UNIVERSIDAD MIGUEL HERNANDEZ DE ELCHE
FAC.CC. SOCIALES Y JURÍDICAS ELCHE GRADO EN DERECHO

TRABAJO FIN DE GRADO /FINAL DEGREE PROJECT

CURSO/YEAR: 2023-2024

EL ESTUDIO SOBRE LA LEY ORGANICA DE REGULACION DE LA EUTANASIA Y EL SUICIDIO ASISTIDO

THE STUDY ON THE ORGANIC REGULATORY LAW OF EUTHANASIA AND PHYSICIAN-ASSISTED SUICIDE

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Summary:
In early 2021, Spain became only the fourth European country to legalise euthanasia and physician-assisted suicide. This was a victory for those advocating for progressive policies and was seen as a violation of the Constitution by others. This law modifies Article 143.4 of the Penal Code by legalising euthanasia and physician-assisted suicide under certain circumstances where healthcare professionals are involved in the process. This alteration marks a significant change in the regulation and perception of end-of-life care. What the future holds in terms of the outcomes of this regulation remains to be seen. Interestingly, there is currently a lack of regulation surrounding palliative care, which could offer another option alongside euthanasia for those seeking relief.

Keywords:
Euthanasia, physician-assisted suicide, right to life, dignity,

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Abstract:
Al principio de 2021, España se convirtió en el cuarto país europeo en legalizar la eutanasia y el suicidio asistido. Esta fue una victoria para quienes abogan por políticas progresistas y otros la vieron como una violación de la Constitución. Esta ley modifica el articulo 143.4 del Código Penal al legalizar la eutanasia y el suicidio asistido en determinadas circunstancias en las que intervienen profesionales sanitarios en el proceso. Esta alteración marca un cambio significativo en la regulación y percepción de los cuidados al final de la vida. Queda por ver lo que depara el futuro en términos de resultados de los resultados de este reglamento. Actualmente, existe una falta de regulación en torno a los cuidados paliativos, lo que podría ofrecer otra opción además de la eutanasia para quienes buscan alivio

Palabras clave: Eutanasia, el suicidio asistido, el derecho a la vida, dignidad

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ABBREVIATION

ABFYC =	The Association of Fundamental and Clinical Bioethics
EAPC =	European Association for Palliative Care
GEC =	Guarantee Evaluation Commissions
LORE =	Organic Law 3/2021, 24th of March, Regulation of Euthanasia
PC =	Palliative care
PAS =	Physician-assisted suicide
QALY =	The quality-adjusted life-year
SECPAL =	The Spanish Society of Palliative Care
SID =	Servicio de Informacion sobre Discapacidad
UN =	United Nations
WHO =	World Health Organization
WMA=	World Medical Association

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1. INTRODUCTION

In this paper, the focus will be on the analysis of the controversial Organic Law 3/2021, 24th of March, which regulates euthanasia and physician-assisted suicide passed by the Chamber of the Congress of Deputies of Spain.[1] The primary objective of this analysis is to scrutinise the law from a legal perspective and evaluate its strengths and weaknesses. While discussing end-of-life matters, it is also crucial to mention non-legal perspectives. After all, these issues affect us all as human beings, and we must approach these matters with sensitivity and empathy. Starting with the recent history in Spain, there has been a longstanding debate surrounding end-of-life matters, with society's broad consensus and interest in regulating them. According to a study by the Sociological Research Centre, 72 % of Spaniards are in favour of Euthanasia[2]. Additionally, a million Spaniards signed petitions on Change.org to decriminalise euthanasia, and eventually, it ended up being presented in the Spanish Parliament, which indicates a strong demand for change [3]. However, before 2021, there was no national regulation in place. Some regions had passed their legislation regarding death, such as Law 2/2010, 8 of April in Andalusia[4], but did not allow or regulate euthanasia or physician-assisted suicide. Before 2021, euthanasia and physician-assisted suicide (PAS from now on) were penalised as a crime by the Spanish penal code by Article 143.4, and everybody involved in the process was seen as accomplices, which of course, disincentives particularly the health care professionals and brought even more suffering for the people in need of it. It was obvious that something had to be done since it was such a debated topic in the country that it was one of the main themes of the 2019 elections[5]. There were many discussions in the Spanish parliament and various legislation attempts to regulate euthanasia. Still, there were no results until late 2020, when the Spanish Socialist Workers Party finally had its legislation approved and entered into force in June 2021. Once the Organic Law 3/2021, 24th of March (LORE from now on) was ratified, it received some criticism, arguing that it was approved in such a short time [6]. How a law text is released is critical in its effectiveness. When done hastily

[1] Organic Law 3/2021, 24th of March, Regulation of Euthanasia
[2] Sociological Research Centre (2021) Study 3307. Retrieved 10 January, 2024, from: https://www.cis.es/documents/d/cis/es3307sdmt_a
[3] Breña, C.M. (2019) One million signatures to decriminalize euthanasia. Elpais https://elpais.com/sociedad/2019/07/11/actualidad/1562859484_327711.html
[4] Law 2/2010, of April 8, on rights and guarantees of the dignity of the person in the process of death. official Gazette of the Junta de Andalucía.
[5] Meyer, C. (2019) The debate on euthanasia sneaks into to the Spanish elections. France 24. Retrieved 14 December, 2023, from: https://www.france24.com/es/20190426-debate-eutanasia-elecciones-espana
[6] Olazbal, M. (2021) Aprobación de la Ley Orgánica de Regulación de la Eutanasia en España, la Dirección Nacional del Sistema Argentino de Información Jurídica (SAIJ) Page 3

and in a short time, the text can lack quality content that could undermine its overall effectiveness. It could be argued that LORE presents these problems in some of its content, as will be thoroughly explained later in this text. Due to the fast release of the law, medical professionals were not adequately trained or prepared to perform the practices outlined by the law once it was enforced. According to a survey conducted by a group of experts, while 93,5 % of the 170 healthcare professionals surveyed favoured the law, more interestingly, only 32,4 % claimed to know the matter well. [7] It is interesting to see such a high level of support for the law despite a relatively low level of understanding. This left healthcare professionals in a difficult situation where they had to improvise and manage without adequate knowledge or expertise. «Doctors should acquire skills and should pay close attention to how a dying person can leave life easily and quietly» [8], which these doctors did not possess, at least according to the mentioned study.

LORE has been under much scrutiny since its release. The latest event was Constitutional Courts Ruling 19/2023, 22nd of March of 2023[9], regarding the appeal of unconstitutionality 4057-2021 by the political party Vox. The court upheld the bill with nine votes in favour and two votes against, with a clear margin to withstand the constitutionality of the LORE. To better understand the troubles around the law and its controversiality, I will briefly explain the content of the law. As we have discovered already, the law decriminalises euthanasia and physically assisted suicide under certain conditions and gives a new legal right to die. Additionally, this law modifies Article 143.4 in the Penal Code to decriminalise euthanistic conduct under strict conditions set by the law and adds a new section 5 to the law [10]. Euthanasia is described as a non-penalized action and distinguishes two separate forms of the action. The first one is active euthanasia, which involves medical professionals who directly and deliberately, by the express request of the patient, to end their life. The second one is physician-assisted suicide (PAS), where medical professionals knowingly facilitate all the means necessary for the patient to create

[7] López-Matons, N. (2022) Ley de regulación de la eutanasia: perspectiva de los profesionales asistenciales. *Gaceta Sanitaria.;36(1)* Page 87
[8] Gustavo, B. (1996) El sentido de la vida, Page 203
[9] Sentencia 19/2023, de 22 de marzo de 2023. Recurso de inconstitucionalidad 4057-2021
[10] Organic Law 3/2021, 24th of March, Regulation of Euthanasia. First final arrangement. Amendment of Organic Law 10/1995, of 23 November, of the Penal Code.
Paragraph 4 is amended and paragraph 5 is added to Article 143 of Organic Law 10/1995 of 23 November of the Penal Code, as follows:
"4. Anyone who actively causes or cooperates with acts necessary and direct to the death of a person who suffers from a serious, chronic and impossible condition or a serious and incurable illness, with constant and unbearable physical or mental suffering, by the express, serious and unequivocal request of the person concerned, shall be punished with the penalty lower by one or two degrees than those 2 and 3.
5. By way of derogation from the foregoing paragraph, no criminal liability shall be incurred by anyone who actively causes or cooperates upon the death of another person in compliance with the provisions of the organic law regulating euthanasia.'

the perfect condition to end their own life. For both situations to occur legally, the patient must be in a so-called ‘’euthanistic context’’, meaning that they are either suffering from a serious chronic and disabling condition or a severe and incurable illness that causes intolerable suffering. LORE excludes passive euthanasia and indirect active euthanasia in the preamble, which might create certain loopholes and ambiguous situations which the law was designed to fill in the first place. The law barely touches the subject of palliative care and only mentions them three times but does not regulate them, which is also part of the criticism [11]. Regulating this debated topic should consider all possibilities and outcomes, including palliative care and other alternatives. Fernando Rey Martinez mentions this well in his article: ‘’*In this context, in which palliative care is still not guaranteed as a citizen's right and considering that it should be a real alternative to euthanasia and assisted suicide, the absence of a National Palliative Care Law means that the Law on euthanasia is born deeply unbalanced*[12]*’’.* In addition, another issue that this piece of legislation presents is that it could be seen as derogatory and discriminating towards people with disabilities. They are causing worry among many institutions. The United Nations has shared its opinion on the matter, highlighting the potential negative impact of this law.[13] When specifying the euthanistic context, which is the fundamental foundation and justification for euthanasia, the law mentions in article 3. b) that the patient must be: *’’suffering from a serious chronic and disabling condition’’.* This suggests that just by being in an euthanistic context, the patient has the right to die legally if they choose to do so. This part of the law could be interpreted in many ways, and this sort of phrasing implies that people with disabilities are less important and easily disposable. Rushing through the creation of laws without proper investigation and preparation can result in unintended consequences. It is important to recognise that every individual has the right to dignity and respect regardless of their physical or mental condition. As a society, we must work towards creating laws and policies that value and respect the diversity of human life[14]. The linguistic choices made in the law could lead to a dangerous path, with sentences such as: ‘’*suffering from a serious, chronic, and disabling condition.’’* This could lead to severe consequences and should have been elaborated better in the text.

[11] Ruling of Tribunal Constitution, 19/2023, 22nd of March of 2023. Unconstitutionality appeal 4057-2021. Page 57767
[12] Martínez, F.R. (2021) El nuevo modelo español de regulación de la eutanasia y el suicidio asistido como derechos: Contenido y valoración critica, *Anuario de Derecho Eclesiástico del Estado, vol. XXXVII*. Page 35
[13] United Nation (2020) UN’s opinion regarding LORE
https://www.infocoponline.es/pdf/Documento-Naciones-Unidas.pdf
[14] Not a direct reference to the declaration of human rights, but the main idea is taking from it.
United Nations General Assembly. The Universal Declaration of Human Rights (UDHR). New York: United Nations General Assembly, 1948.

Although the bill is not perfect, it also contains a lot of positive aspects. For example, health conscientious objection is provided by Article 16.1[15] to all healthcare professionals. This article states that medical professionals can decide whether they wish to participate or not in these practices. It is crucial to respect medical professionals' freedom of choice when it comes to euthanasia since they are the ones providing the services. They are not compelled to participate if they have moral objections to the practice. This right applies to all healthcare professionals involved in the process, including nurses and not just doctors, as is the case in Luxembourg and the Netherlands. [16]

Furthermore, LORE includes safeguards for the patient and the medical professionals involved. It has a guaranteeing response regarding euthanasia, for example, by creating a Guarantee and Evaluation Commission, which ultimately controls the whole process before and after the procedure. This law has three layers of filters to be passed to meet its legal requirements[17]. The first filter is with the assigned doctor, which includes interviewing the patient and their evaluation and informing their rights and options. After this, the assigned doctor must inform and consult a specialised doctor who will interview the patient once more and confirm that the patient meets the requirements. Once these two procedures are completed, subsequently it will be transferred to its final stage for the evaluation commission to make the final decision to evaluate if the case meets the legal requirements and finally grant the patient's wish to end their life. All in all, the law is not just about decriminalising euthanasia. It inspires to be compatible with the constitution and society and have the necessary guarantees for the patient to make free, deliberate, and voluntary decisions without external pressure. This process could take up to 40 days, which is a very long time, particularly for somebody who is in intolerable pain and wants to end their suffering. On the other hand, if the person is not certain about their decision and changes their mind or have made the decision because of external pressure, this lengthy process might just save their life.

