ЮГОЗАПАДЕН УНИВЕРСИТЕТ "НЕОФИТ РИЛСКИ"

ПРАВНО-ИСТОРИЧЕСКИ ФАКУЛТЕТ

КАТЕДРА „МЕЖДУНАРОДНО ПРАВО И МЕЖДУНАРОДНИ ОТНОШЕНИЯ“

"СТАНДАРТИ ЗА ЗАЩИТА НА ПРАВАТА НА ЧОВЕКА В ПРАКТИКАТА НА ЕВРОПЕЙСКИЯ СЪД ПО ПРАВАТА НА ЧОВЕКА"

(Някои аспекти, свързани с член 2 от ЕКПЧ)

Дисертация за присъждане на научна и образователна степен "доктор"

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Дисертацията включва въведение, основна част, разделена на три глави, и раздел, включващ заключения и препоръки. Общият обем на научния труд е 191 стандартни страници. Използвани са 15 албаноезични източника, 86 чуждестранни източника и 30 интернет източника. Текстът включва 5 таблици. Дисертацията е придружена от 1 приложение с общ обем 6 страници.

Авторът на дисертацията е редовен докторант към катедра „Международно право и международни отношения“ към Правно-историческия факултет на Югозападния университет „Неофит Рилски “ в Благоевград.

Защитата на дисертацията ще се проведе на 23 януари 2025 г., в 10:30 ч., в Института за държавата и правото при БАН с адрес – гр. София, ул. „Сердика“ № 4 Материалите, свързани със защитата, са на разположение в катедра „Международно право и международни отношения“, Правно-исторически факултет, ЮЗУ „Неофит“ Рилски“, Благоевград.

ОБЩИ ХАРАКТЕРИСТИКИ НА ДИСЕРТАЦИЯТА

Обхват, релевантност и рамка на изследването

Това изследване разглежда правото на живот като централен принцип на правата на човека, като акцентира върху неговите правни, етични и социални измерения в Албания. То подчертава ограниченото вътрешно третиране на това право и пропуските в законодателството относно абортите и евтаназията, две от най-чувствителните и недостатъчно проучени области в албанското право.

1. Значение и цели

Изследването подчертава, че без правото на живот, никакви други права не биха могли да съществуват. Въпреки фундаменталния си характер, Албания няма цялостно академично и правно разглеждане на тази тема. Изследването има за цел да:

- Подобряване на разбирането на политиките, свързани с правото на живот;
- Идентифициране на недостатъците в албанската правна и институционална рамка;
- Сравнете националните практики с международните стандарти, като например тези, установени от Европейската конвенция за правата на човека (ЕКПЧ) и инструментите на ООН.

Изследването има за цел да преодолее пропуските в знанията за това как Албания защитава живота и да насърчи политически ориентирани реформи.

2. Контекст и предизвикателства

Правата на човекав Албания често се нарушават или се прилагат слабо поради институционални слабости. Абортът остава широко разпространен и публично обсъждан, докато евтаназията до голяма степен отсъства от обществения дискурс и не е правно регулирана – което отразява дълбоко вкоренени културни и религиозни табута. Въпреки че може да съществуват неформални практики, евтаназията не е нито призната, нито обсъждана открито в Албания.

Липсата на съдебна практика и законодателство затруднява сравнителния анализ, тъй като съществуват малко национални прецеденти. Проучването разкрива, че транспонирането на международното право не е последвано от ясно национално прилагане или насоки, което създава неяснота и непоследователност при прилагането на принципите на правата на човека.

3. Принос и значение

Академичната и практическата стойност на изследването се състои в изследването на:

- Как социално-политическият преход на Албания влияе върху тълкуването на правото на живот;
- Взаимодействието между правото, етиката и общественото възприятие;
- Сравнителни прозрения с глобалните дебати за абортите и евтаназията.

Като акцентира върху съдебната независимост, етичното управление и институционалната прозрачност, изследването допринася за обществения дискурс и помага за оформянето на бъдещи реформи, които балансират индивидуалните права с моралните и културните ценности.

