INTERNATIONAL JOURNAL OF INNOVATIVE RESEARCH IN MULTIDISCIPLINARY EDUCATION

ISSN(print): 2833-4515, ISSN(online): 2833-4531

Volume 03 Issue 11 November 2024

DOI: 10.58806/ijirme.2024.v3i11n01, Impact factor- 5.138

Page No. 1714 - 1733

Between Portugal and Brazil: Dignified Death, Legislative Evolution and Future Perspectives

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ABSTRACT: The purpose of this work is to verify how dignified death can be analyzed in the constitutional reality of Portugal and Brazil, aiming to delimit - contextually - each of the realities. In short, the question, duly problematized, is how the relationship between the two countries can contribute to the debate and development of the themes of euthanasia, orthothanasia and assisted suicide, as well as the decriminalization of the conduct typified in the legislation. To achieve this, the topic is introduced by analyzing dignified life and autonomy, seeking to understand whether for dignity in and of the "individual", we speak of technical-mechanical life or dignified life. It also aims to conceptualize what is meant by dignified death and its practices. The study also aims to verify the Portuguese legislative reality and, on the other hand, how criminalization of criminal types related to life and death occurs in Brazilian society, using legislative (in)evolution, identifying one of the main problems, which is the sacralization of life in contrast to secularity. It is therefore a descriptive and exploratory study of a bibliographical and documentary nature. The research provides and clarifies, through the bibliographic data obtained, the reality of the taboo when dealing with the subject of death, especially death considered and contextualized as dignified. It concludes that there is no absolute right, not even one dedicated to life, and that it is necessary to confront the issues related to dignified death - euthanasia, assisted suicide and orthothanasia - and that each of these issues should be analyzed based on a careful verification of elements or requirements, as well as through a dichotomy between different realities, as is the case in Portugal and Brazil, in order to promote debate and overcome issues such as the slippery slope.

KEYWORDS: Human Dignity; Fundamental Rights; Dignified Death; Portugal; Brazil.

INTRODUCTION

One of the most recurrent themes in constitutional literature, from a global perspective, concerns dignified death, what forms are possible within constitutional admissibility, the species, the concepts, the necessary confrontation and the possibilities of allowing it to mature and develop as an institute.

Dignified death, which has been recurring for a number of years, is a controversial topic, as it divides many opinions and its conceptualization is also necessary.

This work, therefore, attempts to highlight the realities that exist between Brazil and Portugal with regard to issues related to dignified death, considering its numerous other relevant aspects, making the necessary delimitations that contemplate understanding the issues as a humanitarian practice, observing Human Rights.

Therefore, the research problem of this work brings with it many other problems or questions, but specifically it can be translated as: can the realities of Portugal and Brazil be complementary for the dissemination of themes related to dignified death and for the promotion of debate?

Looking at the Brazilian reality, a considerable range of authors have already pointed out, and not so long ago, the low academic production on this subject. Therefore, the research to be carried out - bibliographical, documentary and exploratory - aims to suggest possible solutions, given the questions and the reality verified and, from certain perspectives, to guarantee originality and originality, obviously with the contribution of the Portuguese reality, with authors who have been dealing with the subject for years, much earlier than the Brazilian reality.

To this end, after the introduction, the first chapter/section will present the concepts of dignified death, assisted suicide, euthanasia and orthothanasia, notably by Portuguese and Brazilian authors.

In the second chapter/section, we will contextualize the Portuguese reality on the subject, not only from a doctrinal perspective, but especially from a legislative one.

In the third chapter/section, we'll move on to identifying the reasons why death and its consequences are so criminalized in Brazil, looking at the legal provisions on the subject and looking at the projects for legislative change in relation to these issues.

In the course of this work, we also deal with life as a dignified life and view the dying process in the same way, which only reinforces the concept of a dignified death.

Undoubtedly, elements are always added to the perspective of the concept of a dignified death, but there are essential ones, such as the preservation, respect and guarantee of each person's values and beliefs at the moment when the "rite of passage" from life to death takes place, and even before that, during the process which is sometimes painful, not just physically, but also psychically, and for everyone in this situation, which reveals a fundamental analysis of the issues relating to palliative care and overcoming what has been called the "slippery slope".

Finally, in the final considerations, we will highlight the main similarities and differences between the Brazilian and Portuguese realities, with the aim of presenting points of convergence and how the realities can be complementary in the study and development of the themes, based on the need to observe secularity.

The final considerations, in turn, are not intended to exhaust the subject, not least because of the factual impossibility and the need to promote debate, which is one of the main foundations and reasons for this article.

1. DELIMITING THE ISSUES SURROUNDING DIGNIFIED DEATH

Therefore, a dignified death - although the concept will be further delimited throughout this work - can initially be contemplated as respect for dignity in the passage from life to death, respect for the values and beliefs of each individual (LIMA, 2015).

Having analyzed the elements of respect for dignity, the passage from life to death and respect for values and beliefs, a brief digression on the dignity of the human person, the moment of death and the question of secularity is necessary, not least so that the practices considered dignified and those considered undignified can be highlighted.

Briefly, we would like to point out that when dealing with the term dignity in the context of this work, we are defending the idea of the dignity of the human person, which differs from human dignity. In this sense, we clarify that the expression dignity of the human person refers to an individual sphere, of that person. It therefore guarantees concreteness, unlike human dignity, which is understood as a quality that should be common to all, which goes beyond a single person (MIRANDA, 2003, p. 84).

Regarding the moment of death itself, there are differences in understanding. Although death is also a biological phenomenon, it is not limited to this. It is therefore important to study the legal concept of death, which has a medical concept - which opposes the existence of life - and a concept of death, which is brain death.

Ylmar Correa Neto points out that in medical literature there is no great conceptual difference between the terms brain death and encephalic death, since both include irreversible dysfunction of the brain, brainstem and cerebellum. Although there is no such conceptual distinction, he reveals that there are differences of great magnitude, and therefore significance, with two other anatomically restrictive concepts: "brainstem death, used in the UK, which does not require brain damage; and neocortical death, which does not require deep brain and brainstem damage" (NETO, 2010, p. 360)[1] .

Understanding the issue, within the concept of dignified death, of "respect for the values and beliefs of each individual", we highlight the issue of secularity. A secular state is one that is neutral, i.e. it does not adopt an official religion, nor is it averse to certain religions. All forms of religion are respected, as is the choice not to believe. Therefore, for the purposes of legal discussion, from here on in, no religion will be considered, as it is inappropriate for the proposed discussion.

Therefore, still in terms of initial contextualization, the following themes are suitable for dignified death for the purposes of this work: assisted suicide, euthanasia and orthothanasia. In turn, the concepts of dysthanasia and mysthanasia do not fit[2] .

1.1 Assisted suicide

Moving on - in an introductory way - to the basic concepts of the proposed topic, let's move on to the concept of assisted suicide, which is considered to be the abbreviation of life by the person themselves who has a serious, incurable or terminal illness. In this case, the person is helped by someone else (a doctor or not), who gives them the means to shorten their life on their own (DADALTO, 2019, p. 4).[2]

[1] Ylmar Correa Neto continues (2010, p. 360): If the acceptance of anatomically rostral criteria of death is complex, the acceptance of cranial criteria is more difficult. The criterion of neocortical death (also called *high brain death*) only requires damage to the brain regions related to the content of consciousness, affecting what is considered the essence of the human being. The patient would not fit Boethius' (c.475/480-524) classic definition of person, "individual substance of a rational nature", reducing their dignity. The loss of reason and consequent depersonalization would be tantamount to death, paving the way for patients in a persistent vegetative state, who maintain their breathing and sleep-wake cycle, to be considered dead, and perhaps one day, down a slippery slope, mentally handicapped children, schizophrenic adults and demented elderly people. We would have dead people breathing and perhaps walking.

[2] Luciano Dadalto, Camila Fagundes Lima Monteze Caneschi and Gabriel Frota (2020, p. 45) highlight the issue of the complete life pill, which cannot be confused with assisted suicide. The point, since it concerns the Dutch reality, will be addressed when analyzing the global reality of assisted suicide, but it is important to establish that only one of the above elements will be present when we evaluate the reality of the pill or tablet: abbreviation of life by the person themselves, since they are not always suffering from a serious, incurable and/or terminal illness, nor is there necessarily help (medical or otherwise) to abbreviate life. The

Luciano de Freitas Santoro defines the concept as follows:
Assisted suicide can also be known as self-euthanasia, which is euthanasia carried out by the individual themselves, who ends their life without the direct intervention of a third party, despite their participation for humanitarian reasons, providing material or moral assistance to carry out the act (SANTORO, 2011, p. 123).

According to Patrícia Rizzo Tomé, assisted suicide is
[...] an act carried out by the patient himself, under the guidance and assistance of a third party, who provides him with the means to end his own life. However, this patient may be a sick person, but for personal reasons wants to end their own life (TOMÉ, 2020, p. 8).