[15] Article 16. Conscientious objection of healthcare professionals.
1. Health professionals directly involved in the provision of aid to die may exercise their right to conscientious objection.
The refusal or refusal to make such a benefit on grounds of conscience is an individual decision of the healthcare professional directly involved in its implementation, which must be expressed in advance and in writing.

[16] Velasco Sanz, T.R. (2021) Spanish regulation of euthanasia and physician-assisted suicide. *Journal of medical ethics.* Jul 30:medethics-2021-107523. Page 5

[17] Velasco Sanz, T.R. (2021) Spanish regulation of euthanasia and physician-assisted suicide. *Journal of medical ethics*. Jul 30:medethics-2021-107523. Page 5

2. BASIC CONCEPTS:

2.1 Euthanasia:

The word Euthanasia derives from the Greek language and originates from two words: ‘’eu’’ (good) and ‘’thatanos’’ (death), which translates to good death [18]. There are various forms of euthanasia, and I will explain the central concept of each one of them. Now, we will start with a general view of euthanasia overall. One of the most significant issues with defining euthanasia is that there is no universally agreed-upon definition of the term, and this creates a lot of issues and is often misused or confused with different concepts, such as palliative care or physician-assisted suicide. For instance, in Germany, the term *Euthanasie* is used to refer to the abuse of the Nazi regime during the Second World War and the term *Sterbehilfe* is used in the current euthanasia discussion, which we talk about in this paper. In the context of the Nazi regime, the more precise word would be Eugenics, which means, according to the Merriam-Webster dictionary: ‘’*the practice or advocacy of controlled selective breeding of human populations (as by sterilization) to improve the populations' genetic composition.*[19] [20]’ During the late Renaissance, an English philosopher, Francis Bacon, introduced the term euthanasia for the first time. Bacon believed medicine should help patients to die peacefully and easily with the physician's help. He called this ’’euthanasia exterior’’ (a good death coming from outside). The meaning of euthanasia to Bacon was a quiet, peaceful death for a person who is expecting it. Technically, it means that the patient dies non-violently and painlessly in their sleep[21].

The Organic law’s definition of euthanasia is a deliberate act to end a person’s life by their own free express decision to end their suffering. According to the LORE’s preamble, only active and direct euthanasia meets the legal and bioethical requirements, and it excludes passive and active indirect euthanasia. [22] The Merriam-Webster dictionary describes euthanasia from a different lens by mentioning animals as well. It is the only one of the

[18] Annadurai, K. (2014) Euthanasia: right to die with dignity. *Journal of family medicine and primary care*, *3*(4) Page 477
[19] Merriam-Webster. (n.d.). Eugenics. In Merriam-Webster.com dictionary. Retrieved January 9, 2024, from https://www.merriam-webster.com/dictionary/eugenics
[20]Kuře, J. (2011) Euthanasia - The "Good Death" Controversy in Humans and Animals. Page 5
[21]Kuře, J. (2011) Euthanasia - The "Good Death" Controversy in Humans and Animals. Page 16
[22] Organic Law 3/2021, 24th of March, Regulation of Euthanasia.
Preamble: can be defined as the deliberate act of ending a person's life, produced by the express will of the person himself and in order to avoid suffering. In our bioethical and criminal doctrines there is now broad agreement to limit the use of the term "euthanasia" to that which occurs actively and directly, so that the omission actions that were designated as passive euthanasia (not adoption of treatments aimed at prolonging the life and disruption of those already urged according to *lex artis),*or those that could be considered as indirect active euthanasia (use of drugs or therapeutic means that alleviate physical or psychic suffering even if they accelerate the patient's death – palliative care – have been excluded from the bioethical and legal-criminal concept of euthanasia.

definitions that talks about mercy. ‘’*the act or practice of killing or permitting the death of hopelessly sick or injured individuals (such as persons or domestic animals) in a relatively painless way for reasons of mercy.*[23]’’ Subsequently, the Royal Spanish Academy defines euthanasia: *as a deliberate intervention to end the life of a patient with no prospect of cure.* It offers another definition from a medical perspective*: without physical suffering* [24]’’ The World Medical Association (WMA) continues with the same spirit and described euthanasia in 2015: *‘’act of deliberately ending the life of a patient, even at the patient’s own request or at the request of close relatives, is unethical. This does not prevent the physician from respecting the desire of a patient to allow the natural process of death to follow its course in the terminal phase of sickness.* [25]’’ Eventually, five years later, the World Medical Association changed their definition towards a more lenient one, which was released in 2019: ‘’*a physician deliberately administering a lethal substance or carrying out an intervention to cause the death of a patient with decision-making capacity at the patient’s own voluntary request* [26]’’. Concluding these different interpretations of euthanasia, we can find some similarities between them. Each one of them, except WMA, in their way, mentions how this act is conducted in a way where the patient feels no pain or is not suffering or that the suffering is limited as much as possible. From the WMA definition, it can be seen that it stands against euthanasia through its words and tone. Although between their two definitions, one could argue that the latter definition seems more lenient towards euthanasia, which could be because physicians seem to be more accepting towards legalising euthanasia, at least that is the result according to a Finnish study conducted by the University of Tampere [27]. In this study, they found that the number of physicians fully agreeing with the legalisation of euthanasia increased from 5 % to 25 % from 1993 to 2020.

[23] Merriam-Webster. (n.d.). Euthanasia. In Merriam-Webster.com dictionary. Retrieved January 2, 2024, from https://www.merriam-webster.com/dictionary/euthanasia
[24] REAL ACADEMIA ESPAÑOLA. Eutanasia. Dictionary of spanish language 23rd edition. Retrieved January 7, 2024, from: https://dle.rae.es/eutanasia
[25] World Medical Association (2015) Definition of Euthanasia. Retrieved January 2, 2024, from:https://www.wma.net/policies-post/wma-declaration-on-euthanasia/
[26] World Medical Association (2019) Definition of Euthanasia. Retrieved January 7, 2024. From: https://www.wma.net/policies-post/declaration-on-euthanasia-and-physician-assisted-suicide/
[27] Piili, R. P. (2022). Ambivalence toward euthanasia and physician-assisted suicide has decreased among physicians in Finland. *BMC medical ethics*, *23*(1), 71. Page 3 and forward

2.2 Active euthanasia:

Active euthanasia is a direct action that involves killing the patient due to their terminally ill condition or other form of suffering[28]. The patient requests euthanasia because they would rather die than endure the intolerable pain due to their condition and is usually injected with a lethal injection or other death-inducing product, which results in their death. The essence of active euthanasia is that the patient would not suffer and be released from their pain. *Therefore, intentional killing that does not use the gentlest and easiest possible means cannot be euthanasia* [29]. To further highlight the message here, perhaps a more accurate definition of active euthanasia would be: *The act is performed deliberately by an assigned physician with a lethal dose of a drug to end the patient's life painlessly* [30]. This is the most common form of euthanasia and is usually considered the reference point for euthanasia in general discussions.

2.3 Passive euthanasia:

The passive form of euthanasia can be considered as omitting all the actions that actively keep the patient alive. In other words, it consists of the withdrawal of treatments and allowing the terminal patient to die [31]. As we discovered, active euthanasia requires an action to terminate the patient's life; on the other hand, passive euthanasia refers to terminating life via inaction, causing death by omission, and that is the easiest way to compare the two [32]. Defining this form of euthanasia is not as straightforward as the active one. Fundamentally, any form of omission or non-taken action that leads to the patient's death can be categorised as passive euthanasia technically. *An example of passive euthanasia is simply letting a patient die without providing the necessary treatment to save or prolong that patient's life* [33]. This leaves expansive room for interpretation, thus making it hard to define precisely. Nevertheless, the most accurate way to describe this form of euthanasia would be instances of withholding treatment, omitting specific actions to end life, or knowingly not taking any action that eventually leads to the patient's death.

[28] Gomez, F. B. (2005) *A pilgrim's notes: Ethics, social ethics, bioethics*. Page 263
[29] Brassington, I. (2020) What passive euthanasia is. *BMC Med Ethics*. **21**, 41 (2020) Page 2
[30] Liggett, L. (2011) Active Euthanasia. Encyclopedia of Child Behavior and Development. Page: 25
[31] Westley, D. (1994) When It's Right to Die: Conflicting Voices, Difficult Choices. Page 67
[32] Ping-cheung, L. (2010) Euthanasia and Assisted Suicide from Confucian Moral Perspectives. *Journal of Comparative Philosophy , Dao **9***. Page 53
[33] Alanazi, M. R. (2017) Is there a moral difference between killing and letting die in healthcare? *International Journal of Research in Medical Sciences*, *3*(1) Page 1

2.4 Other forms of euthanasia:

Besides these primary forms of euthanasia, we can delve deeper into the concept depending on who is making the final decision of euthanasia. First, we will start with voluntary euthanasia, where the patient is the one who is requesting the action by his own will. Most euthanasia's are performed in this manner, and one might say that it is the most common form of euthanasia. The second is non-voluntary euthanasia, which is the opposite of voluntary euthanasia. In this context, euthanasia is done without the patient's will or permission and is commonly used as an argument for people advocating against euthanasia. One of these people is Peter Singer, professor of Bioethics at Princeton University, who quotes in his book: once *we allow doctors to kill patients, we will not be able to limit the killing to those who want to die''* [34]. Third, indirect active euthanasia, which is a medical procedure aimed at alleviating a patient's suffering, often involves administration of high dosages of medication, and this may have unintended secondary consequences that may lead to or hasten the demise of the patient. [35]

Lastly, a less common practice is involuntary euthanasia; it refers to a situation where a patient's death is accelerated through a deliberate act without their consent [36]. Some scholars include physician-assisted suicide as being part of euthanasia, which, depending on the context, can be seen as equal. For the sake of this paper, these concepts will be treated differently, just as LORE has done in its preamble by separating them into two different actions.

2.5 Physician-assisted suicide (PAS):

Suicide is generally considered an act where an individual ends their own life voluntarily and deliberately[37]. Assisted suicide, on the other hand, occurs when another person assists so that the assisted person can end their life. Now, combining both concepts, physician-assisted suicide consists of an action where a physician provides the means for death, and the patient takes the final step to end their life intentionally. Merriam-Webster dictionary defines PAS as '' suicide *by a patient facilitated by means (such as a drug prescription) or by information (such as an indication of a lethal dosage) provided by a physician aware of*

[34] Singer, P (2021) Ethics in the Real World: 82 Brief Essays on Things That Matter. Page 89
[35] Smith, M.L. (1992) A good death: is euthanasia the answer? *Cleveland Clinic Journal of Medicine.Volume 59.Issue 1.* Pages 99-100
[36] Liggett, L. (2011) Active Euthanasia. Encyclopedia of Child Behavior and Development. Page: 25
[37] Merriam-Webster. (n.d.). Suicide. In Merriam-Webster.com dictionary. Retrieved January 18, 2024, from https://www.merriam-webster.com/dictionary/suicide

the patient's intent'' [38]. The physician cooperates with the act and facilitates all the means necessary and the patient commits the final act, which results in their demise[39]. Euthanasia and PAS can be considered synonymous by the general public in end-of-life discussions and should be distinguished accurately from each other. The main difference between euthanasia and PAS is that in the first one, another individual administers the death-inducing product, which can be a lethal injection and is usually given by the medical staff. In the latter, the person takes the death-inducing product themselves, thus ending their life. The methods indeed vary between the two, but the intention is the same, which is to cause death. It can be argued that PAS is ethically and morally the better option for the patient since they have complete control over the medication or other death-inducing products. The individuals in question have been granted full autonomy in utilising the aforementioned resources. Furthermore, they possess the authority and agency to revise their decision entirely and can even opt out of employing it altogether. Thus, it is ensured that the patient solely takes the final action and decision. The physician remains present in the collaboration of causing the death, but it can be argued that their role is more minor than in active euthanasia in comparison[40].