4. Ограничения

Авторът идентифицира няколко методологични и контекстуални ограничения:

- Времеви и пространствени ограничения — изследването се фокусира върху конкретни периоди и липсва единен международноправен обхват;
- Културни чувствителност – табутата около абортите и евтаназията намаляват обществената готовност за участие в изследвания;
- Оскъдност на данни – надеждните статистически данни и съдебната практика са ограничени, особено по отношение на евтаназията;
- Институционална непрозрачност — достъпът до съдебни и правоприлагащи документи е ограничен;
- Сравнителни предизвикателства – разликите между Албания и европейските държави усложняват тълкуването;
- Риск от пристрастност на изследователя – поддържането на неутралност при анализа на спорни морални въпроси е трудно;
- Регионални различия — нагласите се различават между градските и селските райони, което влияе върху представителността на резултатите.

Авторът отбелязва също, че международните правни норми се развиват непрекъснато, което затруднява едно отделно изследване да остане изцяло актуално.

5. Етични и методологични съображения

Предвид чувствителния характер на темата, изследването поддържа строги етични стандарти, включително анонимност, поверителност и избягване на принуда. Тези ограничения, макар и необходими, ограничават дълбочината на качественото изследване.

6. По-широка рамка

Проучването разглежда Албания в рамките на международните и европейските правни рамки, като се позовава на:

- Член 3 от Всеобщата декларация за правата на човека;
- Член 2 от Европейската конвенция за правата на човека.

В него се анализира конституционното съответствие на Албания с тези норми и се изследва колко ефективно те се прилагат на практика, особено в случаи, свързани с аборт и евтаназия. Констатациите показват частично спазване, но недостатъчно прилагане и институционален надзор, което призовава за по-силна прозрачност на съдебната система и етична реформа.

- **Развитие на правото на живот**

Историческите и философските основи на правото на живот произтичат от традициите на естественото право, подчертаващи неприкосновеността на човешкото достойнство. В Албания този принцип е кодифициран в член 21 от Конституцията, който гарантира живота като неотменимо право. Правната рамка на страната се е развила значително след прехода от тоталитарен режим към демократична държава, привеждайки законите си в съответствие с европейските и международните стандарти. Прилагането му обаче остава предизвикателство поради слабия институционален капацитет и социално-икономическите борби.

На европейско ниво, ЕСПЧ е оформил динамично разбиране за правото на живот. Дела като *Pretty срещу Обединеното кралство* и *Vo срещу Франция* илюстрират баланса между индивидуалните права и задълженията на държавата, често влияейки върху националните правни реформи. Този контекстуален фон предоставя призма, през която да се оцени напредъкът и недостатъците на Албания.

- **Анализ на абортите в Албания**

Абортът остава поляризиращ въпрос в Албания, отразяващ дълбоко вкоренени културни и религиозни ценности. Въпреки че е легализиран съгласно Закона за репродуктивното здраве от 2002 г., обществената стигма продължава. Религиозните институции и традиционните норми продължават да представят аборта като морално неприемлив, ограничавайки общественото приемане. Законът обаче предоставя на жените автономия до дванадесетата седмица от бременността, като по принцип привежда Албания в съответствие със стандартите на ЕС.

Въпреки легализирането, селективните и неконтролирани практики за аборти представляват правни и етични предизвикателства. Например, Албания е изправена пред демографски дисбаланс, отчасти дължащ се на аборти, основани на пола, практика, подхранвана от културни предпочитания за мъжко потомство. Това доведе до призиви за по-строго регулиране и механизми за прилагане, за да се гарантира целостта на законите за репродуктивно здраве.

Обществената съпротива срещу абортите е в рязък контраст с широко разпространената им практика, подчертавайки дисонанса между законността и културното приемане. Кампаниите за повишаване на обществената осведоменост и образованието относно репродуктивните права са от решаващо значение за преодоляване на тази пропаст и насърчаване на по-балансиран дискурс.

- **Евтаназия: Обществено възприятие и правна рамка**

Евтаназията е криминално престъпление в Албания, което отразява по-широката обществена съпротива срещу практиката. Вкоренена в религиозни доктрини и исторически ценности, албанското общество категорично отхвърля идеята за асистирана смърт. За разлика от абортите, няма значителна обществена или политическа подкрепа за евтаназията и темата остава отсъстваща от масовия дискурс.