[2] The concepts of dysthanasia and mysthanasia follow below, but will not have their own sections in the article: Dysthanasia is that behavior in which there is an excess of the doctor in fighting for the patient's life, true tenacity translated into therapeutic obstinacy, uselessly delaying the patient's natural death through the use of unjustifiable therapeutic methods in patients who are in a state of imminent and irreversible death. [...] As a rule, doctors associate death with a failure in the provision of their services and therefore hardly accept it as a natural consequence (SANTORO, 2011, p. 128-129); Misthanasia (from the Greek: *mis*, miserable; and *thanatos*, death) refers to death that is unfortunate, premature, abandoned, out of time and/or before its time. The word gives meaning to the death of thousands of people without any assistance, left to their own devices, in rubbish dumps, under viaducts, bridges, streets and, above all, in hospitals with crowded corridors, with dying patients abandoned by the state and by everyone. The term was coined by Martin (1998, p. 174) to highlight the inappropriateness of the current use of the expression social euthanasia. For the author, euthanasia, both in its etymological origin and in its intention, is intended to be an act of mercy, which offers the suffering patient a good, gentle and painless death. The situations referred to by the terms social euthanasia and mysthanasia, however, are neither good, gentle nor painless (MENDONÇA; SILVA, 2014, p. 175-176).

In general literature, assisted suicide is understood as the intentional act of ending one's own life, with the help of someone who provides the knowledge or means to do so.

In turn, the expression "physician-assisted suicide" integrates suicide assistance into medical practice, as a response to the request to die arising from the suffering of patients at the end of their lives. Thus, there have also been those who argue that the expression should be "medical aid in dying" .[3]

When assisted suicide is practiced, whether or not a doctor or medical team is present can be seen as obligatory or not, depending on whether health professionals have participated in previous stages and whether the possibility is only in the case of a diagnosis of terminal illnesses with no expectation of a cure, a diagnosis that will be made by a medical board or team.

Lucília Nunes, Luis Duarte Madeira and Sandra Horta e Silva, inserted in the Portuguese reality, delimit the issue as follows:
It is understandable that it could be called "pharmacologically assisted suicide", when a third person provides the lethal product; or just "assisted suicide", when a third person is not a health professional. Assuming that most texts use "assisted suicide" or "medically assisted suicide" as consisting of giving the person the necessary means to commit suicide, with the person self-administering when they decide to do so, the expression still doesn't seem to be the most appropriate for our lexicon and culture. We searched for the expressions that have been used among us - "assisted suicide", "assisted suicide", "assisted death", "medically assisted suicide", - and, while maintaining a translation for "*assisted*" in the English texts, we prefer the use of the notion of "assisted suicide", a denomination already used by the President of the CNECV during the parliamentary hearing held on April 26, 2017 as part of the consideration of Petition no. 250/XIII/2ª - "All Life Has Dignity" (NUNES; MADEIRA; SILVA; 2020, p. 8-9).

The authors consider the following to be "assisted" suicide:
1) The person considering suicide a) is in a condition of irreversible illness, "without hope" b) is competent, not suffering from a depressive or psychiatric disorder that alters their ability to decide for themselves, c) has carried out a process of deliberation, d) expresses a free will to end their life, e) repeatedly, f) and is determined to carry out the act. 2) The person who helps a) makes resources available, either information or the means to carry it out, b) plays a helping role, c) does not intervene in the decision (does not induce, persuade or encourage), d) and the death does not result directly from their action. If the person helping is a doctor, "medically assisted suicide" is used (NUNES; MADEIRA; SILVA; 2020, p. 9-10).
They also harmonize the nomenclatures as follows:
Assisted suicide is when a person decides to take their own life, is in a condition of irreversible illness, "without hope", is competent, capable of making their own decisions, does not suffer from a depressive or psychiatric disorder, has carried out a process of

context of the pill or pill for complete life or complete life is largely related to the age issue, so that, in advance, we will not see it as a form of assisted suicide, since assistance will not always be observed.
[3] *See* ORENTLICHER; POPE; RICH, 2014.

deliberation, expresses a free will to end their life, repeatedly, and is determined to carry out the act. The person who helps makes resources available, be it information or the means to carry it out, plays a role of assistance, of help, does not intervene in the decision (does not induce, persuade or encourage) and death does not result directly from their action (NUNES; MADEIRA; SILVA; 2020, p. 10-11).

Despite some differentiations, there is a consensus that "it is an entirely individual, deliberate, private decision, taken in full possession of their capacities and of their own free will, repeated or reiterated, without being attributable to depressive behavior or mental disorder" (NUNES; MADEIRA; SILVA; 2020, p. 9).

The participation of a third party (whether a doctor or not), however, is fundamental, since "if there is no participation by a third party, no matter how small, we cannot speak of assisted suicide, but only of suicide for euthanasia reasons" (SANTORO, 2011, p. 124).

Making assisted suicide compatible with euthanasia, assisted suicide involves the administration of lethal doses to a patient by a doctor, often intravenously, while in assisted suicide the lethal dose is given to the patient, who will administer it orally or by intravenous facilitation.

It should be made clear that there may be other ways of doing this today, as in the case of SARCO[4] , which has sparked intense debate about the dignity of exercising individual freedom to choose to shorten one's life. Having contextualized assisted suicide in the Brazilian and Portuguese doctrinal reality, we move on to the conceptualization of euthanasia.

1.2 Euthanasia

As with the concept of assisted suicide, euthanasia also has various concepts to consider, again with the Brazilian and Portuguese doctrinal reality prevailing. For Leonard Martin (2004, p. 205), the term euthanasia would be "reserved only for the medical act which, out of compassion, directly shortens the patient's life with the intention of eliminating pain". In turn, the other procedures would be identified as expressions of mercy killing, depending on their intent, nature and circumstances. However, in Luciano de Freitas Santoro's view,

euthanasia can be understood as the act of depriving the life of another person suffering from an incurable illness, out of pity and in their interest, in order to end their suffering and pain. The agent's motive, therefore, is compassion for others (SANTORO, 2011, p. 117).

Maria Elisa Villas-Bôas defines euthanasia as "anticipating the death of an incurable patient, usually terminal and in great suffering, out of compassion for them" (2008, p. 68).

For his part, Roberto Dias (2012, p. 148) believes that euthanasia is the moment when a doctor, passively or actively, anticipates or does not postpone, respectively, the moment of death of a terminally ill person, or of someone suffering from an irreversible condition that causes them unbearable suffering (from a physical or moral point of view), in accordance with their express or tacitly expressed wishes, and in accordance with their fundamental interests, considered from the standpoint of the notion of dignity adopted by them, in an autonomous manner.

There is, therefore, a double possibility of achieving the same result - death - through actions that anticipate it and/or by not offering or interrupting ongoing treatments. When we analyze the first case (actions that effectively anticipate death), we are dealing with active euthanasia and, with regard to not offering or interrupting ongoing treatments, we are referring to passive euthanasia, also called orthothanasia by some of the doctrine[5] .

Thus, active euthanasia can be direct and indirect, known as double-effect euthanasia. Direct active euthanasia aims to effectively cause death; in turn, in indirect active euthanasia, what is sought is the relief of suffering through the administration of drugs capable of alleviating pain, knowing that they will, with great probability, cause death, but without actually desiring this result, different, therefore, from direct active euthanasia (DIAS, 2012, p. 149; 202-207).

In this vein, Luciano de Freitas Santoro makes some points:

Active euthanasia is when the event of death is the result of direct action by the doctor or an intermediary, such as administering lethal doses of drugs to the patient. Passive euthanasia, on the other hand, is an omissive conduct, in which there is the suppression or interruption of medical care that provides indispensable support for vital maintenance. Active euthanasia can be subdivided into direct and indirect. While the former aims *to cut short the patient's life by means of positive acts (**helping them to die**)*, indirect euthanasia, although there is also an acceleration of the death process due to the use of drugs, these are used not to cause death, but rather to relieve the patient's pain and suffering, which will end up being the cause of their death (SANTORO, 2022, p. 118).

Having conceptualized direct active euthanasia, the author considers indirect active euthanasia:

[4] The concept of a capsule that could produce a rapid decrease in the level of oxygen while maintaining a low level of CO2 (the conditions for a peaceful and even euphoric death) led to the development of Sarco (SARCO, s/d, *online*).

[5] The understanding that passive euthanasia is different from orthothanasia can be clarified in: SANTORO, 2011 and LOPES; SANTORO, 2018.

[...] the main act is positive, consisting of relieving unbearable pain, while the secondary effect is negative, as it will lead the patient to death. Conversely, in active euthanasia, the main effect is negative, while the secondary effect is positive, since someone will be killed to relieve their suffering (SANTORO, 2011, p. 119).

The delimitation of the concept is not only adopted by the Brazilian doctrine, but also by the Portuguese. In this context, it is important to highlight:

However, given the variety of national and international definitions, we have listed 7 elements that seem to constitute the definition of **direct active euthanasia**: a) the existence of a request for b) deliberately and intentionally provoked death, c) the existence of a second person who accepts the request, d) this person must be a doctor, e) the patient is suffering from a serious, incapacitating or terminal illness, f) the patient is competent and does not suffer from a depressive or psychiatric disorder that alters their ability to make decisions about themselves, g) death is deemed inevitable in their current state, h) the patient is in a state of *cruel* suffering or i) in a state of *undignified suffering* (NUNES; MADEIRA; SILVA; 2020, p. 10).