2.6 Palliative care:

According to the World Health Organization (WHO), palliative care is defined as:

approach that improves the quality of life of patients and their families facing the problem associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial, and spiritual. [41]

Merriam-Webster dictionary defines palliative care as: *medical and related care provided to a patient with a serious, life-threatening, or terminal illness that is not intended to provide curative treatment but rather to manage symptoms, relieve pain and discomfort, improve quality of life, and meet the emotional, social, and spiritual needs of the patient* [42]

[38] Merriam-Webster. (n.d.). Physician-assisted suicide. In Merriam-Webster.com dictionary. Retrieved January 16, 2024, from https://www.merriam-webster.com/dictionary/physician-assisted%20suicide

[39] Fulmer, R. (2014) Physician-Assisted Suicide, Euthanasia, and Counseling Ethics.VISTAS project sponsored by the American Counseling Association. Page 2

[40] Boudreau, J.D. (2014) Euthanasia and assisted suicide: a physician's and ethicist's perspectives. *Medicolegal and Bioethics*. 2014;4:1-12. Page 2

[41] World Health Organization. (2020) Palliative care. Retrieved January 7, 2024, from: https://www.who.int/news-room/fact-sheets/detail/palliative-care

[42] Merriam-Webster. (n.d.). Palliative care. In Merriam-Webster.com medical dictionary. Retrieved January 20, 2024, from https://www.merriam-webster.com/medical/palliative%20care

In other words, palliative care is a medical treatment for patients suffering from a severe illness that aims to alleviate patients' suffering through sets of medication or other forms of treatment that enhance their quality of life. Palliative care (PC from now on) is not restricted only to providing medicine. Instead, it is a multidisciplinary care involving a range of disciplines, including medicine, nursing, social work, chaplaincy, and other specialities. It is designed to enhance the quality of life for individuals of all ages grappling with serious illnesses[43]. The term ''palliate'' is derived from the Latin word ''pallium,'' which means cloak or cover-up. PC involves cloaking or covering up the symptoms of an illness without necessarily curing it and has evolved significantly over time. PC emerged slowly after the Second World War, and the most significant person to contribute to the development of PC was a British nurse, Dame Cicely Saunders, who was a pioneer for modern-day palliative care and was pivotal in establishing the first formal hospice in 1948, specifically to take care of patients with terminal illnesses. Her success in enhancing the quality of life of her patients led to the introduction of hospice care to other physicians, who swiftly recognised the significance of respecting patients' wishes and needs at the end of life. In 1967, the tireless efforts of a visionary woman culminated in the opening of St Christopher's Hospice in Sydenham, London. Over time, caregivers have realised that the values of palliative care extend beyond patients with terminal illnesses to include patients with non-terminal illnesses[44]. PC initially emerged from hospice care, which is very similar to PC. While both aim to improve the quality of life for patients, hospice care is typically provided to those who are nearing the end of their life, with usually less than six months to live and no longer seeking curative treatment, while PC can be offered at any stage of an illness with the goal of improving overall comfort and well-being and in some instances may even lead to curing the patient [45].

3. THE BACKGROUND: THE RIGHT TO LIFE AND THE END-OF-LIFE REGULATION BEFORE LORE 3/2021

Before enforcing the Organic Law 3/2021, 24th of March, which regulates euthanasia and PAS, these actions were penalised under article 143 by the penal code and could lead to up

[43] Kelley, A. S. (2015). Palliative Care for the Seriously Ill. *The New England journal of medicine*. *373*(8) Page 747
[44] Stevens, E. (2009) Palliative Nursing: Across the Spectrum of Care. Pages 1-16
[45] National Hospice and Palliative Care Organization. Retrieved January 15, 2024 from:https://www.nhpco.org/wp-content/uploads/Palliative_Care_Vs_Hospice.pdf

to eight years of imprisonment[46]. In the event of wanting to take your life away, there were no legal grounds to do it because the law never granted the right to end your own life. However, it is important to take a step back and examine, from a legal perspective, how things were in Spain before implementing LORE. Compared to its neighbouring countries, Spain had a less developed judicial system due to the long-lasting dictatorship of Francisco Franco, who governed Spain as a military dictator for nearly four decades. However, after Franco's death, Spain transitioned to democracy, and the approval of the Spanish constitution in 1978 was a defining moment in this process. The transition to democracy was a monumental change for Spain and its society. The country gradually began to recover from the impact of the dictatorship and moved forward. The adoption of democratic values and institutions helped to promote political stability, economic growth, and social progress.

The newly established constitution, in Article 43, determines health protection as a fundamental right for all citizens [47]. On April 25th, 1986, the General Health Act was passed by the Spanish Parliament. This law regulates all actions to enforce the exercise of the constitutional right to health protection. Marking a significant milestone for the country's healthcare system [48]. This law introduces new rights for patients, which is crucial to understand euthanasia and its regulation better. For the first time, patients were granted the right to request voluntary discharge from their treatment by article 11.4 (Currently repealed by the single repealing provision of Law 41/2002, of November 14) of the General Health Act[49]. This was the stepping stone for patients to control their healthcare decisions. The next significant piece of legislation was Law 41/2002, which regulates different rights for the patient, such as patients' autonomy regarding their treatment. The bill's second article grants the patient the right to decline any treatment except the instances prescribed explicitly by law. Subsequently, Article 11 gives the patient the right to have a document called *previous instructions* or *advance directives,* better known

[46] Penal Code. Organic law 10/1995, of November 23, Article 143.1: Whoever induces the suicide of another will be punished with a prison sentence of four to eight years.

[47] Spanish Constitution of 1978, Article 43:
1. The right to health protection is recognised.
2. It is incumbent upon the public authorities to organise and safeguard public health by means of preventive measures and the necessary benefits and services. The law shall establish the rights and duties of all concerned in this respect.

[48] Official website of the president of the Government of Spain and the Council of Ministers.
Regarding the National Health System. Retrieved January 13, 2024, from:
https://www.lamoncloa.gob.es/lang/en/espana/stpv/spaintoday2015/health/Paginas/index.aspx

[49] General Health Act, 25th of April 1986, Article 11.4:*''Signing the voluntary discharge document in cases of non-acceptance of treatment. In case of refusal for treatment, the Management of the corresponding health center, at the proposal of the doctor in charge of the case, may discharge the patient in question.'' (*This section is repealed by the single repealing provision of Law 41/2002, of November 14. Ref. BOE-A-2002-22188.)

colloquially as ‘’living will’’. [50] This document ensures that the patient’s wishes are fulfilled when they cannot express them personally in matters concerning their health and treatment. The person must be an adult, capable and free to manifest this document in advance. To ensure effectiveness throughout the national territory, the Ministry of Health and Consumer Affairs created a national register for these documents so that healthcare professionals can access them and respect the patient’s wishes and rights. This changes the landscape in the country, and now, the patient can refuse any treatment and has more rights to control their wishes. Fundamentally, this means that passive euthanasia was technically legalised since the patient can refuse the treatment, which could potentially lead to their death[51]. Although passive euthanasia was never explicitly mentioned in the law and perhaps was not the legislators’ intention to include it, patients were given the autonomous right to freely decide about their treatments and with the previous instruction document, this became a reality for the time in Spain. Eventually, on a regional level, many autonomous communities passed laws regarding end-of-life matters. The first autonomous community to do this was Andalucía in 2010 with their legislation regulating dignifying death, Law 2/2010[52]. This law played a crucial role in paving the way for end-of-life matters. It also established exclusive competencies for the autonomous community of Andalucía regarding the organisation, coordination, control, and evaluation of the health care system without exceeding the established constitutional limits. Following the Andalucian law, numerous autonomous communities enacted similar legislation. While they did not specifically address euthanasia and PAS, these laws played a vital role in paving the way for more extensive regulations and bringing these issues to the forefront of society. Ultimately, this culminated in the decriminalisation of euthanasia and PAS through LORE in 2021.

[50] Law 41/2002 of 14th of November, regulating patients’ autonomy, rights and obligations regarding clinical information and documentation. Article 2. Basic principles.
1. The dignity of the human person, respect for the autonomy of their will and their privacy will guide all the activity aimed at obtaining, using, archiving, guarding and transmitting the information and the clinical documentation.
2. Any action in the field of health requires, as a general rule, the prior consent of patients or users. Consent, which must be obtained after the patient receives adequate information, will be made in writing in the assumptions provided for in the Act.
3. The patient or user has the right to freely decide, after receiving the appropriate information, among the available clinical options.
4. Every patient or user has the right to refuse treatment, except in the cases determined in the Law. Their refusal to treatment will be written in writing.
Article 11. Previous instructions.
1. By the document of previous instructions, a person of age, capable and free, expresses his will in advance, so that it may be fulfilled at the moment when he comes to situations in which circumstances he is not able to express them. personally, on the care and treatment of your health or, once the death has arrived, on the fate of your body or the organs of your body. The document's grantor may also designate a representative to serve as his or her partner with the physician or health team to ensure compliance with the previous instructions.
[51]Bestard, J.J. (2019) La eutanasia en España (2a Edición) Page 19
[52] Law 2/2010, of April 8, Autonomous Community of Andalucía,
on rights and guarantees of the dignity of the person in the process of death.

The regulation of euthanasia has increased globally in the last decades. In 2002, the Netherlands became the first country ever to legalise euthanasia and PAS, and now, in 2024, the following countries have legalised active euthanasia in certain conditions at least: Australia, Belgium, Canada, Colombia, Luxembourg, New Zealand, and Spain [53]. It is interesting to consider the reasons behind the increase of regulation in assisted death around the world. While it may be difficult to give a precise answer, it could be argued that the modernisation theory offers a possible explanation. The modernisation theory asserts that societies evolve along a standardised path of development, transitioning from traditional agrarian, rural and traditional societies to contemporary post-industrial, urbanised, modern societies. Modernisation theory highlights the importance of socioeconomic development, such as formal education, a market-based economy, and a democratic and secular political structure [54]. The prevalence of euthanasia has primarily taken root in Western nations, with the exception of Colombia, where it is also regulated [55]. This trend could be attributed to the rise of longer lifespans and the growth of democratic, secular societies that value individual freedom and self-determination. These factors may have contributed to the growing acceptance of end-of-life regulations in the world.

3.1 Protection of the right to life and dignity

Providing context and clarity is essential when discussing complex issues such as euthanasia and PAS. Before analysing the legal aspects, it is necessary to have a fundamental understanding of these concepts. It is relevant to consider the human element and the suffering experienced by terminally ill patients who may seek euthanasia or PAS. While the philosophical implications of dignity and human life are worth exploring, we focus more on the legal aspects in this paper. By clearly understanding these concepts, we can analyse the law better and view it from a different perspective. Following the atrocities of the Second World War, there was a growing recognition of the value and significance of human life and dignity globally. This eventually culminated in the creation of the 1948 Declaration of Human Rights by the United Nations and has been one of the most

[53] World Federation Right to Die Societies. World map of assisted dying. Retrieved January 14, 2024, from: https://wfrtds.org/worldmap/

[54] Ynalvez, M.A. (2015) Science and Development. *International Encyclopedia of the Social & Behavioral Sciences, 2nd edition,* Volume 21. Page 150

[55] Mroz, S. (2020). Assisted dying around the world: a status quaestionis. *Annals Of Palliative Medicine. 10(3)* Page 3542

significant contributions to the protection and development of human and fundamental rights. Through this document, the international landscape for human rights changed drastically. No document of its nature, before or since, has inspired the imagination, action, and transformation of so many people and organisations worldwide to safeguard human rights and freedoms[56]. According to Guinness World Records, it is the most translated document in the world and has been translated into over 500 languages [57]. Shortly after the Declaration of Human Rights, the European Convention on Human Rights followed and established protection of human life in Article 2:*'' Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally…[58]''*. Through these documents, human rights started to have a different and more profound meaning, something inherent to any human by simply being one. These rights became inalienable and worthy of protection. In the magazine of the Inter-American Institute of Human Rights, Nikken Pedro describes what human rights are all about: ''*What is known today as human rights refers to the recognition that every human person, by virtue of being human, is the bearer of autonomous attributes that must be recognised and protected by the State. They are inherent to human beings and do not require any specific qualification to acquire them… They are subjective rights that emanate from human dignity and must be protected because they combat arbitrary domination supported by unequal relations of social power, which some human beings impose on others to be instruments of their own ends. [59]''*
Having briefly mentioned the history behind human rights, which have inspired modern-day constitutions and translated into fundamental rights in the Spanish Constitution [60]. The Spanish constitution is no exception in this aspect and naturally establishes protection for human life. Through its fundamental rights, various articles deal with human life. Still, it could be argued that the most obvious one is the principle granted by Article 15, the right to life in the Spanish constitution: *''Everyone has the right to life and to physical and moral integrity and may under no circumstances be subjected to torture or to inhuman or degrading punishment or treatment…[61]''*. The right to life is fundamental to human dignity