Това контрастира с развиващите се правни и обществени нагласи в много европейски страни, където евтаназията все повече се разглежда като компонент на човешкото достойнство и автономия. Държави като Холандия и Белгия са създали всеобхватни правни рамки за евтаназията, основани на строги гаранции. Нежеланието на Албания да се ангажира с този въпрос подчертава влиянието на традиционните и религиозни ценности върху нейната правна система.

Предвид липсата на обществена подкрепа и институционален капацитет, е малко вероятно Албания да види каквито и да било законодателни инициативи относно евтаназията в обозримо бъдеще. Глобалният преход към признаване на асистираната смърт като право обаче може евентуално да доведе до преразглеждане на тази позиция.

В следващите глави се анализира задълбочено литературата по темата, не просто като я представим като такава, а като изградим критичен поглед върху дебата, който съществува

във философията, доктрината, правото и общественото мнение. „Противоречивите реалности на теорията срещу реалността“ имат за цел да предоставят на читателя по-цялостен подход и разбиране на темата.

1. Методология

Проучването разчита на комбиниран подход:

-Правен и доктринален анализ, изучаване на албанските закони, конституцията и международните актове; идентифициране на пропуски и несъответствия.

-Съвременен научен метод: дедукция за прилагане на теорията към конкретни случаи, анализ за разбиване на сложни проблеми и синтез за изграждане на ясна рамка.

-Качествено изследване: полуструктурирани интервюта с професионалисти и граждани, за да се разберат етичните и емоционалните измерения на абортите и евтаназията.

Спазване на етичните стандарти: участниците бяха информирани, тяхното съгласие беше получено и анонимността и поверителността бяха запазени.

Този подход предоставя цялостен преглед на правото на живот и свързаните с него предизвикателства в Албания.

2. Въздействие на подобни изследвания върху обществото

Подобно проучване има широко въздействие в няколко области:

- На социално ниво: насърчава диалога между поколенията, културите и религиите относно разбирането за ценността на живота, като помага за създаването на обща човешка етика.

- На правно ниво: допринася за подобряване на националното законодателство и за сближаването му със стандартите за защита на правата на човека в държавите членки Европейския съюз, включително и България, както и в практиката на ЕКПЧ.

- На образователно ниво: засилва осведомеността сред студенти, лекари и млади юристи за етични и морални проблеми, които не могат да бъдат решени само със закон, а изискват емпатия и философско размишление.

- На индивидуално ниво: помага на гражданите да разберат по-добре своите права, границите на личната свобода и отговорността, която носят към собствения си живот и този на другите.

Структурата на съдържанието на дисертационния труд е следната:

- **ВЪВЕДЕНИЕ**

1. Международноправна защита на правото на живот

1.1. Философско и историческо развитие на правото на живот

1.2. Преглед на правото на живот в международното право

1.3. Казус: Правото на живот в албанската конституционна и правна рамка

2. Аборт: Правни и етични измерения на правото на живот

2.1 Дебатът за началото на живота и исторически преглед на абортите в Албания

2.2 Глобални тенденции и сравнителни перспективи относно абортите

3. Евтаназия: между автономията и отговорността на държавата

3.1Исторически и етичен контекст на евтаназията

3.2 Евтаназия съгласно член 2 от ЕКПЧ

3.3 Евтаназия, нейната практика и евтаназия в Албания

- **Заключения и препоръки**

1. Международноправна защита на правото на живот

1.1 Философско и историческо развитие на правото на живот

Главата изследва еволюцията на правото на живот като централно човешко право, проследявайки неговите философски основи, историческо развитие и морално значение. Тя започва с акцент върху това, че правата на човека произтичат от естествения разум и моралната философия, а не просто от правна конструкция. Мислители като Хабермас, Ролс и Тасиулас предупреждават срещу „инфлацията“ или „концептуалното превишаване“ на правата на човека – при което всеки морален проблем се етикетира като право – намалявайки истинската им стойност и универсалност.

Произход и историческо развитие

От древността обществата се борят да защитят хората от злоупотреби с власт. Древни текстове като Закона на Хамурапи и конфуцианските учения признават моралната стойност на човешкия живот, докато стоическите философи в Гърция и Рим развиват идеята за всеобщо достойнство чрез естественото право. И все пак противоречията продължават да съществуват: робството, мъченията и социалното неравенство процъфтяват дори при тези морални системи.