Lucília Nunes, Luis Duarte Madeira and Sandra Horta e Silva, as they did with assisted suicide, harmonize the nomenclatures as follows:

Direct active euthanasia, which we consider to be death provoked **on request,** when a person makes a request for death to be provoked, a request that is deliberate and intentional; the possibility exists institutionally, a doctor accepts the request and administers the lethal means; the patient is competent, capable of making their own decisions, does not suffer from a depressive or psychiatric disorder, is in pain and the inevitability of death is judged in the face of an incapacitating or terminal illness (NUNES; MADEIRA; SILVA, 2020, p. 11).

Nevertheless, it is questioned whether double-effect euthanasia is a type of euthanasia, since there is no intention on the part of the doctor to cause death, either actively or passively.

In this respect, a classification that will also help concerns voluntariness. Thus, euthanasia can be, according to the criterion of voluntariness: involuntary, non-voluntary or voluntary.

The first type, involuntary, is nothing more than a form of homicide, in other words, killing someone against their express or tacitly expressed will. Even if we do it for the sake of what we understand to be their fundamental interests, we are practicing murder, a practice repudiated in the construction of this work, from the point of view of the forms of dignified death. With regard to non-voluntariness, it is not possible to know what their will would have been, so that a decision is made based on their fundamental interests, from a heteronomous perspective. It is therefore related to the lack of respect for the dignity of the human person.

Finally, in the voluntary type, the patient expressly or tacitly manifests their will to die (DIAS, 2012, p. 145).

Once the topics have been brought closer together, it is important to highlight the concepts of euthanasia, which are fundamental to the development of this work, at the point where assisted suicide and euthanasia are considered synonymous.

For some authors, suicide could be seen as a kind of active euthanasia, since, once the same end result has been achieved, namely death, it matters little, morally, whether a third party carried out the action at the patient's request (direct active euthanasia), or whether the patient ingested the prescribed medication alone (assisted suicide) (AUBERT, 2019, p. 32).

This is one of the main reasons why the subjects are different, not only morally, but also in practice, since the latter act is combined with a manifest will in the same sense, i.e. ingesting a certain prescribed medicine or pressing a button on a machine.

At this point, we make a clear distinction between euthanasia and assisted suicide. With regard to the latter, not only is the request made by the patient, but so is the final act, making the utilitarian perception of the other person's life give way and space to the person's own perception of their life and condition of existence, which means that assisted suicide is capable of eliminating the need for a third party to make the decision or convince the person, especially because of the procedures and objective requirements that can be devised to ensure that the will is expressed freely.

For Patrícia Rizzo Tomé, the differences between assisted suicide and euthanasia are clear:

It should be noted that the law does not punish suicide, since it is the use of autonomy of will, as well as the exercise of freedom to act, which is a subjective, individual and available right. However, assisting suicide is nothing like euthanasia. In euthanasia, we have an act exclusively by the patient, ingesting a lethal substance that leads to death. In this case, we have the conduct of a third party who administers the drug to the patient or turns off the devices, triggering death. Both are typified in the Brazilian legal system (TOMÉ, 2020, p. 5).

Having highlighted the concepts of assisted suicide, euthanasia and the points of intersection between these concepts, we move on to the conceptualization of orthothanasia.

1.3 Orthothanasia

As we have argued, the factual issue is important for delimiting the concepts. This is how Luciano de Freitas Santoro introduces the issue: For this reason, it cannot be accepted that the terms passive euthanasia and orthothanasia are synonymous, because this leads the application of the norm to a mistaken conclusion, resulting from the lack of perception of the real condition that leads the patient to the result of death. Therefore, although the name is a minor issue, it ends up acquiring a different emphasis every time the legal

operator forgets to ascertain the cause of the event and passively accepts the legal consequence of a certain situation instead of the other (SANTORO, 2011, p. 108).

The expression *orthothanasia*, etymologically, refers to death at the right time, since *orthos* in Greek means "normal" and *thanatos means* "death" (SÁ; MOREIRA, 2015, p. 87).

Beyond the etymological construction, we have the concept classified as the suspension of medication or treatment of a patient, allowing the natural process of death to be triggered (DINIZ, 2010, p. 411).

Medicine is therefore not here to cure, but to mitigate pain . The "middle ground to be sought, of course, is death at the right time, when life is no longer possible" (SANTORO, 2011, p. 132).

For Débora Diniz,

Therapeutic obstinacy cannot be defined in absolute terms. A set of therapeutic measures can be considered necessary and desirable for one person and excessive and aggressive for another. This boundary between what is necessary and what is excessive is not always consensual, because what lies behind this ambiguity are also different conceptions of the meaning of human existence. There are cases of people who, even in the face of irreversible and lethal situations, want to use all available therapeutic resources to stay alive. Other people have set clear limits to the medicalization of their bodies, establishing parameters that may not always be in line with what health professionals would consider to be the appropriate and recommended medical conduct. The ethical challenge for health professionals, traditionally trained to superimpose their technical knowledge on their patients' ethical choices, is to recognize that sick people have different conceptions about the meaning of death and how they wish to conduct their lives (DINIZ, 2007, p. 295-296).

From this perspective, Luciano de Freitas Santoro defines orthothanasia:

Orthothanasia, therefore, is the behavior of the doctor who, faced with imminent and inevitable death, suspends the performance of acts to prolong the patient's life, which would lead to useless treatment and unnecessary suffering, and begins to provide them with the appropriate palliative care so that they can die with dignity. For this reason, orthothanasia can be considered the correct approach to death, which will be carried out in its own time and way, since it will not anticipate or delay it, but rather accept that, once the death process has begun, the dignity of the human being must continue to be respected, without subjecting the patient to real therapeutic torture (SANTORO, 2011, p. 133).

It is clear, therefore, that sick people have different conceptions, both about life and life itself; about death and death itself; conclusions that reinforce the argument for the multi- and interdisciplinary nature of the subject. We have therefore used concepts from other sciences in our discussion, but with the aim of guaranteeing a legal analysis of assisted suicide and all other related issues.

The difference between passive euthanasia and orthothanasia would be in a fundamental point, the beginning of the death process, since in orthothanasia the death event has already begun and in passive euthanasia "this omission will be the cause of the result" (SANTORO, 2011, p, 138)[6] .

To conclude the presentation of the differences between assisted suicide, euthanasia and orthothanasia, the *World Medical Association* reiterated in 2019 (WMA, 23 Nov. 2021, *online*) its opposition to the first two institutes, based on the following terms:

Adopted by the 70th WMA General Assembly, Tbilisi, Georgia, October 2019

The WMA reiterates its strong commitment to the principles of medical ethics and that the utmost respect for human life must be maintained. Therefore, the WMA is firmly opposed to euthanasia and physicianassisted suicide.

For the purposes of this declaration, euthanasia is defined as the deliberate administration of a lethal substance or the performance of an intervention to cause the death of a patient with decision-making capacity at the patient's own voluntary request. Physician-assisted suicide refers to cases in which, at the voluntary request of a patient with decision-making capacity, a physician deliberately allows a patient to end his or her own life by prescribing or providing medical substances with the intention of causing death.

No doctor should be forced to participate in euthanasia or assisted suicide, nor should any doctor be obliged to make referral decisions to this end.

Separately, the doctor who respects the patient's basic right to refuse medical treatment does not act unethically in renouncing or withholding unwanted care, even if respecting such a wish results in the patient's death.

In order to move forward, we will present the Portuguese reality on the legislative evolution of issues related to dignified death, emphasizing that the dichotomy between Brazil and Portugal in bioethics has been dealt with for years, as in the case of assisted human reproduction, comparing precisely the regulations in Brazil and Portugal (SANTOS; PEREIRA; DELDUQUE, 2019), which reveals the contribution of a comparative study, as this article intends to do, precisely for expansion as science advances, establishing definitions and challenges on the issues, in favor of gaining more rights.

[6] In the same vein: VILLAS-BÔAS, 2005 , p. 80.

2. THE PORTUGUESE REALITY

The European reality, as we have seen, has been presenting a necessary debate on the subject for longer than other continents, which sometimes reverberates in Parliaments, as is the case with the Portuguese Parliament.

Luciana Dadalto, Camila Fagundes Lima Monteze Caneschi and Gabriel Anselmo Frota (2021, p. 338-339) note that "in Portugal, five bills regulating assisted death have been approved by the Assembly of the Republic (the country's legislative body) and sent for presidential sanction".

The legislative proposal that we will initially analyze here was approved in February 2021, with the aim of decriminalizing euthanasia and assisted suicide in certain cases. The issue is controversial, and remains so, because the country has a Catholic majority, despite the updating and legislative debate from 2021 to the present day.

The "João Semedo Law" was named after the Portuguese doctor and MP who fought for the right to assisted death and, after a battle with cancer that caused him to lose his voice, died on July 17, 2018 (SANTOS, 2018, s/p). With 136 votes in favour, 78 against and 4 abstentions, the Portuguese Parliament approved the decriminalization of euthanasia.

The parliamentarians of the House voted on a total of 5 proposals, presented by 5 different parties, about legalizing the practice in specific cases and under strict rules, as seen in the Assembly of the Republic (PORTUGAL, Bill 4/XIV/1, 25 Oct. 2019, *online*).