[56] Del Toro Huerta, M.I. (2012) La Declaración Universal de Derechos Humanos: un texto multidimensional. Page 15 and forward.
[57] Through these links it can be demonstrated that the 1948 Declaration of Human Rights by the United Nations is the most translated document in the world:
https://www.ohchr.org/en/ohchr/node/16711/new-record-translations-universal-declaration-human-rights-pass-500
https://www.guinnessworldrecords.com/world-records/most-translated-document
[58] European Court of Human Rights, Council of Europe, European Convention on Human Rights: Convention for the Protection of Human Rights and Fundamental Freedoms Rome, 4.XI.1950
[59] Nikken, P. (2010) La protección de los derechos humanos: haciendo efectiva la progresividad de los derechos económicos, sociales y culturales. *Magazine of the Inter-American Institute of Human Rights*. Page 55
[60] Spanish Constitution 1978, Article 10.2:
2. The principles relating to the fundamental rights and liberties recognised by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain.
[61] Spanish Constitution 1978, Article 15

and freedom. The Inter-American Court of Human Rights illustrates this in the case of Montero-Aranguren vs Venezuela: *''The right to life is a fundamental human right, the full enjoyment of which is a prerequisite for the enjoyment of all other human rights. If not respected, all rights are meaningless* [62]*.''* When discussing human life, we cannot limit the discussion only to the right to life and ignore other rights, such as dignity or freedom, that are interconnected to the right to life. When discussing euthanasia, the argument for and against it often revolves around the concept of dignity. One could argue that euthanasia violates human dignity and, therefore, should be prohibited; however, not allowing euthanasia could also violate human dignity since one has to die in a way that harms dignity; thus, euthanasia is a death which fully corresponds to human dignity. To emphasise this point further, the title of assisted suicide law in the state of Oregon is called ''Death With Dignity Act'' [63]. Eventually, we should then proceed to define dignity to gain a better understanding of the issue overall. Defining dignity is not as straightforward as other concepts. The term dignity is often central to heated end-of-life debates. Its interpretations can convey different messages, such as the respect one deserves as an individual or the value of humankind as a whole [64]. Defining dignity can be challenging since it lacks a universally agreed-upon definition and is often perceived as a subjective term. In Charles Foster's book *Human Dignity in Bioethics and Law*, he gives an interesting view of dignity in the description of the book: '' Dignity *is often denounced as hopelessly amorphous or incurably theological: as feel-good philosophical window-dressing, or as the name given to whatever principles give you the answer that you think is right''* [65]*.* Although there is no clear, undisputed definition of dignity, I will demonstrate four different views from a Stanford article regarding dignity:

1. Dignity as *Gravitas:* a poise or grace associated with behavioral comportment; e.g., the sophisticated manners or elegant speech of nobility, or outward composure in the face of insult or duress.
2. Dignity as *Integrity:* the family of ideas associated with living up to personal or social standards of character and conduct, either in one's own eyes or the eyes of others.

[62] Inter-American Court of Human Rights, Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela. Page 37
[63] Kuře, J. (2011) Euthanasia - The "Good Death" Controversy in Humans and Animals. Page 4
[64] Horn, R. (2016). The Concept of Dignity and Its Use in End-of-Life Debates in England and France. *The international journal of healthcare ethics committees*, *25*(3), 404–413. Reference is taken from the abstract of the text
[65] Foster, C. (2011) Dignity in Bioethics and Law. The description of the book

3. Dignity as *Status*: noble or elevated social position or rank.
4. Dignity as *Human dignity*: the unearned worth or status that all humans share equally (either inherent or constructed). [66]

It is interesting to note that the definitions of dignity mentioned above have nuances and distinctions. However, the last definition is the most pertinent in the context of end-of-life discussions, as it emphasises dignity as something inherent in each human being. The challenge is that dignity and the right to life can be interpreted differently, making regulation difficult. Some individuals argue that euthanasia and PAS go against the right to life, which was also part of Vox's constitutional challenge regarding the illegitimacy of LORE [67]. However, others argue that not allowing euthanasia and PAS could be considered inhumane and cruel to terminally ill patients who are experiencing unbearable pain and wish to alleviate their suffering. While the philosophical implications of dignity and human life are important, this paper will focus on analysing the legal aspects of these terms while still maintaining a fundamental understanding of them.

4. CRITICAL ANALYSIS OF LORE 3/2021

To fully understand the law and its intention, it is essential to start by examining the preamble. This can help us to gain a better understanding of the issues surrounding the legislation and why it has been met with controversy. By reviewing the content of the preamble, we can better comprehend the underlying problems presented by the law and the essence of its purpose. One of the most crucial aspects of any legal text is how well it is interpreted and understood. The message's clarity and the legislator's intention should be evident to ensure the proper implementation. Ambiguity and vagueness are major concerns in legal texts and often lead to confusion among regular citizens. This is a problem that needs to be addressed, as everyone should have a clear understanding of their legal rights and responsibilities. This does not apply only to this exact law but, in general, to the existing legal system and is a much broader issue overall. But I would like to highlight that in this context, we are discussing a law that tackles issues regarding human life, which is

[66] Debes, Remy, (2023) "Dignity", *The Stanford Encyclopedia of Philosophy*
[67] Unconstitutionality appeal Deputies of the Vox Parliamentary Group in the Congress of Deputies Organic Law 3/2021, of March 24, regulating euthanasia. https://www.voxespana.es/wp-content/uploads/2021/06/Recurso-Inconstitucionalidad-Eutanasia-VOX.pdf

perhaps the most protected principle and value in the world and, therefore, should be very clear and precise with its message. For a comprehensive understanding of legal texts, it is essential to delve deeper into the details and not merely skim the surface. Only by thoroughly examining the language and context of legal documents can we truly understand their meaning and implications. What do I mean by this? Well, any law should be understood and interpreted also for its social and historical context and not only its literal meaning. As the Civil Code in its article 3.1 establishes:
''Regulations will be interpreted according to the plain meaning contained in their words, in relation with the context, historical and legislative background, and social reality of the time in which they are to be applied, fundamentally attending to their spirit and purpose.''.
With the reference from the civil code, it is possible to gain a deeper understanding of LORE and analyse it from a different perspective.

4.1 The preamble:

The first sentence of the text is: *''This law pretends to provide a legal, systematic, balanced and guaranteeing response to a sustained demand of today's society such as euthanasia.''.* The law is trying to justify itself through the'' sustained demand of today's society'' and mentions some key features that stem from today's society: growing life expectancy, advancing technology which is capable of maintaining a human life for a longer time, a constant social debate which this topic has created and with it some famous widespread cases; the recognition of people autonomy in the health field, and lastly as society has become more secular, personal values are shifting away from religious beliefs. The preamble also explains the literal meaning of euthanasia, which is described as ''good death'' and is defined as an intentional act to end one's life without any suffering because of a personal explicit wish. After this, the law states that it considers euthanasia only in its active and direct form and excludes the passive and indirect active forms of euthanasia.
I think that the ''sustained demand of today's society'' does not justify the law by itself but instead responds to certain cases, as Fernando Rey Martinez mentions in his article: *The sustained social demand for euthanasia thus announced does not seem to be a sufficiently proven motive beyond the social reaction towards certain extreme cases and the generalised desire for a painless final stage of life* [68]. Interestingly, only 0,84 % of Spain's

[68] Martínez, F.R. (2021) El nuevo modelo español de regulación de la eutanasia y el suicidio asistido como derechos: Contenido y valoración critica, *Anuario de Derecho Eclesiástico del Estado, vol. XXXVII*. Page 22

population (402.761) has registered a previous instruction document, according to the statistics published by the Ministry of Health[69]. This number does not seem to correlate with the notion of today's sustained demand for euthanasia in Spanish society beyond the social reaction towards certain extreme cases, such as the famous case of Ramon Sampedro, who was the first Spanish citizen to claim euthanasia from the Spanish courts, because of his condition as a quadriplegic [70]. One could also argue, based on these numbers, that perhaps most of the Spaniards have a high level of trust in healthcare professionals. It could be that they believe in the professionalism of doctors when it comes to end-of-life matters, which could explain the low number of registered previous instruction documents. Nevertheless, other statistics claim otherwise, such as the already mentioned study by the Sociological Research Centre [71]. The study's sample size was only 3862 participants, and naturally, this does not fully represent the entire Spanish society. However, it is important to note that the survey was conducted diversely with more than 100 participants from each autonomous community, excluding Ceuta and Melilla. There are also almost equally as many men (48,6 %) and women (51,4 %) and people of various ages (18 to 65 +) to minimise the bias of the result. The questions in the study were the following:

1. *Do you know that last December, the Congress of Deputies approved the regulation of euthanasia law? 2. And, as far as you know, do you agree or disagree with euthanasia? 3. Why do you doubt your opinion on euthanasia?* In the first question, more than 90% of the participants knew about the regulation of euthanasia, which shows that people at least have heard about it, but it does not entail anything else. With the second question, 72 % were in favour of euthanasia, which shows that most of the participants agree with the legalisation of euthanasia. However, the final question shows an interesting result, where almost 90 % replied that they did not know the term euthanasia or clearly agreed or disagreed with it. It is crucial to consider whether people truly understand the complex nature of euthanasia beyond perceiving it as a merciful death. A follow-up question like: ''Do you fully understand what euthanasia means?'' could have shed more light on the previous question and the overall topic and helped us understand people's perspectives

[69] Ministry of Health (2023) Registered number of previous instruction documents. Retrieved January 15, 2024, from: https://www.sanidad.gob.es/areas/profesionesSanitarias/rnip/docs/Enero-2023/2023_N_Inscripciones_en_el_Registro_Nacional_de_Instrucciones_Previas_desde_la_sincronizacion_completa_de_los_Registros_Autonomicos.pdf

[70] El periodico de Aragon (2021) La huella de Ramón Sampedro 23 años después. Retrieved December 29, 2023, from: https://www.elperiodicodearagon.com/sociedad/2021/07/06/huella-ramon-sampedro-23-anos-54719306.html

[71] Sociological Research Centre (2021) Study 3307. Retrieved 10 January 2024, from: https://www.cis.es/documents/d/cis/es3307sdmt_a

better. One can always speculate, and I think that most people do not possess the knowledge or the expertise to properly analyse euthanasia, which is perhaps one of the reasons why it is hard to regulate and has taken this long. It is crucial to have open and informed discussions about important topics such as euthanasia. This helps people better understand the issue, leading to better societal outcomes. After all, democracy is all about having the freedom to express our opinions and ideas respectfully and constructively. Nonetheless, it is crucial to approach survey results such as this one with caution and consider the study's limitations.

Afterwards, the preamble proceeds to compare the types of euthanasia in Spain's neighbouring countries. It highlights that there are two types of regulations regarding euthanasia. The first kind of regulation appears in countries where euthanistic conducts are not penalised since the motive of the agent is not selfish but rather compassionate. This creates an atmosphere for legal indeterminacy and may result in more issues than initially aimed to solve. This is an apparent reference to Switzerland[72], where euthanasia is decriminalised under certain circumstances, yet the practice has not been legally regulated in the country. The second form of regulation appears in countries where euthanasia is a legally accepted practice and has its regulations. Countries such as Belgium, Netherlands, and Luxembourg are on that list. The Spanish law follows the latter, where it legalises the practice under certain circumstances and regulates the whole process and its conditions to avoid legal indeterminacies. Then, the law differentiates two distinct forms of euthanasia, the first one being active euthanasia and the second one being physician-assisted suicide (PAS). After which, it explains the euthanistic context, in which it is legally accepted to aid in ending another person's life. This context is delimited to certain circumstances, such as the person's physical condition due to physical or mental suffering. The patient must be granted the opportunity to alleviate their condition and uphold their moral convictions on preserving their own life, particularly if it is against their dignity. Therefore, they should be empowered to make autonomous decisions regarding their own lives. The legislator attempts to make the law compatible with essential principles, such as the right to life, physical and moral integrity, and other constitutional rights, such as dignity, freedom, and the free will to act. It mentions that it is not just enough to decriminalise the conducts that lead to one's death, even in the case of their express wish to do so. Instead, it is to regulate

[72] **CASE OF GROSS v. SWITZERLAND** *(Application no. 67810/10)* 14 May 2013
https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-119703%22]}

and respect the autonomy and free will to end the life of someone who is suffering from a serious chronic and disabling condition or severe and incurable illness that causes intolerable suffering. This situation is called the ‘’euthanistic context.’’. It would be legally permissible if all the requirements set by the law are met within this euthanistic context. The preamble aspires to create guarantees that safeguard the absolute freedom of the decision, eliminating any external pressure. The guarantee that the law talks about refers to the Guarantee and Evaluation Commission, which requires a qualified and external assessment before and after the euthanistic intervention, which I will discuss in more detail later. While establishing these commissions is a positive step towards ensuring safeguards for the patient, it is not sufficient to address, for example, the issue of external pressure in decision-making. This personal decision should be taken with absolute liberty, autonomy, knowledge and free from external pressure, yet the legislator does not clarify how to achieve this. Concluding the preamble, this law introduces a new individual right to euthanasia. For this legislation to be compatible with the existing legal system and the constitution, it establishes a connection with fundamental rights such as life. Still, it also must be in harmony with other legally protected interests which the Spanish constitution determines, such as physical and moral integrity, human dignity, the superior value of freedom, ideological freedom, conscience, and the right to privacy. In conclusion, when a competent and free person faces a vital situation that can violate their integrity, privacy, and dignity, as may occur under the euthanistic context described earlier, the right to life can deteriorate compared to the other legally protected interests and rights. The right to life must be weighed against these other rights since there is no constitutional duty to preserve or impose life at any cost, especially if it is against their own will. Nothing in the constitution legitimises the State to protect a person's life *against their will…The individual is, constitutionally speaking, free to continue to live or not, and there is no fundamental right, principle, or value in the Constitution that states otherwise…. Another thing is that for moral, religious, or other reasons, it is claimed that another conclusion can be drawn from the Constitution, but none of those reasons have constitutional coverage.*[73] For this to work in congruence, the state must establish and regulate a legal regime with guarantees in place and legal certainty to tackle all the issues that might occur with such a delicate topic as we are dealing with.

