усіх засуджених. Підстави тримання особи в спеціальній установі і ступінь його небезпеки може бути кардинально різною. Необхідно оцінити ризик засудженого і, відповідно, вирішити питання щодо необхідності введення конкретних обмежень [6].

Таким чином, основною метою позбавлення волі є захист суспільства від злочину та зменшення рецидивізму, але ці цілі можуть бути досягнуті лише тоді, коли період позбавлення волі витрачається на виправлення засуджених та їх ресоціалізацію після відбуття покарання [7].

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ANALYSIS OF ACTIVE EUTHANASIA BASED ON PRETTY'S CASE

The right to life is viewed as an "essential element of dignity and vital prerequisite for the rest of fundamental rights, " [1, p. 111] but does this right include the freedom to choose when and how one wishes to die? This research paper aims to analyze this issue based on "the most important case dealing with euthanasia" [2, p. 17], identify how wide the states' margin of appreciation is and whether one's attitude towards mercy killing can fall within the scope of Article 9 of the European Convention of Human Rights (ECHR). The evolution of ECtHR's case law and safeguards included in Luxembourg's legislation will also be evaluated in order to make a final conclusion.

First and foremost, since "the absence of a consensus is probably a decisive

factor in finding that there is a [wide] margin of appreciation" [3, p. 279], the fact that euthanasia is governed by local legislations in three different ways [4, p. 82] should be emphasized. The first group of countries (France, England, Russia) views euthanasia as ordinary murder, however, mercy killing is classified as a mitigating condition under penal codes of other countries, such as Germany, Georgia, and Austria. The third group of states (the Netherlands, Belgium) has decriminalized euthanasia. [5, pp. 25-26] "Where there is no consensus within the Contracting Parties to the Convention, particularly where the case raises sensitive moral or ethical issues, " the margin of appreciation "will be wider" [6, para. 273] The issue of how states that have a wide discretion should regulate euthanasia is especially relevant as the case of Mortier v. Belgium is still pending.

The applicant – Mrs. Pretty was a 43-year-old woman, suffering from motor neurone disease that leads to respiratory failure and pneumonia. Since Pretty's intellect and capacity to make decisions were unimpaired, but her disease prevented her from taking her life, she wished to by spared from an undignified death by her husband, however, such assistance is criminalized under section 2 (1) of the Suicide Act 1961. The Director of Public Prosecutions refused to give an undertaking not to prosecute the applicant's husband should he assist her to commit suicide. Pretty applied to ECtHR after exhausting all local remedies. [7, para. 7-14].

It was argued on behalf of Mrs. Pretty that Article 2 protects not simply the right to life but its corollary: the right to die. The ECtHR held that "Article 2 cannot, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die." Although Pretty was set to endure suffering at the final stages of her disease, the Court reiterated the substantive limits of Article 3 and excluded what seems to be the most appropriate Convention guarantee to ensure respect for human dignity [8, p. 2-3]. "A scenario where Dorscheidt argues a breach of Article 3 regarding end-of-life treatment may occur is if the medical professionals were to intentionally humiliate a severely suffering patient wishing to die or if the medical treatment in such a scenario were to be found to be genuinely appalling" [9, p. 28-29].

Physical and mental wellbeing, right of self-determination, social, personal autonomy are protected under Article 8, which is focused on the quality, rather than the sanctity of life, so ECtHR examined whether the interference in Mrs. Pretty's private life could be legitimated under the convention [8, p. 4] The interference was in accordance with the Suicide Act, served the legitimate aim of protecting vulnerable groups from forced euthanasia, but, in the author's view, wasn't necessary in a democratic society due to the blanket nature of the prohibition. Pedain believes that non-vulnerable, mentally competent individuals who are physically unable to commit suicide should be given an exception from blanket prohibitions. Wicks argues that if assisted suicide is authorized, the law should include a conscience clause, similar to the existing

provision in the Belgian legislation, to protect individuals who do not want to participate in an assisted suicide due to personal reasons [9, p. 51, 54]. In the Court's view, the legitimate aim of protecting vulnerable persons also legitimated not seeking to distinguish between those who are able and those who are unable to commit suicide unaided under Article 14 [7, para. 88].

Dworkin has argued that, "Making someone die in a way that others approve, but he believes a horrifying contradiction of his life, is a devastating, odious form of tyranny, " [10, 1. p. 217] which highlights that the desire to a dignified death is fundamental for patients like Pretty, but, unfortunately, doesn't fall within the narrow, inflexible scope of Article 9. Viewing assisted dying as a conscientious exemption from the general rules about death would be an effective way of securing the state's positive obligations and "could send a message that seeking an early, or 'unnatural' death is not the preferred option by society but that there is tolerance of the views of a minority whose conscience dictates otherwise" [11, p. 33]. Although expecting a judgement in Pretty's favor was never realistic, "the horror of her circumstances and ultimate painful and public death, caused the European society to reflect closely upon whether or not, in these circumstances, it is time for the law to be modified in response to medical advances and changing social perceptions of dying" [8, p. 6-7].

Has the case law evolved since hearing Pretty's case? In 2002, the Court was "not prepared to exclude" that hindering Mrs. Pretty from committing assisted suicide constituted an interference with her right to respect for private life, but nine years later in Haas v. Germany, the Court stated clearly that "an individual's right to decide the way in which and at which point his or her life should end" falls within the scope of Article 8 of the Convention" [2, p. 35]. Although the Chamber findings regarding the Gross Case are no longer legally valid, this case highlighted the importance of keeping legal certainty in mind during the process of lawmaking. Additionally, a parallel can be drawn between Koch and Pretty cases due to the stress terminally ill patients' loved ones undergo as they witness their suffering.

Despite minor progress, a revolutionary change in the ECtHR's case law shouldn't be expected, so liberal legislative changes should be implemented at local levels after analyzing legislations that have already decriminalized euthanasia. Although safeguards included in the Luxembourgish legislation, such as limiting the scope of application and decriminalization of euthanasia to medical practitioners or submitting mandatory reports, aren't always complied with, "injustice is not a negation, but rather a condition of law" [12, p. 44].

In conclusion, the Pretty case demands us to identify whether life is equal to survival or should be lived with dignity. Answering this question based on the anthropological-personal function of law, inspires one to support abolishing odious tyranny of forcing someone to live by permitting conscientious exemptions from the blanket prohibition. Despite the lack of recognition of a

right to die with dignity, the ECtHR's assertion in Pretty that respect for human dignity relates not only to respect for life, but also to quality of life, does set down an important marker for the future [8, p. 7].

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PRINCIPLE *NE BIS IN IDEM* AND CRIMINAL LEGISLATION OF THE REPUBLIC OF SERBIA

Generally, the principle of *ne bis in idem*, is not only one of the basic principles of criminal procedure law, but also one of the very important instruments of legal certainty of citizens. This character of the above principle, among other things, is evidenced by the fact that it is not only universal but also in a large number of cases of constitutional nature, and that as such it is guaranteed by key international legal acts from this area. The case is primarily with Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms [1].

In terms of content, the principle of *ne bis in idem*, i.e. "not twice, not about