The five texts are very similar to each other and were approved in a very favorable and comfortable manner, being transformed into a single bill, which was finally voted on and sent for promulgation.

The text of this bill makes progress on the issue of assisted death. At the time, President Marcelo Rebelo de Sousa's appraisal generated expectations, since in the Portuguese constitutional system there is the possibility of submitting the issue to the Constitutional Court or imposing vetoes.

In summary, the proposals presented and voted on established that euthanasia would not be punishable in the case of the anticipation of death by decision of the person themselves, who is older, in a situation of extreme suffering, with definitive injury, of extreme severity, according to scientific consensus, or incurable and fatal illness, when practiced or helped by health professionals.

The evolution of the issue in Portugal was more timid, even with the action and legislative militancy of MPs like João Semedo, who gave his name to the final bill, given the confessional religious issue present in the country. Progress was so much slower than in other European countries that a similar measure had been voted on in Parliament two years earlier (2019), and rejected.

The issue of dignified death continued to be debated by the Portuguese Parliament, culminating in Law no. 22/2023, of May 25 (PORTUGAL, Law no. 22/2023, May 25, *online*), which now regulates the conditions under which medically assisted death is not punishable and amended the Portuguese Penal Code, being enacted under the terms of Article 161(c) of the Portuguese Constitution: "It is the responsibility of the Portuguese Parliament: (...) c) To make laws on all matters, except those reserved by the Constitution to the Government".

It should be noted that the President of the Portuguese Republic had already returned Decree no. 43/XV, on medically assisted death, to Parliament without promulgation.º 43/XV, on medically assisted death, returning the matter for classification of the main points: the patient's choice of assisted suicide or euthanasia (being able to resort to euthanasia only if physically prevented from practicing assisted suicide) and clarifying who should define the physical incapacity to self-administer lethal drugs and supervise assisted suicide, which doctor should intervene in situations of suicide and euthanasia (PRESIDÊNCIA DA REPÚBLICA PORTUGUESA, 19 abr. 2023, *online*)[7] .

After the procedure, Parliament again approved the law on medically assisted death for the fifth time, and the President of the Republic can no longer veto the law and has promulgated it, in compliance with the Constitution, although parties such as the Portuguese Social Democratic Party announced that they would resort to constitutional channels to review the matter (EURONEWS, May 13, 2023, *online*).

Therefore, on May 16, 2023, the aforementioned law regulating medicallyassisted death was enacted, and we must now move on to a legal analysis of the provisions of Law No. 22/2023, of May 25, 2023.

Historically, in relation to the procedure for assisted dying, the patient would have to confirm their wishes several times and would be assisted by two doctors, at least one of whom must be a specialist in the illness in question. A psychiatrist had to authorize the applicant's request, at which point the case was sent to a committee, which could approve or reject it. It was also possible to postpone the process if it was contested in court, or if the patient became unconscious, with the exception of cases of conscientious objection on the part of health professionals.

Another point that stood out on the Portuguese scene throughout the legislative process was that, in order to prevent people from traveling to Portugal in search of euthanasia or assisted suicide ("death tourism", a term strongly criticized by the authors of this article), each of the proposals stipulated, as did the final text, that patients must be Portuguese citizens (nationals) or legally resident in national territory (article 3, 2, of Law no. 22/2023).

[7] To access the PDF version of the letter sent to the President of the Portuguese Parliament: https://www.presidencia.pt/media/kwwjlexg/carta_ar_20230419.pdf

Having gone over the issues that have historically been dealt with in Portuguese legislation, it is worth highlighting points relating to the final text, which was duly approved and promulgated.

Law no. 22/2023 is made up of 34 articles and is divided into 6 chapters. The first chapter (articles 1 to 3) covers the object, definitions and medically assisted death, which is not punishable in itself, establishing the "decision of the person themselves, of legal age, whose will is current and repeated, serious, free and informed, in a situation of

great suffering, with definitive injury of extreme severity or serious and incurable illness, when practiced or assisted by health professionals".

It has been established that euthanasia can only take place if assisted suicide is impossible due to the patient's physical incapacity.

Another point that is dealt with in Chapter II is the procedure (establishing stages, deadlines, authorized locations), listed between Articles 4 and 17, reaffirming previous issues in the sense of the need for at least 2 doctors (counselor, chosen by the patient; specialist in the pathology), as well as the possibility of a specialist in clinical psychology (article 4, 7), as well as access to palliative care (article 4, 6) and also a specialist in psychiatry, whose participation is mandatory in cases of doubt about the ability to request medically assisted death, in order to reveal a serious, free and informed will (article 7).

The opinions of the supervising doctor, the specialist and, possibly, the psychiatrist are recurrent and successive, and in the event of an unfavorable opinion, the procedure is closed and may be restarted with a new request for opening, under the terms of Article 4.

The case will be sent to a committee, which can approve or reject it. It is also possible to postpone the process if it is contested in court, or if the patient becomes unconscious, with the exception of cases of conscientious objection by health professionals.

The patient's decision is only made after all these steps have been taken and in accordance with Article 9 of the law, and revocation is possible at any time, with the chapter of procedures ending after the act, with the verification of death, the special clinical record and the final report.

The legislator was also concerned with the rights and duties not only of the patient, but also of health professionals, provided they are qualified (Chapter III - Articles 18 to 22), especially with regard to conscientious objection, which can be invoked at any time and is not bound by any reasoning, not even any mention of intimate matters.

The supervision and evaluation stage is dealt with in Chapter IV, and it is worth highlighting the composition and functioning of the commission, which is made up of two jurists (one from the Council of the Judiciary and one from the Superior Council of the Public Prosecutor's Office), one doctor appointed by the Portuguese Medical Association, one nurse appointed by the Portuguese Nursing Association and one bioethics specialist appointed by the National Ethics Council for Life Sciences (CNECV).

The commission is responsible for overseeing medically assisted death procedures, under the terms of the law.

Chapter V deals with the legislative changes made to the Penal Code, in Articles 134, 135 and 139, to be observed after the demonstration in Chapter VI.

The aforementioned chapter (VI) deals with final and transitional provisions, such as life insurance (medically assisted death is not an exclusion factor), disclosure on the internet, regulation, deadlines, transitional provision[8] and entry into force.

The legislative outcome did not end the debate, so much so that Ombudsman Maria Lúcia Amaral requested the unconstitutionality of the law before the Portuguese Constitutional Court[9] , but these grounds will not be analyzed in this work, since the perspective is analyzed with regard to legislative evolution, dealing with the future perspective of the declaration of unconstitutionality or not, which will be addressed in the final considerations.

However, not only did the legislative outcome not end the debate, but it also fostered it not only from a legislative and judicial perspective, but also from an academic one, as revealed by Inês Fernandes Godinho and André Dias Pereira (2023, p. 469-478).

Moving forward, euthanasia, as in most other countries, has certainly opened the door to debate on other forms of dignified death, especially assisted suicide, but the Portuguese reality has ensured that it will only occur if the patient himself is unable to carry out assisted suicide.

The Legislative and Parliamentary Information Division (DILP) of the Assembly of the Portuguese Republic has contributed to the development of the debate on issues related to euthanasia and assisted suicide, including the international framework, through the collection called "Themes", in which No. 60, of November 2020, presented the world reality.

The Brazilian reality, which will be discussed more fully in the following section, has a criminal bias, with the limitations brought about by the Penal Code itself and its articles (2020, p. 18-19). As for the reality in Portugal, which was analyzed here,

[8] Every year, the CVA submits a report to Parliament evaluating the implementation of this law, with detailed statistical information on all relevant elements of medically assisted death processes and any recommendations

[9] To access the full request: https://www.provedorjus.pt/documentos/2024_03_06_pedido%20inconstitucionalidade_Lei%20Morte%20Medicamente%20Assistida.pdf. Accessed July 13, 2024.

the criminal issue was present, but with legislative advances in which issues were better debated and related topics were developed, such as living wills (2020, p. 41-43).

Moving on to the legislative debate, as much as it began with the issue of euthanasia, it ended with the amendment of the Portuguese Penal Code, not just Article 134, but also Articles 135 and 139:

Article 134

Murder at the victim's request

1 - Anyone who kills another person as a result of a serious, immediate and express request made by that person shall be punished with imprisonment of up to 3 years. 2 - Attempts shall be punishable. 3 - Conduct is not punishable when carried out in compliance with the conditions set out in Law no. 22/2023.

Article 134

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(...)

Article 139

Suicide propaganda

1 - Anyone who, in any way, advertises or publicizes a product, object or method advocated as a means to produce death, in a manner suitable to provoke suicide, shall be punished with imprisonment of up to 2 years or a fine of up to 240 days.

2 - A doctor or nurse who does not incite or advertise, but merely provides information on medically assisted suicide at the express request of another person, in accordance with Article 135(3), shall not be punished.

The amendments to these articles included the note that: "The amendment to this article shall enter into force 30 days after the publication of the relevant regulations."