[73] Requena, L.T. (2009) Sobre el «derecho a la vida» *Revista de derecho constitucional europeo. Año 6. Núm. 12*. Page 326-327

4.1.2 Problematic aspects of the preamble

The delivery of its intended message is lacking in various aspects within LORE, potentially leading to misinterpretation and confusion. First, I will showcase the ambiguous and misleading writing of the law. At the beginning of the second page of the preamble, the law states: *''law regulates and decriminalises euthanasia in certain clearly defined cases that are subject to sufficient guarantees that safeguard absolute freedom of decision''* [74]. It may seem as if euthanasia is legal in various cases. Still, the law specifies that euthanasia and PAS are only allowed in case of serious, chronic, and disabling conditions or serious or incurable illnesses as defined in Article 3. The word ''certain'' implies a much broader and wider range of possibilities that can be difficult to interpret due to the lack of specificity. This situation could have been avoided easily with more precise wording. For instance, using phrases such as ''in clearly defined cases'' or preferably with even more accuracy, referring to the fundamental requirement of a serious, chronic, and disabling condition or serious or incurable illness, which is also known as the euthanistic context, could have provided much more clarity. Afterwards, there is a section in the preamble that talks about how the patient must make their decision without any external pressure: ''*Guarantees must be established so that the decision to end one's life is made with absolute freedom, autonomy, and knowledge, protected therefore from all kinds of pressures that may come from unfavourable social, economic or family environments, or even from hasty decisions''.* Addressing this matter properly is very important, especially considering that we are talking about the most significant decision a person will make in their life, which involves their life itself. However, if the legislator decides to regulate this matter, they should provide clear and detailed steps to ensure no external pressure is involved in the process. While it states that the applicant should be protected from any external pressure, no concrete solution is offered on how to achieve this. It is essential to have a clear and structured plan of action to determine any kind of external pressure. Still, the proposal only mentions that it should be free of any external pressure without providing any information on controlling it and what the content would be. Also, it talks about the guarantees but does not go into the details and is not explained sufficiently. *''This euthanistic context, thus delimited, requires a qualified and external assessment of the requesting and executing persons, before and after the euthanasia act.''* [75]. After reading

[74] Hernando-Garreta, A. (2023) Clarity and precision in legal language: Linguistic-discursive analysis of Organic Law 3/2021 on the regulation of euthanasia in Spain. Page 12

[75] Organic Law 3/2021, 24th of March, The preamble

this part, it offers some answers to the already mentioned guarantees. Which, in this case, refers to the Evaluation committee since they are the ones reviewing the case before and after the practice, which does indeed offer some level of guarantee to the whole operation and the people involved in it. I find the legislators' approach very complex and not very straightforward, especially for those individuals with no legal background or knowledge, which would be most regular citizens. At the end of the preamble, where it concludes the reasons behind the regulation of the new individual right of euthanasia and PAS, ambiguity shines again: *''It is understood as an action that directly and intentionally causes the death of a person through a single and immediate cause-effect relationship, at the informed, express and repeated request of said person; it is carried out in a context of suffering due to an incurable illness or disease that the person experiences as intolerable and that could* ***not be mitigated by other*** *means''.* Based on the way the legislator has written this part in the preamble, it seems like the patient has exhausted all available options and is left with no other alternative but to opt for euthanasia or PAS, as stated in Article 5, which mentions the requirements for assisted death. It never mentions that the patient must exhaust all the available options to receive this aid, but states that the patient must have in writing the information regarding their medical process and different treatment alternatives, which might include access to palliative care. The phrase ''could not be mitigated by other means'' may lead one to assume that a patient must try every possible treatment alternative before turning to euthanasia and PAS, which can be misleading [76]. In many cases, even if they would have wanted to have palliative care, receiving it has been a big issue in Spain. It is estimated that roughly 80,000 people die each year in Spain without receiving palliative and most of them are terminally ill cancer patients [77]. I will touch more on the subject of palliative care later in the text.

4.2 The requirements to receive the necessary help to die

4.2.1 The euthanistic context

First, a person can request and receive the necessary aid to die only under two conditions: Either they are suffering from a serious, chronic, and disabling condition, or they are

[76] Hernando-Garreta, A (2023) Clarity and precision in legal language: Linguistic-discursive analysis of Organic Law 3/2021 on the regulation of euthanasia in Spain. Page 13
[77] Servicio de Informacion sobre Discapacidad (SID) 2021. Retrieved December 4, 2023, from: https://sid-inico.usal.es/noticias/casi-80-000-personas-mueren-cada-ano-en-espana-sin-recibir-cuidados-paliativos/

suffering a severe and incurable illness that causes intolerable suffering. The law fundamentally justifies everything through this euthanistic context, and it functions as a filter to either be eligible or not. This is the main requirement set by the law, and it prohibits the possibility of euthanasia or PAS under any other circumstances. I think it is essential that the law is clear and precise to delimit the context under which PAS or euthanasia is performed. As we progress in the text and move forward towards the euthanistic context, which is fundamentally the whole structure for the legalisation of euthanasia and PAS. The law justifies these actions through this said context, and only under these conditions are euthanasia and PAS considered as non-penalized actions. It could be argued that the definition of the euthanistic context and its criteria is flawed, as I will highlight through article 3 of LORE, which outlines the definition. In section B) of the said article is the root of the problem: «Suffering a serious, chronic and incapacitating condition»: *"those limitations that have a direct impact on the patient's physical autonomy and activities of daily life, preventing them from taking care of themselves, as well as on their capacity for expression and relationship, and that are associated with constant and intolerable physical and psychological suffering, it being certain, or there existing a high degree of probability, that these limitations will persist over time without any appreciable possibility of cure or improvement".* This description seems to have a linguistic issue, as it may create ambiguity due to some of its wording. This definition is very similar to describing a disabled person. First, it mentions the limits to physical autonomy and daily life activities, which is very common for an individual who uses a wheelchair or has limited physical autonomy. After which, it follows: '' preventing them from taking care of themselves''. So, theoretically, anybody who needs any external help with their daily life is considered eligible to request and receive the aid to die. It could be argued that the linguistic aspect of the euthanistic context is flawed, as I have already mentioned, and it creates a dangerous path for any individual who meets any of the requirements that this concept contemplates. This feels as if disabled people are less worthy and are deemed to be eligible to receive the aid to die. It seems as if they are easily disposable and that they don't deserve protection from the state, which is a violation of Article 10[78] of the United Nations Convention on the Rights of Persons with Disabilities. The said article mentions that the state must protect and ensure equal rights and basis for people with disabilities,

[78] United Nations. (2006). Convention on the Rights of Persons with Disabilities. Article 10:
States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

which this euthanistic context violates by highlighting and making disabled people eligible to die legally. Disabled people should receive even more protection since they are more vulnerable due to their characteristics, which might bring legislators' aim to eliminate external pressure to avoid it impacting the decision-making of those seeking aid for assisted death, which may have the opposite effect. Especially with the linguistic choices made in the text with phrases such as ''incapacitating condition''. The pressure to not burden their families or to be a burden overall to society might create depression and may lead individuals to feel compelled to seek help, resulting in increased pressure and potential worsening of their condition [79]. This may result in a desire to end their own life even more rather than addressing the underlying issues causing their problems. Additionally, phrases such as '*'unbearable suffering or other legally recognised equivalent documents''* should not be used as a standalone requirement in a legal text without further explanation. In the case of ''unbearable suffering,'' it is very subjective, and pain tolerance varies significantly between individuals, so what may be tolerable to one person could be unbearable suffering to another, even in a similar context [80]. Therefore, it is crucial to provide additional clarification to fully comprehend the true meaning of such phrases. The language used in LORE is often vague and ambiguous, lacking the necessary precision to avoid multiple interpretations and outcomes, which can lead to unintended consequences that are not aligned with the original intent of the legislator.

4.2.2 Rest of the formal requirements

The patient must fulfil specific requirements to legally request assistance for end-of-life procedures. The law mentions the criteria in Article 5 to request and receive the necessary aid to die[81]. The first aspect that this article tackles and tries to prevent is ''suicide tourism''. The person must be either a Spanish citizen or legal resident, have a registration certificate from the municipality, and have been residing in the Spanish territory for over twelve months. With this provision, the legislator wants to prevent foreigners from travelling to Spain to end their lives there. For example, in Switzerland, a non-profit organisation called Dignitas offers PAS to individuals who are members and have a

[79] Donkin, A.J. (2021) Physician-assisted suicide and euthanasia – who are the vulnerable? *S Afr J Bioethics Law* 2021;14(1): Pages 37-38

[80] Hernando-Garreta, A (2023) Clarity and precision in legal language: Linguistic-discursive analysis of Organic Law 3/2021 on the regulation of euthanasia in Spain. Page 18

[81] Organic Law 3/2021, 24th of March, **Article 5. Requirements for receiving the help to die.**
1. In order to receive the aid to die, the person must meet all of the following requirements:
a) Have Spanish nationality or legal residence in Spain or a certificate of logging that proves a period of stay in Spanish territory longer than twelve months, be of legal age and be able and conscious at the time of application.

terminal illness or severe physical or mental illness. Independent Swiss doctors provide these services. Through this organisation, many foreigners have travelled to Switzerland to die legally because, in most jurisdictions, euthanasia and PAS are illegal[82]. As a matter of fact, by the end of 2022, Dignitas has ended 3666 lives, and out of these, only 6 % were local Swiss people, and almost 40 % were Germans[83]. Overall, the legislator intends to avoid situations similar to Switzerland's case. Continuing with the terms, the applicant must be of legal age, competent, aware, and conscious when applying. There is no legal provision for minors, which does exist in Netherlands [84] and Belgium[85]. Perhaps the legislator made the right decision by excluding minors from this regulation. Their inclusion could have exacerbated the already sensitive topic, leading to further arguments and disputes. These are the initial conditions for even to be eligible to apply. After that, the law goes into more detail with other sets of requirements. The patient must have in writing the information regarding their medical process and different treatment alternatives, including access to palliative care. This writing must be done repeatedly, twice precisely, with 15 days between requests. It must be done freely and voluntarily and clear of any external pressure.[86] If the applicant cannot request in writing, it may be submitted in other accepted forms which indicate the applicant's intentions or through a person of legal age chosen by the patient in a previous instruction document. This notion of free and voluntary decision contradicts the statement because if the requirement to receive the aid to die is unbearable suffering, then the decision is not free and voluntary, but due to the intolerable suffering. Neil Campbell made a great analogy regarding a free and voluntary decision: *' The analogy*

[82] Dignitas. Who is DIGNITAS? Retrieved November 26, 2023, from http://www.dignitas.ch/index.php?option=com_content&view=article&id=4&Itemid=44&lang=en

[83] Dignitas. (2022) Accompanied suicide statistics provided by Dignitas between 1998-2022. Retrieved November 11, 2023, from http://www.dignitas.ch/images/stories/pdf/statistik-ftb-jahr-wohnsitz-1998-2022.pdf

[84] **April 1st, 2002, Dutch Euthanasia Act, Article 2:**
3. If the minor patient has attained an age between sixteen and eighteen years and may be deemed to have a reasonable understanding of his interests, the physician may cant' out the patient's request for termination of life or assisted suicide, after the parent or the parents exercising parental authority and/or his guardian have been involved in the decision process.
4. If the minor patient is aged between twelve and sixteen years and may be deemed to have a reasonable understanding of his interests, the physician may cant' out the patient's request, provided always that the parent or the parents exercising parental authority and/or his guardian agree with the termination of life or the assisted suicide. The second paragraph applies mutatis mutandis.

