altruistic the motivations may appear, and regardless of the means used to carry it out.

When talking about euthanasia, it is the life of a person what is being discussed, so it must be addressed from a perspective of respect for the autonomy of the patient and respect for their dignity within the field of human rights. Understanding that dignity encompasses the acceptance of living and requesting to die, it is necessary to assume a terminal and unbearable illness, where the pain is intolerable, untreatable, mortal, and irreversible, without any available medication or cure. The request is autonomous and free, and the patient's decision, being a free and informed choice after weighing possibilities, options, and consequences, leads to a response from the state. This response ultimately results in either acceptance or denial and it must be regulated (Casado, 2020).

## Conclusions

The Constitution of the Republic of Ecuador recognizes the right to a dignified life, personal integrity, and the making of free, responsible, and informed decisions. The Comprehensive



Organic Criminal Code (COIP) penalizes the act of causing the death of another person, as it is considered an action of malpractice that can be sanctioned as involuntary manslaughter. Therefore, the practice of euthanasia is not permitted. Additionally, Ecuador is bound by international treaties and agreements, committing to respecting, protecting, and ensuring universally recognized rights and freedoms, including the right to life and personal liberty. The Organic Health Law and the Medical Code of Ethics regulate the professional conduct of doctors to safeguard the right to the inviolability of life.

The conditions may vary depending on the legal framework, but there are common requirements, such as patients suffering from incurable or terminal illnesses involving unbearable physical and psychological suffering. Patients must be adults making a voluntary request while in full possession of their mental faculties. A specialized medical evaluation is required to determine the patient's clinical condition, and there must be a lack of viable treatment options or palliative care that can alleviate suffering.

According to public perception, there is broad acceptance of the inclusion of euthanasia in Ecuadorian legislation. However, it is acknowledged that this procedure must have strict conditions and safeguards stipulated in the regulations to ensure the non-violation of fundamental rights and allow people to access a dignified death. It is also recognized that the legalization of euthanasia in the country involves a complex ethical and legal debate that must be approached with responsibility.

## **Proposal**

### **Explanation of reasons**

Living in a constitutional state of rights and justice implies having a legal framework that safeguards the protection and dignity of every human being, guaranteeing their fundamental rights in all spheres of life. As society progresses, new issues and needs arise, demanding that legislation adapt to this evolution. In response to these demands, various countries have legalized euthanasia for those suffering from incurable catastrophic illnesses in the terminal phase. This measure seeks to alleviate the suffering of individuals experiencing these disorders, affecting their ability to live with dignity. Euthanasia is presented as an alternative to mitigate their pains and agonies, allowing legal regulations to adapt to this ever-changing reality.

Therefore, it is essential to establish regulations concerning death, which is the inevitable end of every individual's life. While it is a natural process we all face, it is crucial to navigate it while maintaining our dignity as human beings and experiencing a dignified death. In situations where death is linked to a terminal or catastrophic illness, it is crucial to consider the rights that correspond to people in those circumstances. This will allow the development of their dying process to be compatible with a dignified life and grant them the freedom to decide about their own life. (Zabala, Nadia; Viteri B., 2023)

Considering these background aspects, the urgency of incorporating provisions into the Comprehensive Organic Criminal Code that decriminalizes the practice of euthanasia becomes evident. It is also necessary to regulate it in the Organic Health Law to ensure the right to make free and informed decisions and live a dignified life in all aspects.

Currently, internationally, there are precedents for the decriminalization of euthanasia. In countries such as Belgium, the Netherlands, New Zealand, Spain, Canada, Colombia, and Luxembourg, specific laws have been created to regulate the euthanasia procedure (Estrella,

2019). In contrast, in Switzerland, euthanasia is not regulated by law but is allowed under explicit conditions in the penal code of the country. Therefore, there is relevant legislation for the development of the present proposal.

## ORGANIC REFORM LAW TO THE COMPREHENSIVE ORGANIC CRIMINAL CODE AND THE ORGANIC HEALTH LAW

THE NATIONAL ASSEMBLY

### Considering

That, Art. 1 of the Constitution of the Republic of Ecuador states that: "Ecuador is a constitutional state of rights and justice (...)", where the protection of the human being and their dignity prevails;

That, Art. 50 of the Constitution of Ecuador establishes that: "The State will guarantee every person suffering from catastrophic or highly complex diseases the right to specialized and free care at all levels, in a timely and preferential manner".

That, Art. 66, numeral 2 of the Constitution of the Republic of Ecuador guarantees people "the right to a dignified life (...)" ensuring the well-being and good quality of life for all citizens.

That, Art. 66, numeral 3, literal c) of the Constitution establishes "the prohibition of torture, forced disappearance, and cruel, inhuman, or degrading treatment and punishment."

That, Art. 66, Numeral 9 of the Constitution of the Republic of Ecuador establishes "The right to make free, informed, voluntary, and responsible decisions (...). The State will promote access to the necessary means for these decisions to be made under safe conditions".

That, the Comprehensive Organic Penal Code and the Organic Health Law must be reformed and updated in accordance with the demands of contemporary society, which has deeper requirements and needs regarding the right of individuals to have a dignified death when suffering from a terminal illness that causes them a lot of pain and suffering;

In the exercise of its constitutional and legal powers, it issues the following reforms:

### TO THE COMPREHENSIVE ORGANIC CRIMINAL CODE

Add an unnumbered article following Article 146 that states:

Art.- (...) The right of individuals in the terminal phase of an illness that involves unbearable physical suffering to receive the assistance of a doctor to have an assisted dignified death is recognized; that is, to receive appropriate medical care and procedures in the end-of-life process according to their wishes and in compliance with ethical and legal principles; without this being considered as negligent homicide due to professional malpractice.

### TO THE ORGANIC HEALTH CODE, IN CHAPTER III-A OF CATASTROPHIC AND RARE OR ORPHAN DISEASES

Add an unnumbered article following Article 6 that states:

Art. - (...) The national health authority will designate the professionals who must provide assistance to terminally ill patients with unbearable physical suffering and carry out the appropriate procedures for those who decide to have assisted dignified death, in accordance with their wishes and compliance with ethical and legal principles.



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