The decriminalization of conduct in Portugal has been debated for years, as evidenced by the doctrinal warning below:

[...] although Portugal still criminalizes assisted suicide, it is important to note that the country already admits the living will, which gives the person greater autonomy in relation to the way they wish to end their life, since they can, as long as they are of legal age and capable, express their will in advance - consciously, freely and in an informed manner - in relation to the health care they wish to receive or not receive in the event that they are incapable of expressing their will at a future time. In addition, the country authorizes the practice of orthothanasia, which summarizes the secular term of turning off artificial life-sustaining devices [...] (SASSI, 2020, p. 39).

The perspective also adopted as one of its main foundations the exclusion of criminal illegality based on the consent of the offended party (BRITO; MATA; NEVES; MORÃO, 2007).

Not only what the author reveals, but also the recent legislative developments, allow us to move towards the constitutionalization of assisted suicide in Portugal, as well as euthanasia, although the recent judicialization of the issue by the Ombudsman is highlighted.

Once again, in addition to the legislative developments to date, and the issue discussed from a criminal point of view, Ana Paula Zappellini Sassi (2020) clarifies other important points in the Portuguese debate, such as aiding suicide as a concept of a good death, the unavailability of life only in relation to third parties, the existence of other realities, establishing basic parameters or requirements, the last word being that of a doctor, the necessary assistance of a doctor, autonomy of will, conscientious objection and the possibility of self-determination.

It is not too much to point out that José de Faria Costa (2004, p. 133) has already dealt with the issue of life and death in criminal law and emphasizes the point of the absolute of life compared to the absolute of an "I", from the perspective of selfdetermination, as well as which elements are fundamental to allow the exceptional nature of the practice, such as the extreme nature of a disease, the imposition of the practice by a doctor, the age of majority[10] , the capacity of the patient, the offer of palliative care and precisely what was highlighted in the previous paragraph, the conscientious objection of the doctor.

The punitive legal regime revealed by FARIA COSTA (2004) is also highlighted by André Dias Pereira, in his explanation of vote in Opinion No. 101/CNECV/2018 (PORTUGAL, **Declaração de voto.** Parecer n. 101/CNECV/2018, *online*), but in addition to the penal analysis carried out, it is worth highlighting the position on diversity and plurality:

[10] Currently confronted by the reality in Belgium: AZEVEDO, Reinaldo. Belgium approves euthanasia for children. **Veja**, Feb. 13, 2014. Available at: http://veja.abril.com.br/noticia/saude/belgica-aprovaeutanasia-em-criancas. Accessed on: July 25, 2024.

[...] But I don't see how a safe, thoughtful and careful path can be found if it isn't precisely through a complex procedure that links the medical and legal fields, with a view to promoting the realization of the personality of the human person, in the diversity and plurality of ways of understanding the end of life that, in an open society, should be considered acceptable. Failure to regulate ethically controversial interventions by law can lead to recourse to the courts, which will make
decisions on a case-by-case basis and, possibly, disparate ones, thus jeopardizing democratic principles of equality and security in the application of the law.

DIAS PEREIRA concludes:

7. I recognize that regulating assisted suicide and euthanasia could create a painful transformation of medical ethics. However, such caution cannot lead to a denial of the exercise of a citizen's freedom, in duly considered cases. An ancillary argument cannot detract from the central answer to the problem: the primacy of the autonomy of the sick person and the illegitimacy of - in a plural and democratic society - wanting to impose certain ways of dying on other people. This bill imposes nothing, it only liberates! On the contrary, the law in force (articles 134 and 135 of the Penal Code) punishes with a prison sentence of up to 3 years the option that some citizens might wish to take. It therefore oppresses and humiliates different visions of the end of life. As Ronald Dworkin states "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." (Dworkin, Ronald, Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom, Vintage Books, 1993, p. 217 and 327; cf. also Pereira, André G. Dias, O Consentimento Informado na Relação Médico-Patiente. Estudo de Direito Civil, Coimbra Editora, 2004, pp. 516-525).

These doctrinal foundations were later perceived in Law No. 22/2023, which allows us to advance a final consideration, in the sense that it is not the absence of academic production that will allow debate on the subject, it is exactly the opposite.

As final considerations, which deserve attention even after Law no. 22/2023, precisely for the constitutional confrontation that will follow, Ana Paula Zappellini Sassi advances on the Portuguese reality thus defined:

Death with dignity is the essential reason for the practice of assisted suicide. The case for decriminalizing assisted suicide is made on the grounds that the individual - who has the right to life and health - once struck down by a terminal illness - the reason for which is enormous physical and/or psychological suffering - has his rights to a dignified life and health transformed into the prerogative, which stems from individual autonomy, of receiving assistance to carry out suicide - based on the principle of dignity at the moment of death - if he feels that his current health situation takes away his dignity, which could be remedied through a quick and painless end of life. [...Therefore, since the issue has already been successfully legislated in some nations, which have started to carry out the procedure in a serious and effective manner, in accordance with the principle of dignified death and patient autonomy, it can be seen that the path to legalizing assisted suicide in other countries, specifically Portugal, has already begun to be mapped out, depending on the permission to carry out the procedure, the debate with the local population and the establishment of requirements to be followed rigorously, and which do not diminish the human being as a person with essential rights that must be protected (SASSI, 2020, p. 4344). 43-44).

Also relevant in Portugal is the existence of the National Ethics Council for the Life Sciences (CNECV), which works on issues related to the life sciences, as evidenced by the aforementioned explanation of vote.

The Council's main activity is precisely to monitor the evolution of ethical problems raised by scientific progress, reflected in the drafting of opinions, which often - at the request of legislative bodies or ex officio - lead to normative regulation (BESSA, 2014, p. 275), so much so that it is present in Law no. 22/2023 (article 25, 1, e).

Maria Raquel Ribeiro Bessa (2014, p. 374) concludes, in line with Paula Martinho da Silva's understanding, that even though the opinions are advisory, ethics committees such as the CNECV move the discussion, the debate itself, precisely by drawing up opinions which, as well as being the product of the debate, guide or influence the rules related to the issue.

Bioethics is therefore extremely relevant and recognized by Maria Raquel Ribeiro Bessa (2014, p. 374). According to Luís Archer (*el al*, 2001, p. 329), with whom she dialogues, "we can't do without bioethics at the risk of succumbing to the new powers and resigning from our destiny".

Therefore, bills have dealt with the issue; it cannot be based solely on the "first person", precisely because of the complexity of the issue; regulation must be in conjunction with the professional councils in the health area, especially the medical council; it is not just a question of legalizing euthanasia or assisted suicide or orthothanasia, but also of enabling requirements for its realization; Furthermore, conscientious objection on the part of the doctor or medical team and other areas that followed the case up to the patient's decision must be considered, since legalizing the practice does not mean automatically making it a "duty of office" *ope leges*, which can be excused for personal reasons, regardless of justification.

In this sense, Portuguese legislation, which is not without its critics and will certainly face relevant constitutional debate about the constitutionality of the law, should be considered as a basis for debating the issue in Brazil.

As with other issues, even for historical reasons, the Portuguese reality is similar to the Brazilian one, which is why we should consider what has been done in Portugal in order to encourage debate in the Brazilian legal-constitutional reality.

In order to delimit the issue, Portuguese doctrine helps us:

Both assisted suicide and active, direct and voluntary euthanasia (death provoked on request) are essentially problems with an ethical dimension. However, they do raise the issue of a potential collision between legal goods: life on the one hand and self-determination on the other. Basically, the question is whether or not, despite the supremacy of the protected good, human life, it is up to the legal system to demand that it be maintained at all costs, even in the case of offenses coming from its own holder. The debate on whether or not the absolute value of life can be legally overcome has been discussed by the legal system in relation to the crimes of murder at the request of the victim and assisting suicide, including on the margins of the debate on euthanasia. Basically, the question is whether it is possible to change the role of the state, removing its legitimacy to intervene in situations of self-injury and consensual hetero-injury, as is the case in other legal systems. To this end, and favorably, the argument is made for situations in which the legal system already tolerates the elimination of human life, given certain circumstances, as is the case, for example, with self-defense and the privileging of homicide at the victim's request and aiding suicide. Or even the non-punishability of attempted suicide (NUNES; MADEIRA; SILVA; 2020, p. 5).

And a final reflection by Inês Fernandes Godinho (2017, p. 146) can be revealed:

Naturally, the debate on the legal implementation of a possible decriminalization of assisted death in Portugal cannot be exhausted in these brief lines. We just want to raise the points - albeit in some cases in a topical way - that we think are crucial in any serious and committed debate on this issue, against the backdrop of the three axes mentioned. The truth is that, in this matter, all the proposals we can put forward will always be the body of an impossible attempt to solve an issue that, after all, remains the great mystery of life: death. That's why the only possible attempt can be to follow a path illuminated by the polar star that guides us: freedom.

Once we have seen the legislative points, the start of the constitutional debate and the constitutional foundations presented above, we can look at the reality of Brazilian legislation on the issue.

3. THE BRAZILIAN REALITY

Criminal law provides answers to this question, since institutes such as the state of necessity and self-defense also demonstrate that life is not an absolute right (articles 23 to 25 of the Brazilian Penal Code).

What can be seen from an analysis of the Brazilian reality is that the criminalization of conduct in relation to the dead, their memory and their families is a cause for concern in the Brazilian legal system (articles 208 to 212 of the Brazilian Penal Code). However, we do not intend this work to diminish the level of protection afforded to the right to life, but rather to look at it from another perspective, that is, when analyzed from the perspective of its own holder.