[85] **May 28th 2002, The Belgian Act on Euthanasia, Section 3**
§1. The physician who performs euthanasia commits no criminal offence when he/she ensures that: - the patient has attained the age of majority or is an emancipated minor, and is legally competent and conscious at the moment of making the request;

[86] Organic Law 3/2021, 24th of March, Article 5. Requirements for receiving the help to die.
b) To have in writing the information that exists about its medical process, the different alternatives and possibilities for action, including access to comprehensive palliative care within the common portfolio of services and the services that it is entitled to in accordance with the rules of care for dependency.
(c) Having made two applications voluntarily and in writing, or by another means to be recorded, and other than the result of any external pressure, leaving a separation of at least fifteen calendar days between the two.
If the responsible physician considers that the loss of the applicant's ability to grant informed consent is imminent, he may accept any minor period he deems appropriate depending on the concurrent clinical circumstances, which he or she must record in the medical history.
d) Suffer a serious and incurable illness or a serious, chronic and impossible condition under the terms set out in this Law, certified by the responsible physician.

of the prisoner who is tortured for information…The assumption is that since the pain was so excruciating the decision to talk was not voluntary, but was compelled. Indeed, that is the whole point of torture. Under the conditions of unbearable pain and suffering, then, if the concern of the agent is to alleviate the pain, it seems to be a mistake to speak of voluntary choices… [87] The legislator gives a lot of freedom to the assigned physician to assess and evaluate the situation. We can see this happening in Article 5.1.c) which mentions that if the assigned physician considers the loss of the patient's capacity imminent, it gives the physician the freedom to accept any shorter time to allow the request. I find this problematic since a lot of authority is being invested in one person, and this reduces, in my opinion, some of the guarantees that this law inspires to provide. Something similar occurs again in the second section of the same article. Article 5.2 establishes a situation where the assigned physician considers that the patient is not in full use of their capability, nor can give their free, voluntary, and conscious consent to make the request[88], but is in a euthanistic context and has beforehand drafted and signed previous instruction document or other legally equivalent document, where they have given their consent and wish to end their life. This is called a situation of de facto incapacity and is defined in Article 3. h) a *situation in which the patient lacks sufficient understanding and will to act autonomously, fully, and effectively, regardless of the existence or adoption of measures of support for the exercise of their legal capacity''* Under these circumstances the necessary aid to die can be provided. Still, once again, the assigned physician makes the final call to decide whether this process will progress. However, the doctor cannot arbitrarily decide or evaluate what to do with the patient but must act according to the protocols of the Interterritorial Council of the National Health System, which is a good balancing addition from the legislator. Also, every applicant will be reviewed before and after the procedure through the Evaluation Committee, which adds more guarantees to the whole process. In the situation of de facto incapacity, the legislator has established a separate method in Article 9, which I will explain later in the next chapter. The applicant does have the right to change their mind and to revoke their application and decision at any given moment, and if so, it will be added to the patient's

[87] Campbell, N. (1999) A problem for the idea of voluntary euthanasia. Journal of Medical Ethics. *25*(3) Page 243

[88] Organic Law 3/2021, 24th of March, Article 5. Requirements for receiving the help to die.

2. The provisions of point (b), (c) and (e) of the previous subparagraph shall not apply in cases where the responsible physician certifies that the patient is not in full use of his powers and cannot lend his free, voluntary and conscious conformity to make the requests, complies with paragraph 1(d) , and has previously signed a document of prior instructions, living will, advance wills or legally recognised equivalent documents, in which case aid may be provided to die in accordance with the provisions of that document. If you have appointed a representative in that document, you will be the valid interlocutor for the responsible physician.

The assessment of the situation of incapacity in fact by the responsible physician shall be made in accordance with the protocols of action determined by the Interterritorial Council of the National Health System.

medical history. In addition, the applicant can also request a postponement of the procedure.

4.3 Procedure for Euthanasia and PAS

Requirements	► Serious, chronic and incapacitating illness or serious and incurable disease, causing intolerable physical or psychological suffering. ► Competent and conscientious patient. Non-competent patient: possibility of advance directives. ► Absence of external pressures. ► Be 18 years old or older. ► Spanish nationality or registration of more than 12 months.
Step 1	**First request:** to the assigned doctor and signed by doctor and patient. ► Interview of the assigned doctor: assessment of compliance with the requirements. ► Maximum of 2 days: deliberation process on its diagnosis, therapeutic possibilities and expected results, information on palliative care and help for care dependency. ► Maximum 5 days: the patient receives the information in writing.
Step 2	**Second request:** to the assigned doctor. At least 15 days after the first, except for situations that do not allow delay due to the risk of loss of competence. ► 2–5 days after submission: new deliberation process. ► 24 hours after the end of the deliberation process, if the request persists, the assigned doctor informs the healthcare team (especially the nursing staff), family members (if the patient requests it) and collects the document of informed consent. ► If the applicant withdraws, the healthcare team is also informed.
Step 3	Assigned physician informs the consulting physician, who will: ► Interview the applicant. ► Review of medical history. ► Maximum of 10 days from the second request: report confirming if the requirements are met. ► Communication of the conclusions of the report to the patient.
Step 4	Assigned physician notifies the president of the EC of the favourable report of the consultant. ► Maximum of 3 days.
Step 5	President of the EC: appoints two members of the EC (a doctor and a lawyer) to verify if the legal requirements for the application are met. ► Maximum of 2 days.
Step 6	The two members of the EC carry out: ► Review of documentation and medical history, interview (if they consider it necessary) with the assigned doctor, health team and/or with the applicant. ► Maximum of 7 days: report assessing whether the requirements are met. If it is favourable, the aid to die will be given. ► Maximum of 2 days: the decision is reported to the president of the EC.
Step 7	The president of the EC informs the assigned physician.
Step 8	**Approval of the procedure**: ► Date that the applicant proposes. ► Method chosen by the applicant: euthanasia or PAS. ► Accompaniment of professionals. ► Possibility of revocation or delay of the procedure.
Step 9	**After the procedure**: ► Maximum of 5 days: the assigned doctor sends the EC: – First document: data of the applicant, the assigned doctor and the consulting doctor. If there is an advance directives document, from the applicant's representative. – Second document: clinical data of the applicant, compliance with the requirements and detailed description of the procedure. ► Maximum of 2 months: the EC supervises whether the procedure was carried out in compliance with legality.

EC, evaluation commission; PAS, physician-assisted suicide.

Velasco Sanz, T.R. (2021) Spanish regulation of euthanasia and physician-assisted suicide. *Journal of medical ethics*, Jul 30:medethics-2021-107523. Page 2

Finally, once all the requirements are fulfilled, the procedure to apply for euthanasia and PAS can be initiated. The chart illustrates the process step-by-step without going into too much detail. As seen from the chart above, the procedure for a patient to receive assistance in dying involves several steps. The legislator has put these steps in place to ensure that the patient fully understands the gravity of their decision. This process leaves very little room for ambiguity and mistakes and ensures that all necessary precautions have been taken and that forcible euthanasia does not occur[89]. The presence of three filters in the process provides guarantees for all the participants, including the patient and the medical staff.

[89] Crouch, J. (2017) Female Dutch doctor drugged a patient's coffee then asked her family to hold her down as she fought not to be killed - but did not break the country's euthanasia laws. Dailymail. Retrieved January 7, 2024, from: https://www.dailymail.co.uk/news/article-4166098/Female-Dutch-doctor-drugged-patient-s-coffee.html?offset=0&max=100&jumpTo=comment-175426032#comment-175426032

(There are three filters in the decision-making process: The assigned doctor for the first request, the consulting physician for the second request, and the Evaluation Committee, which ultimately makes the final decision.) To better understand how this guarantee works, I will provide two examples. First, from the patient's perspective, if a doctor determines that a patient wishes to receive assistance in dying, but the patient is uncertain about the decision, and the doctor fails to detect this uncertainty, knowing that another healthcare professional will evaluate the case is reassuring. This provides an additional layer of security to ensure the patient's decision is fully informed and free of doubts. Second, from the medical professional's perspective, if a member of the medical staff commits a mistake during the process, other professionals can amend the mistake and re-evaluate the case. This minimises the likelihood of errors and ensures that the quality of the service is not compromised. Overall, the multiple filters in place provide a robust system that prioritises the safety and well-being of the patient. In this case, the consulting physician must review the case and provide their approval before further steps can be taken. If any uncertainty arises from the patient, the Evaluation Committee remains as a final filter. This ensures that all measures have been taken to address the patient's concerns without hindering the process. It is also worth noting that the inclusion of the health conscientious objection allows medical professionals to opt out of a case if they have personal objections without compromising the quality of the service for the patient.

This procedure is not flawless, although the legislator intended to ensure a proper safety net for the patient and the medical staff, which is a welcome addition. Quoting the Journal of Medical Ethics: ''*Spanish law provides more guarantees because the EC reviews each case before and after the procedure, while in the other countries it only does so afterwards. In this way, it is ensured that the patient meets all the requirements''*[90]. On the other hand, these safety measures have also made this process very bureaucratic. The entire process can extend for approximately up to 40 days, starting from the moment the individual requests assistance to the actual delivery of the aid to enable death. It could be argued that this prolonged duration is excessive and bureaucratic, considering that the person in question is suffering from ''intolerable pain'' which is one of the conditions for eligibility to receive aid in the law. In my opinion, the law contradicts itself here. In cases where an individual has reached a point where they are no longer able to bear the pain and have made a firm decision to end their life after consulting with healthcare professionals

[90] Velasco Sanz, T.R. (2021) Spanish regulation of euthanasia and physician-assisted suicide. *Journal of medical ethics*. Jul 30:medethics-2021-107523. Page 5

and loved ones, waiting an additional 40 days to fulfil their wish may be perceived as needlessly extending their suffering. Additionally, the current system fails to provide adequate guarantees. It lacks the necessary compassion for individuals who are resolute in their desire to bring their suffering to an end. On the other hand, I can understand the rationale behind the length of this process. It serves to mitigate the potential for accidental, rushed, or coerced decisions regarding euthanasia and PAS, which is a priority for the legislator to avoid.

Article 9 of LORE [91] establishes the procedure for de facto incapacity[92], where the patient is not in full use of their capability nor can give their free, voluntary, and conscious consent to make the request. For these circumstances, there is a different procedure from the regular one, which I just explained. According to the protocols set by the Interterritorial Council of the National Health System, the assigned doctor will determine if the patient is in a situation of de facto incapacity. Article 5.2 will be the reference point for this procedure. If the patient meets the criteria of the euthanistic context set by Article 5.1.d) *'' suffering from a serious, chronic and disabling condition or suffering a severe and incurable illness, that causes intolerable suffering''* and has previously drafted previous instruction document, vital testament, or other legally recognised equivalent documents, they are eligible to receive the necessary aid to die according to these previously mentioned documents. The problem that may arise with these documents is the elapse of time. There is no additional regulation or specification regarding these documents in the LORE, and what would constitute as a valid time frame to consider it usable or eligible? I believe these documents should be revised periodically to ensure they prioritise the patient's interest, promote transparency and provide better guarantees for the patient and the medical staff. In the manual of the doctor-patient relationship, Juan José Rodríguez

[91] Organic Law 3/2021, 24th of March
Article 9. Procedure to follow when it is appreciated that there is a situation of incapacity in fact.
In the cases provided for in Article 5.2 the responsible physician is obliged to apply the provisions of the previous instructions or equivalent document.
Article 5. Requirements for receiving the help to die.
2. The provisions of point (b), (c) and (e) of the previous subparagraph shall not apply in cases where the responsible physician certifies that the patient is not in full use of his powers and cannot lend his free, voluntary and conscious conformity to make the requests, complies with paragraph 1(d) , and has previously signed a document of prior instructions, living will, advance wills or legally recognised equivalent documents, in which case aid may be provided to die in accordance with the provisions of that document. If you have appointed a representative in that document, you will be the valid interlocutor for the responsible physician.
The assessment of the situation of incapacity in fact by the responsible physician shall be made in accordance with the protocols of action determined by the Interterritorial Council of the National Health System.
[92] Organic Law 3/2021, 24th of March
Article 3. Definitions.
(h) 'Situation of incapacity in fact' means a situation in which the patient lacks sufficient understanding and will to govern himself autonomously, fully and effectively, irrespective of whether support measures exist or have been taken for the exercise of his legal capacity.