The protection of the right to one's own life and physical integrity is fundamental to prevent anyone from taking or endangering the lives of others.

When we look at the life of the person who owns it, we see a significant interference of protection by the state, which is also related to the idea of sacralizing the body, even if it is dead, in the sense that there are many crimes related to the corpse itself and the memory of those who have died. This does not reveal the importance of understanding whether those same people, protected after their respective deaths, even intended to live until that moment.

In this area, the re-signification has to do with the human being himself, who wishes, given certain (objective) limits, to no longer live, since life is no longer dignified. Thus, what is desired is a dignified death, as all life should be, or at least should be (but this is not always possible, when other fundamental rights are not observed, respected, guaranteed and made effective, especially those of a social nature, so that this objective can be achieved, while alive).

Thus, Lorenzo Morillas Cueva, writing the prologue to the work by Claus Roxin and other authors (2001), clarifies that one of the keys to the solution is not the choice to kill or not to kill, to deprive life or not, but to answer whether we will accept a long and painful death or a quick and peaceful death. Once again, when dealing with a quick and peaceful death, we do so without trivializing suicide itself and the significant numbers that come with it, but we deal with speed and peace of mind on the basis of a consensual death, in which the dimensions of dignity and autonomy are observed.

The subject is constantly arousing interest and debate. On this point, politics has an influence insofar as, for example, the size of the parliamentary front in the National Congress called "Evangelical", or commonly referred to as the "Bible Caucus", is quite significant. In addition, issues related to the right to control one's own body are already being resisted by conservative or so-called "customary" agendas, closely related to religious issues, which prevent discussion of bills on the subject in the political sphere, and the possibility of conforming the constitutional amendment itself to the limit or limits on the right to life.

If political openness is extremely costly for issues that have been debated for a long time, it is even more so for issues such as assisted suicide, euthanasia and orthothanasia. It is because of these political influences that we can see that a *lege ferenda* solution is simplistic in the Brazilian reality, which is a point of difference and necessary reflection with the Portuguese reality.

Politics and political choices - as well as other areas of knowledge, such as religion - are also relevant factors to look at.

Firstly, just as we criticized when the Penal Code was created (1940), in relation to the article mentioned above, in 2019 there was a legislative change by Law No. 13,968/2019, precisely to modify the crime of incitement to suicide and include the conduct of inducing or instigating self-mutilation, and providing assistance to those who practice it.

Thus, the criminal type, which until then had only been related to suicide, now also includes self-mutilation, but we won't go into this in as much detail as we will in relation to suicide itself.

Criminal law is obviously concerned with the preservation of life, not least because of criminal liability itself, but there is a difference between criminal law that protects life in relation to third parties and in relation to oneself, which also permeates the constitutional debate between inviolability and non-renounceability.

The inviolability of the right of a third party to take the life of another is one perspective, but the inviolability of one's own life can be combated with practical arguments such as the possibility of tattoos or even earlobe piercings for earrings.

Undoubtedly, the differences between having control over your own body by getting a tattoo or piercing your earlobes and medically assisted death are great, but we don't think it's appropriate to limit the debate under the argument of inviolability, an expression provided for in the Brazilian (Article 5) and Portuguese (Articles 24 and 25) Constitutions.

Thus, returning to art. 122, the victim's consent is not considered irrelevant, since the legal asset in question in Brazil is considered unavailable.

Regarding the conduct analyzed from a current doctrine, the concepts are outlined as follows (MASSON, 2021, p. 660-661):

To induce means to instill the idea of suicide or self-harm in someone else's mind. To **instigate** is to reinforce the pre-existing purpose of suicide or self-harm. These two types of moral participation require **seriousness** in the agent's conduct. **Aiding** is materially contributing to the suicide or self-mutilation (**ancillary, secondary** activity), otherwise the perpetrator will be liable for homicide. The aid must be **effective**. It is not to be confused with the omission of aid to the suicidal or selfmutilated person, which will characterize the crime of art. 135 of the

Criminal Code. **Aid by omission** is allowed, as long as the **duty to act**

to prevent the result is present (art. 13, § 2, of the Criminal Code). There is an understanding that the legal expression **"to provide assistance"** indicates action, and that the agent, in the case of omissive conduct, must answer for the crime of art. 135, sole paragraph of the CP. This is an **alternative mixed type** (multiple action or varied content crime): the type includes two or more nuclei, and a single crime is characterized when the agent carries out two or more acts against the same material object, i.e. the same person. Participation in suicide or self-mutilation must be directed at a **specific person or persons**.

Brazilian law is largely concerned with containing social impulses through criminalization; in other words, criminalizing a conduct becomes the main instrument for dealing with it.

However, just analyzing the issues from a criminal point of view seems meager to us, precisely because there are other elements that deserve to be looked at, such as public policies. Just as there are policies to control suicide due to psychological illnesses, we should also tackle the issue with policies aimed at people who want to choose a dignified death.

Although we have evolved in terms of provisions related to the internet, technology and digital media, especially with the Marco Civil da Internet (Civil Rights Framework for the Internet) and the concern about crimes committed on the world wide web, it is necessary to clarify that the issue of data in Brazil is an imprecise factor.

In this sense, in relation to the figures on suicide, especially in the relationship between suicide and the practice contained in art. 122 of the Penal Code, we have flaws, revealed and summarized as follows:

Although death certificates have quantitative advantages, they have many qualitative flaws. Several factors affect their accuracy and quality. In Brazil, several locations do not have reference services for the clarification of deaths from external causes, and other locations do not regularly send this information to the Ministry of Health [...]. In the Brazilian system, suicide cases are recorded in the External Causes section of ICD-10. Mortality information from external causes records lethal events not resulting from biological diseases, monitoring, above all, deaths resulting from violence, fatal accidents and suicide. The methodological problem that emerges is the difficulty of distinguishing suicide from violent events such as homicides, as well as dubious fatal cases. Often, coroners do not clarify the underlying cause of death on the death certificate, specifying only the nature of the injury, which makes it difficult to obtain conclusive data on the type of death recorded

(MELEIRO; SANTOS; WANG; 2007, p. 472-473).

In practice, there are programs and campaigns that combat suicide itself, such as the Yellow September Campaign and the Center for Valuing Life (CVV)[11] , but many others could be thought up, created and developed, including with the help of the internet and technology.

To corroborate the fact that other elements are fundamental and that the purely legislative issue can be altered and is not the main solution to the issue, let's look at what is being discussed in the Chamber of Deputies regarding art. 122 of the Penal Code and dignified death.

The first proposal to be analyzed is Bill 1.670/2019, authored by Congresswoman Clarissa Garotinho (PROS/RJ), presented on March 21, 2019, aimed to increase the penalties for those who induce or instigate someone to commit suicide or assist

[11] Available at: YELLOW SEPTEMBER, s/d, *online*; CVV, s/d, *online*.

them in doing so and equates it to homicide if the victim is a child, elderly or does not have such discernment, not having the possibility of understanding and possible resistance (CÂMARA...Projeto de Lei n. 1.670/2019, 21 mar. 2019).

Another bill, n. 4.930/2019, presented by Federal Deputy Guilherme Derrite (PP/SP) on September 10, 2019, was attached to the bill, but aimed to amend the article to punish inducing, instigating or aiding suicide regardless of death or the result of serious bodily injury to the victim.

Both bills were declared null and void due to the approval of the Global Substitute Amendment to Bill 8.833/2017, adopted by the Rapporteur of the Committee on Science and Technology, Communication and Informatics (Extraordinary Deliberative Session of 29-10-2019, 20h03, 342nd Session).

Adopting, in turn, other indexing terms, such as "aiding suicide" or "art. 122 of Decree-Law no. 2848, of December 7, 1940, of the Brazilian Penal Code", new projects appear, basically involving increasing the penalties and trying to create new criminal types such as "apology" for suicide.

It is worth highlighting 03 projects on the subject of "assisted suicide". INC

Indication no. 696/2003, by Federal Deputy Severino Cavalcanti (PP/PE), presented on July 9, 2003, suggesting that the Attorney General adopt the necessary measures to investigate the actions of the Criminal Prosecutor's Office for the Defense of Health Service Users - Pró-Vida, of the Public Prosecutor's Office of the Federal District and Territories, and bills PL no. 518/2020 and PL no. 580/2020.

The first of these, authored by Federal Deputy Diego Garcia (PODE/PR), establishes January 22 as a day of Homage to Human Life, from conception onwards.

The second, authored by Congresswoman Chris Tonietto (PSL/RJ) and Carla Dickson (PROS/RN), aims to include an "e" in item I of Article 7 of Decree-Law No. 2,848/1940 (Penal Code), in order to provide for the application of unconditional extraterritoriality to intentional crimes against life, when the perpetrator is Brazilian or domiciled in Brazil.