Sendín and Jacinto Bátiz Cantera have discussed this, and they consider that there should be some sort of renewal system for these documents: ‘’*Periodic renewal of a patient's decision can mitigate uncertainty about whether they would still make the same decision after a long time. This helps ensure that their wishes are followed, and they receive the best possible care’’*[93]. This may lead to potential problems in many cases, mainly when a long time has passed between the expression of the will and its practical application. Clear guidelines and definitions are crucial to avoid any confusion or misinterpretation of the law, which shines in certain areas of the law with its absence.

4.4 Guarantee Evaluation Commissions

In Article 17 [94] of LORE, new Guarantee and Evaluation Commissions are formed in each autonomous community and the autonomous cities of Ceuta and Melilla. These commissions have been created by the law to handle the verification of the requirements before and after the procedure, which could be seen as an additional guarantee to ensure that it is exclusively the patient’s wish to end their life. The composition of these commissions shall be multidisciplinary in nature and consist of at least seven members, including medical, nursing, and legal personnel. Each Guarantee and Evaluation Committee (GEC from now on) shall be established and constituted within three months of the entry of this law into force. It seems that the legislator was eager to accelerate the implementation process of the GEC as highlighted in the fourth final arrangement of the law: *This Law shall enter into force three months after its publication in the 'Official Gazette of the State', with the exception of Article 17, which shall enter into force on the day following its publication in the 'Official Gazette of the State'.* This could be seen as an example of the hasty decision-making by the legislator in trying to implement the whole

[93] Bátiz, J.C. (2019) Manual de la Relación Médico Paciente. Pages 243-254

[94] Article 17. Creation and composition.
1. There shall be a Guarantee and Evaluation Commission in each of the Autonomous Communities, as well as in the Cities of Ceuta and Melilla. The composition of each of them shall be multidisciplinary in nature and shall have a minimum number of seven members including medical, nursing and legal personnel.2. In the case of the Autonomous Communities, such commissions, which shall be of the nature of an administrative body, shall be set up by the respective regional governments, who shall determine their legal regime. In the case of the Cities of Ceuta and Melilla, it will be the Ministry of Health that creates the commissions for each of the cities and determines their legal regimes.
3. Each Guarantee and Evaluation Committee shall be established and constituted within three months of the entry into force of this Article.
4. Each Guarantee and Evaluation Committee shall have an internal regulation, which shall be drawn up by that Commission and authorised by the competent body of the autonomic administration. In the case of the Cities of Ceuta and Melilla, that authorisation shall be the responsibility of the Ministry of Health.
5. The Ministry of Health and the Chairs of the Guarantee and Evaluation Groups of the Autonomous Communities shall meet annually, under the coordination of the Ministry, to homogenize criteria and exchange good practices in the development of euthanasia delivery in the National Health System.

process as soon as possible, which has been one of the criticisms towards this law. *''It has been approved with a surplus of haste and a deficit of dialogue, I am afraid'',*[95] quoting the words of Fernando Rey Martinez. Each committee will create its internal regulation authorised by its respective autonomous administrations. The presidents of these committees will meet annually with the Ministry of Health to standardise criteria and exchange good practices. These annual meetings intend to ensure that all parties are aligned and working towards the common goal of improving euthanasia services in the national health system. (art. 17.5)

According to Article 18, the GEC has various functions, the main functions being approving the provision of aid in dying or its denial and resolving any conflict of interest between the medical team, the patient, and the assigned and consulting physician. As I mentioned, the GEC works as the final filter to verify the whole process. It needs to confirm within a maximum period of two months whether the provision of assistance in dying has complied with all legal requirements. To maintain the highest level of integrity and compliance, the GEC must conduct a thorough legality control before and after providing any services. This ensures that all actions are within the boundaries of regulations and laws. Additionally, it helps to identify and address any potential issues in a timely manner, promoting a safe and secure environment for every party involved. These commissions should have been regulated more thoroughly and individually since the autonomous communities have significant differences between them. For example, the population in Andalucía is 8.5 million and, in La Rioja, 320.000, yet they have the same regulation: to have at least seven members in the GEC. The law does not specify how many health care professionals each committee should have, but only limits to mention: *shall have a minimum number of seven members, including medical, nursing and legal personnel.* (art. 17.1) In practice, there can be variations in the composition and structure of each GEC, as the law does not rigorously regulate them. This could potentially lead to different implementations in different areas. Fernando Rey Martinez explains this well in his article: ''*On the other hand, it is evident that a GEC composed of opponents of euthanasia will resolve the same cases very differently compared to one in which supporters predominate. And we are going to have 19 bodies deciding in a partially different way on a right that should be exercised under conditions of equality by all its*

[95] Martínez, F.R. (2021) El nuevo modelo español de regulación de la eutanasia y el suicidio asistido como derechos: Contenido y valoración critica, *Anuario de Derecho Eclesiástico del Estado, vol. XXXVII.* Page 36

holders regardless of where they reside. This baroque and centrifugal institutional configuration of the Law is doomed to generate problems in its application''.[96]
GEC works as a safeguard protecting the patients and medical staff. Unfortunately, there appears to be a lack of comprehensive training for healthcare professionals regarding these particular events [97]. Moreover, the composition and formation of GECs can differ significantly, resulting in disparities in their implementation and criteria from one region to another. These issues must be addressed to ensure that GECs can operate effectively as safeguards for all parties involved. By taking the necessary steps to enhance the training of healthcare professionals and standardise GECs, we can ensure a fair and safe experience for everyone involved in these challenging situations.

5. PALLIATIVE CARE IN SPAIN

The lack of national regulation for palliative care (PC from now on) in Spain has resulted in Autonomous communities creating their own legislation regarding PC; for example, the autonomous community of Madrid approved their legislation (*Law 4/2017, of March 9, on the Rights and Guarantees of People in the Dying Process).* In 2007, the Ministry of Health and Consumer Affairs released a PC strategy that integrated PC as part of the National Health System. This plan focuses on improving the quality of end-of-life services and ensures that PC is recognised both as a legal and human right. This was an important milestone towards a national regulation for PC. Despite the high demand for national PC regulation from medical professionals and organisations such as the Spanish Society of Palliative Care[98] (SECPAL), nothing significant has happened regarding the regulation of PC on a national level. Although there have been several legislative proposals, they have yet to be approved, with the latest proposal coming from Vox in 2023 (21st of October of 2022, Num. 282-1**)**. In 2019, the European Association for Palliative Care (EAPC) released a study, *EAPC Atlas of Palliative Care in Europe 2019. It* analysed the current landscape

[96] Martínez, F.R. (2021) El nuevo modelo español de regulación de la eutanasia y el suicidio asistido como derechos: Contenido y valoración critica, *Anuario de Derecho Eclesiástico del Estado, vol. XXXVII.* Page 34
[97] López-Matons, N. (2022) Ley de regulación de la eutanasia: perspectiva de los profesionales asistenciales. *Gaceta Sanitaria.;36(1)* Page 87
[98] Geriatricarea (2022) SECPAL demands a state law that guarantees quality palliative care for the entire population. Retrieved January 6, 2024, from: https://www.geriatricarea.com/2022/09/23/secpal-reclama-una-ley-estatal-que-garantice-unos-cuidados-paliativos-de-calidad-a-toda-la-poblacion/

of PC in Europe. According to this study, Spain ranks 7th in terms of PC services provided in the continent but falls to 31st when measured by each 100,000 inhabitants in Europe. With only 0.6 PC services provided per 100,000 inhabitants, Spain is below the European average of 0.8. The service ratio in Spain is similar to that of Romania, Georgia, and Latvia. EAPC considers two PC services per 100,000 inhabitants to be a good result, so there is much work to be done to improve access to PC in Spain.

According to SECPAL[99], annually, around 250,000 patients need palliative care and 50,000 of these patients do not receive palliative care at all and end up dying while suffering from the pain. Velasco Sanz, explains well the actual situation with palliative care in the Journal of Medical Ethics [100]: *''The regulation of euthanasia and PAS should be preceded or accompanied by a regulation of palliative care because an essential requirement for accepting requests for help to die is that patients have received comprehensive and quality palliative care. In Spain, there should be a national law on palliative care, therefore priority should be given to its development.''* Although PC is a viable and necessary option besides euthanasia and PAS and should be more available overall, its wider implementation has certain difficulties. According to research from 2014, 61 palliative care specialists participated in the study to conclude the barriers to palliative care, and the five biggest barriers were, according to the study: funding, institutional capacity, researcher workforce, challenging nature of population and topic and finally public and professional misunderstanding and discomfort with PC [101]. Investing in PC is a necessity for the healthcare system of Spain to become more compassionate and effective in addressing the population's needs, as can be clearly seen from the EAPC study. Despite the challenges that come along, the government needs to prioritise PC to a greater extent than it currently does, given its potential to enhance citizens' health and well-being significantly. Though addressing the current situation may require considerable time, finances, and institutional resources, it is crucial to implement PC regulations as an initial step towards building a superior healthcare system. By acting now, Spain can guarantee its citizens receive the compassionate care they deserve.

[99] Servicio de Informacion sobre Discapacidad (SID) 2021 - Casi 80.000 personas mueren cada año en España sin recibir cuidados paliativos. Retrieved December 4, 2023, from: https://sid-inico.usal.es/noticias/casi-80-000-personas-mueren-cada-ano-en-espana-sin-recibir-cuidados-paliativos/

[100] Velasco Sanz, T.R. (2021) Spanish regulation of euthanasia and physician-assisted suicide. *Journal of medical ethics*. Jul 30:medethics-2021-107523. Page 6

[101] Chen, E. K., (2014) Why is high-quality research on palliative care so hard to do? Barriers to improved research from a survey of palliative care researchers. *Journal of palliative medicine*, *17*(7) Page 783

5.1 Palliative care in the constitutional court ruling

In the constitutional court's ruling of 19/2023, 22nd of March 2023[102], the lack of regulation towards palliative care has been a significant criticism towards this law. The political party Vox challenged the constitutional legitimacy of LORE by citing the unconstitutionality of various articles, including Article 15 on the right to life, Article 43 on health protection, Article 49 on services for the physically disabled and Article 50 on the elderly. The complainants argued that any other constitutional right cannot compromise the right to life under any circumstances. They also stated that the universalisation of palliative care, which the LORE does not guarantee, would be an equally effective and less restrictive measure to avoid patients' suffering. The complainants believe that these appealed articles would not pass the tests of necessity and proportionality in the strict sense, which is completely against what LORE has established in its preamble to make euthanasia compatible with other rights, particularly with the right to life [103]. The legislator intends this law to be compatible with essential principles, such as the right to life, physical and moral integrity, and other constitutional rights, such as dignity, freedom, and the free will to act, which is mentioned in the preamble of the law. However, Vox believes that this is not the case with this law. They argue that not only would the fundamental right to life itself be irreparably extinguished, but also the other goods and constitutional rights which are based on the fundamental right to life. Vox continues with its argument by saying that the law mentions palliative care in Articles 5.1 b) and 8.1, but these are merely formal informational requirements that do not guarantee universal access towards palliative care. In the same ruling, the state's attorney responds regarding these claims and, due to the lack of effective universalisation and guarantee of accessibility to palliative care, mentions that the provision of help in dying has '' an autonomous nature and does not exclude palliative care.'' [104]. In Article 5.1 b), the law stipulates the requirements to be eligible for euthanasia and PAS, and the person must fulfil these requirements: The patient must have in writing the information regarding their medical process and different treatment alternatives, which includes access to palliative care if needed. Then, in Article 8.1, the law explains that once the first request to receive assistance in dying has been received, the assigned doctor must carry out with the requesting patient a deliberative process on his

[102] Sentencia 19/2023, de 22 de marzo de 2023. Recurso de inconstitucionalidad 4057-2021 page 57765 and forward
[103] Sentencia 19/2023, de 22 de marzo de 2023.Recurso de inconstitucionalidad 4057-2021 Page 57800
[104] Sentencia 19/2023, de 22 de marzo de 2023. Recurso de inconstitucionalidad 4057-2021 Page 57801

diagnosis, therapeutic possibilities and expected results, as well as on possible palliative care, ensuring that the patient understands the information provided.