Having briefly demonstrated the bills, we are interested in checking the justification for each one of them, in order to reveal that the issue does have room for debate, but always with a view to protecting the right to life, even of its own holder. Bill 580/2020 has the following justification:

Almost consequently, in view of certain movements to relativize natural rights, such as the right to life, certain individuals are taking advantage of the more lenient legislation in certain countries and, in those places, are committing crimes. In Switzerland, for example, where assisted suicide is allowed indiscriminately, an ever-increasing flow of people, often influenced and guided by large foundations, have sought to end their lives. Such institutions should in no way be free to operate in Brazil, since our Penal Code has made it a crime to induce, instigate or assist suicide, as provided for in Article 122 of the Penal Code. However, given that the result takes place in a foreign country that does not punish the practice, it is difficult to hold these organizations accountable (CÂMARA...Projeto de Lei n. 580/2020, *online*).

Bill 518/2020, on the other hand, considers:

The life of a new person is a good for all of humanity. It's humanity reopening itself. It is hope. It is promise. It is life. Simply. If it weren't for the care and protection of the rights of the unborn, we wouldn't be here. Therefore, life cannot be treated indiscriminately as an object, as something that is possessed in order to abuse it. [...] And this defense takes place throughout life. This is why issues such as the liberalization of euthanasia and assisted suicide are crying out for urgent attention. In 2020, the Portuguese Parliament accepted five bills proposing the decriminalization of euthanasia and assisted suicide in the country. Through these practices, seriously ill people can choose to end their lives.

Medical bodies in Portugal, such as the Ordem dos Médicos and the Ordem dos Enfermeiros, have already spoken out on the issue and have issued opinions against the legalization of assisted death based on ethical arguments. For them, the government should invest in a palliative care network for terminally ill patients before discussing euthanasia. In addition to Portugal, Spain and New Zealand are also countries that have discussed decriminalization. Three European countries already authorize euthanasia. In the Netherlands and Belgium, assisted death is even possible for minors who have the consent of their legal representatives. [...] Even though it is a crime in the country, the mobilization of the discussion of the issue around the world brings with it great concern for Brazil. Setting aside a day to honor Human Life, from conception onwards, is something that is not only commendable, but necessary in a scenario in which people are losing their perception of the beauty and value of life. I therefore ask for the support of my noble peers for the approval of this proposal (CÂMARA..., Projeto de Lei n. 518/2020, *online*).

Undeniably, the use of terms related to religious influences is noticeable, such as "promise" and "praiseworthy"; there is also a clear concern for life and its protection at any cost, using issues related to dignity itself; comparative law is also present, since both projects reveal awareness of what has happened in other realities, treating them as true systemic pathologies, to be combated at any cost.

In this work, as explained, the verification of the international reality, especially the Portuguese one, aims to provide a guide to the Brazilian reality, so that the issue can be tackled and the debate can be complete, not just from one perspective, since it is necessary to consider countless other elements, including comparative law.

In view of the analysis of the problem proposed for this study, the question arises: is the instigation, inducement and assistance of one person to the suicide of another relevant conduct to be criminalized when the person clearly wishes to choose a dignified death or a medically assisted death?

The proposed analysis of art. 122 of the Penal Code, which deals precisely with inducing, instigating and assisting a victim to commit suicide (also self-mutilation with the amendment introduced in 2019), has apparently become a dead letter in the law, as a crime, precisely because of the difficulty of evidence, data and its collection.

In practice, suicide occurs, but the incriminating crime is not proven, nor does it come to the attention of the judiciary. There may be many reasons for this, such as the lack of denunciation by those involved, the difficulty in proving the crime occurred or the complexity of the crime.

It is not uncommon for the type of crime to end up being a different one, adopted by the person in charge of the investigation or by the authority responsible for initiating the criminal action, given the particularities that permeate the crime, sometimes confusing it with homicide.

Although we have already dealt with the legislative issue, we have deliberately left the New Penal Code project to the end of the chapter (PLS n. 236/2012), making it clear that the crime provided for in art. 122 will be maintained, i.e. typified as an illicit act, but changes will be made to its wording, the regime and the *quantum of* the penalty.

In reality, the current art. 122 will become art. 123, with some changes to the current § 4, § 5, § 6 and § 7, which will be allocated to other criminal types of their own.

Art. 122 (of the legislative proposal), in turn, will contain an express provision on the classification of the crime of euthanasia:

Euthanasia

Art. 122 - Killing, out of pity or compassion, a terminally ill patient who is at fault and of legal age, at their request, in order to shorten their unbearable physical suffering due to a serious illness:

Penalty - imprisonment for two to four years.

§ Paragraph 1 - The judge shall waive the penalty by assessing the circumstances of the case, as well as the relationship of kinship or close ties of affection between the perpetrator and the victim.

Exclusion of illegality

§ Paragraph 2 There is no crime when the perpetrator fails to use artificial means to maintain the patient's life in the event of a serious irreversible illness, and provided that this circumstance is previously certified by two doctors and there is consent from the patient, or, if this is not possible, from an ascendant, descendant, spouse, partner or sibling.

Inducing, instigating or aiding suicide

Art. 123: Inducing, instigating or assisting someone to commit suicide: Penalty - imprisonment for two to six years if the suicide is consummated, and one to four years if the attempt results in serious bodily injury of any degree.

§ Paragraph 1. Attempts shall not be punished unless the action results in at least serious bodily injury.

§ Paragraph 2 The provisions of paragraphs 1 and 2 of the previous article shall apply to aiding suicide.

Penalty increase

§ Paragraph 3 The penalty is increased by one third to one half if the crime is committed for a selfish motive.

As we have seen so far, the practice of suicide has always been evident, yet it is a mystery that permeates society. What is revealed, at least from the above, is that the difficulty in investigating the circumstances of the act, in the criminal legal sphere, ends up making it difficult to apply the crime provided for in the current art. 122 of the Penal Code.

Therefore, maintaining the article in the proposed reform of the Penal Code would be dispensable, given the number of cases of the crime in practice. However, we are not arguing that suicide care itself is not relevant, it is, but not so much (or only) in the criminal sphere.

In this line of argument, the law can be understood in different ways, as a social fact, an allegory that we have been led to believe. However, we are very aware of the idea that the law has pendulum movements, in order to show guarantees and setbacks, evolution and involution. In this way, the exclusion of unlawfulness with regard to the crime of euthanasia, as set out in the construction of the bill's article, reveals an advance for the object of analysis of this work.

The demonstration so far highlights the difficulty, in the Brazilian reality, of finding grounds to counter the constitutional argument that the inviolability of life means that it cannot be renounced by the holder of the right, which also obviously prevents any proposal for a Constitutional Amendment or legislative activity to decriminalize certain conducts, we are not referring to inducing or inciting suicide, but to aid, in the perspective that it may be medical aid, as evidenced in the Portuguese reality.

For all these reasons, the adoption of a *lege ferenda* amendment does not allow the problem to be solved in the Brazilian reality, nor does it even encourage debate.

Thus, to compare the Portuguese and Brazilian realities is to show where each one is today, so that we can draw some common ground, precisely by allowing the debate to become more vertical in Brazil, from a reality that is much more advanced in terms of medically assisted death, guaranteeing the concept of dignified death, that is, respect for dignity in the passage from life to death, respect for the values and beliefs of each individual.

4. BRINGING REALITIES CLOSER TOGETHER, REAFFIRMING SECULARITY AND MAKING BRIEF FINAL CONTRIBUTIONS

In this final chapter or section, three main points will be addressed: the slippery slope argument, the need to consider secularity and the need or not for palliative care, all of which will also foster debate, given the differences observed between the Portuguese and Brazilian realities. In other words, in our opinion, the Portuguese reality has dealt with the aforementioned points and is at a different stage in the development of medically assisted death.

Regarding the slippery slope, Ronald Dworkin is assertive:

Another well-known argument against legalizing euthanasia for conscious people - that the elderly are vulnerable and can sometimes be pressured to choose death - makes the same mistake: it fails to recognize that forcing people who really want to die to stay alive is a harmful procedure for them. The same can be said of the well-known "slippery slope" argument, according to which legalizing euthanasia, even in carefully limited cases, increases the likelihood that it will later be legalized in more dubious cases, and that the process could end in Nazi eugenics. This argument also loses strength once we understand that *not* legalizing euthanasia is in itself harmful to many people, so we realize that doing our best to draw and maintain a different line in the future, and trying to protect ourselves from such a risk, is better than abandoning these people altogether. There are risks both in legalizing and in refusing to legalize; one must attend to the balance of these competitors, and neither should be ignored (DWORKIN, 2009, p. 278279).

In the same vein, José Afonso da Silva, when listing Remo Pannain's reasons for euthanasia to be punishable, in addition to the religious issue, indicates three more reasons that would oppose its impunity:

(a) scientific and coexistence motives, such as the possibility of a diagnostic error, the discovery of a remedy, as well as the possibility of pretext and abuse; (b) moral (and even legal) motives, since, given the value attributed to human life by the common conscience and the legal system, a human being cannot be deprived of even a single moment of existence; (c) moreover, the prevalence of the motive of pity over the natural aversion to the suppression of a fellow human being reveals, in those who practice euthanasia, a bloodthirsty personality or, at least, one prone to crime. Euthanasia did not receive much attention in the Constituent Assembly (SILVA, 2008, p. 202).

In addition to the above reasons, José Afonso da Silva reveals that "euthanasia did not receive greater attention in the Constitution", in the Brazilian reality, however, he does not clarify the reasons for this, nor does he agree or disagree with the lack of importance or attention given to the issue. It seems to us that at that time the issue was still much more distant from the Brazilian reality, even more so than it is today, which does not mean that the necessary attention to euthanasia, assisted suicide and orthothanasia cannot be reviewed, with a view to guaranteeing safety for the patient and also for the doctors and the entire healthcare team involved in the treatment.

Despite the reasons given, Ronald Dworkin suggests a first response on what to do about the arguments for non-legalization:

[...] we want to have the right to decide for ourselves, which is why we should always be willing to insist that any honorable Constitution, any truly principled Constitution, can guarantee that right to everyone (DWORKIN, 2009, p. 343).

One of these principles will be discussed next, and is related to secularity. First, however, Fábian Bogado presents arguments for and against practices related to medically assisted death, but both are based on the principle of autonomy, which is evident in the context of bioethics. In the opposite direction, she warns that those who advocate against euthanasia and, thus, assisted suicide, clarify that medicine has evolved and is already capable of relieving almost all human pain, so allowing these practices could lead to other permissions, which will lead to others and so on (slippery slope theory).

The theory of the slope, the slope or the slippery slope is a fallacy, not least because of the lack of evidence to support it. There is therefore a logical error, which would precisely prevent creative problem-solving, such as that proposed in this article, i.e. fostering debate and allowing the Brazilian reality to learn from the Portuguese one. Assuming that if something happens, such as the constitutionalization of medically assisted death, there will soon be an inevitable sequence of events and a drastic and undesirable result, is reason enough to hinder study on the subject and on any object that is tested in this argument, since there is no prior evidence or reasoning to prove the imagined causal chain. The relevance of the debate is therefore reiterated.

As the article draws to a close, using Ronaldo Dworkin's words above, debate and the construction of other realities, such as the Brazilian case based on the Portuguese experience, is only possible through secularism.

For context, and in view of the established assumption of secularity, the Catholic Church, since the fourth century, has accepted the indirect modality of what it called active euthanasia.

In 1957, Pope Pius XII officially declared its compatibility with Catholic dogma (LEPARGNEUR, 1999, s/p), which shows an evolution that is also being questioned in other cases of deaths considered dignified, just as we can see in the *Declaration on Euthanasia by the Sacred Congregation for the Doctrine of the Faith*.

At this point, the aforementioned Declaration, approved on May 5, 1980, presented above as an indirect form of euthanasia, is also understood as a definition of orthothanasia, from the perspective of the authors who understand that there is a difference between the concepts, as explained above. As it is relevant to the context, let's look at the following excerpt from the document:

[...] In the imminence of an inevitable death, in spite of the means used, it is lawful in conscience to take the decision to renounce treatments which would give only a precarious and painful prolongation of life, without, however, interrupting the normal care due to the patient in similar cases. For this reason, the doctor has no reason to be distressed, as if he had not provided assistance to a person in danger (VATICAN, May 5, 1980, *online*).

Continuing in the field of medical morality related to the Catholic Church, three questions about reanimation were answered by Pope Pius XII in 1957:

We will be happy to answer these three questions, but before examining them, we would like to establish the principles that will allow us to formulate the answer. Natural reason and Christian morality say that man (and anyone entrusted with the care of his fellow man) has the right and the duty, in the event of serious illness, to take the necessary measures to preserve life and health. This duty, which he has towards himself, towards God, towards the human community and most often towards certain people, derives from well-ordered charity, submission to the Creator, social justice and even strict justice, as well as piety towards the family. But generally it only obliges the use of ordinary means (according to the circumstances of people, places, times, culture), that is, means that do not impose any extraordinary burden on oneself or others. A more severe obligation would be too heavy for most people and would make it more difficult to acquire more important superior goods. Life, health and all temporal activity are in fact subordinate to spiritual ends. On the other hand, it is not forbidden to do more than is strictly necessary for the preservation of life and health, provided that one does not neglect more serious duties (VATICAN, Discourse..., 24 Nov. 1957, *online*)[13] .

As much as the Vatican's writings are presented, secularism allows for the realization of human rights, from the perspective of the possibility of opting for any religion or belief, or even for any belief or religion at all.

Therefore, it cannot be the religious question that should be an obstacle to the debate, precisely because of the possibility or not of professing a certain faith, religion or belief; possibility and not obligation, so much so that in a state with a Catholic majority, as is the case in Portugal, the issue of medically assisted death is well developed, and in the Brazilian reality, the Catholic majority should not hinder the evolution of the debate on the subject, even though democracy is representative and, at least for the time being, the religious caucus does not allow the development of this issue, which guarantees even greater relevance to the academic sphere, which now exercises, or at least tries to exercise, the epistemological constraint to promote and guarantee the debate.

[13] In the original: *Nos responderemos de muy buena gana a estas tres cuestiones; pero antes de examinarlas querríamos exponer los principios que permitirán formular la respuesta.*

La razón natural y la moral cristiana dicen que el hombre (y cualquiera que está encargado de cuidar de su semejante) tiene el derecho y el deber, en caso de enfermedad grave, de tomar las medidas necesarias para conservar la vida y la salud. Tal deber que tiene hacia él mismo, hacia Dios, hacia la comunidad humana y lo más a menudo hacia personas determinadas, deriva de la caridad bien ordenada, de la sumisión al Creador, de la justicia social y aun de la estricta justicia, así como de la piedad hacia la familia. Pero obliga habitualmente sólo al empleo de los medios ordinarios (según las circunstancias de personas, de lugares, de épocas, de cultura), es decir, a medios que no impongan ninguna carga extraordinaria para sí mismo o para otro. Una obligación más severa sería demasiado pesada para la mayor parte de los hombres y haría más difícil la adquisición de bienes superiores más importantes. La vida, la salud, toda la actividad temporal están en efecto, subordinadas a los fines espirituales. Por otra parte, no está prohibido hacer más de lo estrictamente necesario para conservar la vida y la salud, a condición de no faltar a deberes más graves.

With regard to Law no. 22/2023, it is worth highlighting one point before we go into the issue of palliative care, precisely because it demonstrates the closeness of the subject between Portugal and Brazil.

This point presents yet another need to foster the necessary debate in Brazil, since many Brazilian citizens come to Portugal for a series of opportunities, notably in the academic world, and in search of new opportunities.

However, Portuguese law, as it stands, does not allow non-nationals or legally resident citizens to carry out the practice of non-punishable medically assisted death, which means that an even greater number of Brazilians seek to obtain legalized residency in Portuguese national territory, in order to realize the reality that has hitherto been denied on Brazilian soil.

What is important to note, as stated above, is that the issue of exercising a fundamental right that is denied by your state generates other profound debates, especially in relation to equality, since few people will be able to aspire to dual citizenship in Portugal for practice or even legal residence in Portuguese national territory, without failing to mention the impact on the health system, which could also be the subject of analysis, but this is not the purpose of this article.

Finally, the palliative care dealt with in Article 4(6) of Law 22/2023 is an option, which makes it impossible to impose the feelings and values of other people, third parties and society itself on those who are in a situation of great suffering, with a definitive injury of extreme severity or a serious and incurable illness.

To impose the need for palliative care is, therefore, not to allow the full dignity of the human person. In this sense, Ana Elisabete Ferreira (2014, p. 1.052-1.053):

It seems to us that these reasons that we have just mentioned are enough to affirm that it is up to the Law to fight autonomously for the person, taking their immanent vulnerability much more seriously than their sublime biopsychological capacities. The fact is that, while the survival mechanisms embodied in faith, reason and language are obviously indispensable to the maintenance of the human being, they do not in themselves guarantee the maintenance of the person, whose construction, according to the effective social progress we are experiencing, must be increasingly less arbitrary, broader and more secure.

The aim, in terms of future prospects for this article, is to encourage debate, to show that even in a confessional reality, the issue of dignified death or medically assisted death has, at some point, been initiated, debated and decided, even if not through a final decision, subject, therefore, to criticism and the adoption of constitutional measures, as is currently the case in Portugal.

However, the reasons given, to paraphrase the quote above, are attempts to contribute to the fight for rights, for the person, for their autonomy, for their dignity as a human being, for their right to live and not for the duty to be alive, with each individual and each vulnerability deserving consideration, but it is certainly not the absence of debate and scientific production that will enable this development.

Faith, therefore, transcends religious issues, it affirms secularism from the perspective that it can (should) be in reason and language and in the possibility of producing debate and epistemological constraint, in order to allow for a broader and safer construction, less arbitrary, therefore, of the state in relation to its citizens.

On this point, André Dias Pereira, in an explanation of vote in Opinion No. 101/CNECV/2018 (PORTUGAL, 2018, *online*): "the legitimacy of the state to maintain the punitive legal regime in critical end-of-life situations, especially in some cases of assisted suicide, is in deep crisis."

And it is precisely from this perspective that we conclude that the Portuguese reality needs to be observed, so that Brazil can also debate issues related to medically assisted death, with the aim of perhaps bearing fruit and having advances like those in Portuguese legislation, which is still debated, studied and criticized - in a scientific manner (GODINHO; PEREIRA, 2023) - but which proves to be the best way to do things and to evolve, through the plurality of debate.

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