The Court emphasises that the appeal for unconstitutionality is limited to prosecuting "laws, regulatory provisions or acts with the force of law" as mentioned in Article 2.1 a) Organic Law 2/1979. The appeal is meant to challenge specific legal texts and legislative formulas and not a block of legality or a part of the regulatory system. The tribunal refers to a few rulings where they tackle these issues (SSTC 24/1982, de 13 de mayo, FJ 12; 86/1982, de 23 de diciembre FJ 5, y 45/2019, de 27 de marzo, FJ 5) [105]. The court continues in its justification and claims that it is also worth noting that, for the same reasons, it is not possible to establish open-ended and indeterminate controls over the effectiveness or completeness of different legislative policies, no matter how necessary they may be for optimising constitutional mandates or complementing other legal provisions, without undermining and taking away the freedom of the legislator. Additionally, whether palliative care has achieved universalisation or not is not a matter that can be examined in this procedure but should have its separate examination. The Court continues with its argument; *another important clarification is that according to the LORE's preamble, which the parties did not discuss, palliative care involves the ''use of drugs or therapeutic means that relieve physical or mental suffering even if they might accelerate the death of the patient.'' Thus integrating a form of euthanasia different from that regulated by the challenged norm (the so-called indirect active euthanasia). LORE's provision of assistance in dying is based on the concept of self-determination, which goes beyond just the notion of freedom and encompasses the dignity of the individual. It's important to understand that constitutional principles do not assume that easing physical suffering through palliative care will automatically alleviate the mental suffering of a person to the point where they can continue living with dignity. Ultimately, it's up to the individual to decide what constitutes a dignified experience regarding their perceptions and beliefs*[106]. The court concludes its argument by saying that palliative care represents a therapeutic option along with euthanasia and PAS. Palliative care can be rejected by individuals based on their conception of a dignified death, which might lead them to prefer euthanasia, an option protected by the person's right to self-determination in the euthanistic context. Limiting a person's medical options to palliative care in extreme

[105] Sentencia 19/2023, de 22 de marzo de 2023. Recurso de inconstitucionalidad 4057-2021 Page 57818
[106] Sentencia 19/2023, de 22 de marzo de 2023. Recurso de inconstitucionalidad 4057-2021 Page 57819

situations of suffering would mean restricting their right to self-determination, which is incompatible with respect for human dignity, free development of personality (art. 10.1 of the Spanish Constitution) and the right to personal integrity (art. 15 of the Spanish Constitution). It is important to note that from a constitutional perspective, both palliative care and active euthanasia should coexist and complement each other rather than being exclusive options. The provision of assistance in dying through active euthanasia should not be viewed as a replacement for palliative care but rather as an additional option to consider. Ultimately, the goal should always be to provide the best possible care for the individual in question while respecting their autonomy and dignity[107].

6. COVID-19

The final chapter of this text will give us a different approach towards this law and a new perspective to analyse. Examining the context in which LORE was approved before concluding its motivations and implications is important. Understanding the cultural, social, and political factors influencing the law can help provide a clearer picture of its significance and potential impact. As Article 3 from the civil code mentions: '' *with the context, historical and legislative background, and social reality of the time in which they are to be applied*.'' The approval of the law by the Chamber of the Congress of Deputies of Spain in 2020 took place during the COVID-19 pandemic, which was a significant event affecting the world at large. The pandemic had a major impact on Spanish society, leading to nationwide lockdowns and other measures to contain the spread of the virus. Spain was hit hard by the pandemic, especially in its early stages. On the 2nd of April 2020, Spain recorded the highest number of coronavirus deaths in a single day of any country, with 950 deaths [108]. The Spanish government had no choice but to declare an emergency state in the country, which was later followed by a complete lockdown, which had a catastrophic impact on the country's economy. Spain's economy suffered a substantial blow, and the GDP shrank by 10.8% in 2020, the hardest contraction in Europe [109]. The healthcare system was under tremendous pressure during the pandemic and faced the risk of

[107] Sentencia 19/2023, de 22 de marzo de 2023. Recurso de inconstitucionalidad 4057-2021 Page 57819

[108] Collman, A. (2020) Spain recorded 950 coronavirus deaths in a day, the highest single-day toll of any country. Business Insider. Retrieved November 22, 2023, from: https://www.businessinsider.com/coronavirus-spain-950-deaths-one-day-most-of-any-country-2020-4?r=US&IR=T

[109] European Commission - Spain on the 2022 National Reform Programme of Spain and delivering a Council opinion on the 2022 Stability Programme of Spain (Country Report) COM (2022) 610 final. Retrieved January 18, 2024 from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022SC0610

collapsing entirely. Intensive care units in numerous regions of the country were overwhelmed, putting a strain on the entire healthcare system. According to the Ministry of Health, around 250,000 patients were hospitalised in Spain in 2020 due to COVID-19. Among these hospitalised patients, nearly 50 % were aged over 65 years of age, while less than 21 % were younger than 44 years old [110]. The information provided is relevant to understand better the cultural, social, and political context in which the law was approved. It could shed light on the values, beliefs, and attitudes of the people and policymakers who supported or opposed the law. For instance, if there was a high prevalence of religious or conservative views in the country, it could explain why the law faced opposition or controversy. Likewise, a strong emphasis on individual autonomy, human rights, and medical ethics could explain why the law was considered necessary or progressive. Therefore, by examining the historical, cultural, and social factors that influenced the law, we may gain a deeper understanding of its implications, limitations, and controversies.
It is questionable why the LORE was approved in 2020, given the significant challenges faced by Spain and many other countries during that time. The pandemic and resulting economic recession had far-reaching consequences, particularly for vulnerable populations such as the elderly and disabled. During the pandemic, Spanish Society of Intensive and Critical Care Medicine and Coronary Units (SEMICIUC) released a document called ''Ethical recommendations for decision making in the exceptional situation of crisis due to the COVID-19 pandemic in Intensive Care Unit'' In this document as the name suggests, recommendations were made to health care professionals on hypothetical scenarios and decision making. Some of these recommendations could be seen as discriminating towards the already mentioned elderly and disabled people. For instance, ''When faced with two similar patients, the person with the most quality-adjusted life years) should be prioritised'' [111]. What is considered as a Quality-adjusted life years, also known as (QALYs)? According to an article published in Health and Quality of Life Outcomes 2003, *The quality-adjusted life-year (QALY) is a measure of the value of health outcomes. Since health is a function of length of life and quality of life, the QALY was developed as an attempt to combine the value of these attributes into a single index number…This parameter can be used to compare the cost-effectiveness of any treatments.* The problem

[110] Ministry of Health (2020) Registro de Atención Actividad Sanitaria Especializada (RAE-CMBD). Actividad y resultados de la hospitalización en el Sistema Nacional de Salud. Año 2020. Retrieved January 15, 2024, from: https://www.sanidad.gob.es/estadEstudios/estadisticas/docs/RAE-CMBD_Informe_Hospitalizacion_2020.pdf
[111] Spanish Society of Intensive and Critical Care Medicine and Coronary Units (2020) *Ethical recommendations for decision making in the exceptional situation of crisis due to the COVID-19 pandemic in Intensive Care Unit.* Page 11. Retrieved January 18, 2024, from: https://semicyuc.org/wp-content/uploads/2020/03/Ética_SEMICYUC-COVID-19.pdf

with these arbitrary values is that you cannot measure quality and length in the same units of measurement. In the same way, you cannot compare apples with oranges. In this case, they are two separate objects or fruits (quality and life) and should be treated as such and not combined as done in the QALY function[112]. Having said all this, It could be argued that it is morally and ethically wrong to determine the value of human life or to decide who gets to live using a mathematical function. It is crucial to consider each individual's worth and dignity rather than reduce them to arbitrary numbers. Each human life is unique and deserves to be treated with the utmost respect and value. This requires, of course, individual decision-making case by case, but human life deserves to be treated in such a way, and this shows the dignity and the value given to the person. It is natural to question whether enacting the law amidst such challenging times was necessary. There is no hard evidence to suggest that these above-mentioned factors have influenced the creation and approval of the law. It is always important to consider the context in which laws are released, as it can provide valuable insight into their purpose and potential impact. While we cannot say for certain, the situation during the pandemic was unlikely to impact the decision to enact the law significantly. However, it is worth noting that the process of creating and approving a law is often lengthy and complex, involving multiple stages of review and consultation. Nevertheless, in this case, the law came into force only three months after its approval. Considering that this happened during the pandemic when the healthcare system was on the brink of collapse and to introduce simultaneously a new right for patients seems illogical. The Association of Fundamental and Clinical Bioethics (ABFYC) released a document right before LORE came into force in early 2021. The document features the association's thoughts and opinions regarding the law. The ABFYC's view on the entry into force and the implementation of the law was that it was insufficient. Compared to similar processes in other parts of the world, such as the State of Victoria, Western Australia, and New Zealand, the implementation time in these cases ranged between 12 and 18 months after the law's approval. Three months, as in this case, seems indeed insufficient, especially considering the pandemic that has impacted the health system and end-of-life situations. ABFYC considers the law's timing undesirable because it occurs simultaneously with the pandemic. During this time, the accompaniment of loved ones at the end of life has been challenging since the health system has been subjected to

[112] Prieto, L. (2003) Problems and solutions in calculating quality-adjusted life years (QALYs). *Health and quality of life outcomes.1(80)* Pages: The abstract and page 7

unprecedented challenges. The elderly have faced end-of-life situations in conditions of fragility and loneliness, which has raised concerns about the abandonment of such groups [113]. Given the magnitude of the pandemic, the law's timing is strange and undesirable. Three months seems too short for implementation, especially considering that it coincided with the pandemic. It is understandable to question whether implementing the law during this time was necessary. Unfortunately, we do not have answers to these questions, leaving many unanswered concerns. Therefore, a more detailed analysis is needed to understand the reasons behind the timing of the law's implementation and the decision-making process that led to it.

7. Conclusions

The topic of assisted death is a complex and sensitive matter that requires a thoughtful approach. Some people may see the concept of showcasing free decision-making and human autonomy as a positive step towards individual empowerment, others will have valid concerns and worries about the matter. These concerns could stem from various factors, such as the possibility of decisions being influenced by external factors and the impact of such decisions on society. It is essential to carefully consider all aspects of assisted death before favouring it or being against it. This includes examining the potential benefits and drawbacks, assessing the potential risks and challenges, and exploring alternative approaches, such as palliative care, that may be more suitable for achieving the desired outcomes. In addition, it is vital to ensure that any steps taken in this regard are based on sound principles of ethics and morality and that they consider the needs and interests of all the parties involved in this process. By doing so, we can strive to create a more equitable and just society that empowers individuals while ensuring the greater good for society. I think the current regulation of euthanasia and PAS is heavily reliant on individual decision-making. Any future modifications or regulations regarding end-of-life matters should be improved and prioritised towards a more humane approach. I would argue that the world is moving towards a more individualist culture, particularly in the Western world, with a decline in collective culture and family values. Upon reviewing end-

[113] The Association of Fundamental and Clinical Bioethics (2021) Reflections, considerations and proposals of the association of fundamental and clinical bioethics (ABFYC) regarding the regulation of medical aid in dying. Retrieved January 20, 2024, from: https://www.asociacionbioetica.com/imagenes/publicaciones/reflexiones-consideraciones-y-propuestas-abfyc-en-torno-a-la-regulacion-de-la-ayuda-medica-para-morir-66-es.pdf

of-life regulation globally, it is noteworthy that most countries with such regulations are Western countries, with the exception of Colombia. In a world where individual values are gaining more emphasis, the occurrence of regulation for euthanasia and PAS in Spain was only a matter of time. On one hand, the law contains many problematic aspects, such as its implementation, timing, and linguistic aspects, to point out a few examples. On the other hand, the law offers safeguards for the patients. One such safeguard is the involvement of the Evaluation Committee, which reviews the process before and after and ensures that the patients are protected. Additionally, the health conscientious objection allows medical professionals to abstain from participating in procedures that conflict with their beliefs and values, maintaining their autonomy. The law aims to strike a balance between the protection of patients and the respect for individual rights and freedoms.

The primary objective was to offer more options to individuals who are terminally ill. However, due to the hasty implementation of the law and strange timing of its release during COVID-19 pandemic, resulted in several concerns, including discrimination against elderly and disabled individuals. This unintended consequence has sparked debates and discussions on the need to revisit the legislation to ensure that it truly serves its intended purpose. It is vital that lawmakers consider these concerns and take appropriate action to address them, so that the law can function as intended, without causing any unintended harm and trouble to the individuals in question and to the society overall.

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