През Средновековието и Ренесанса, основополагащи правни текстове като Магна Харта и Английската декларация за правата започват да вграждат защитата на живота и свободата. Мислители от епохата на Просвещението като Джон Лок, Волтер и Русо формулират естествените права на индивидите, влияейки върху революционни документи като Декларацията за правата на Вирджиния (1776 г.) и Декларацията за независимост на САЩ, които утвърждават живота, свободата и стремежа към щастие като неотменими права. Следвоенният период допълнително институционализира правата на човека чрез Обществото на народите и Договорите от Версайската система, което в крайна сметка води до Всеобщата декларация за правата на човека през 1948 г.

Морални и философски основи

„Ортодоксалната теза“ за правата на човека твърди, че те са морални права, принадлежащи на всички хора по силата на тяхната човечност – универсални и независими от политически или правни системи. Учени като Грифин, Гевирт и Тасиулас подчертават, че правата на човека защитават нашата нормативна дейност, позволявайки на индивидите да действат според моралната причина. Обратно, позитивистки мислители като Бентам отхвърлят естествените права като „глупости на кокили“, твърдейки, че само правните системи могат да създават приложими права. Този сблъсък между моралния универсализъм и правния позитивизъм определя голяма част от съвременната теория за правата на човека.

Отговорът на Ганди към Х. Дж. Уелс – призивът за Харта на задълженията на човека преди Харта на правата – илюстрира моралния дълг, който е в основата на всяко право.

Без морална отговорност, правата на човека рискуват да се превърнат в инструменти на политическа полезност или индивидуален интерес, а не в израз на споделена човечност.

Съвременни предизвикателства и прагматични напрежения

Модерността и прагматизмът, както отбелязват Хауле и Хайдегер, отчуждават човечеството от неговата морална същност. Правата станаха бюрократични, откъснати от естествените ценности, които е трябвало да съхраняват. Пандемията от COVID-19 допълнително разкри тези напрежения: правителствата балансираха правото на движение със задължението да защитават общественото здраве, показвайки как правата могат да си противоречат при утилитарни разсъждения.

Философи като Кант и Хегел разглеждат морала като основа за легитимно право и свобода, докато съвременни мислители като Джоузеф Раз критикуват универсалното прилагане на правата като политически обусловено, а не морално обосновано. Концепцията за морал срещу политическа остава разделена: докато Ролс се фокусира върху правата на човека като граници в рамките на международното право, Бенхабиб и Попър се аргументират за „морализиране на политиката, а не политизиране на морала“.

Човешкото достойнство и завръщането към моралните основи

Всеобщата декларация твърди, че всички права произтичат от достойнството и ценността на човешката личност. За Кант достойнството е отвъд цената – присъща морална ценност. И все пак, съвременната злоупотреба с „достойнство“ като политическа пропаганда подкопава същността му. Текстът заключава, че възстановяването на моралната философия към човешките права изисква смирение, комуникация и колективна морална отговорност. Истинският прогрес не се крие в разширяването на законите, а в повторното закотвяне на човечеството в рамките на хармонията, справедливостта и моралния дълг на природата. Следователно човешките права трябва да се върнат към своите етични корени – като универсални изрази на нашата споделена човечност, а не просто като правни или политически конструкции.

1.2 Правото на живот в международното право

Правото на живот е най-основното човешко право и крайъгълен камък на всички други свободи. Признато като *jus cogens* и *erga omnes*, това е норма на обичайното международно право, от която не е разрешено отклонение, дори при извънредни ситуации или въоръжени конфликти. Държавите са длъжни да защитават не само съществуването, но и качеството на живот, като осигуряват достъп до ресурси, необходими за оцеляване. Правото на чиста околна среда, мир и оцеляване са неразделна част от тази норма, изискваща както вътрешно, така и международно сътрудничество.

Развитие в системата на ООН

След зверствата на Втората световна война, Уставът на Организацията на обединените нации (1945 г.) утвърждава достойнството и ценността на всеки човек и поставя началото на международната рамка за правата на човека. В Уставът обаче липсва конкретен списък с права, което води до приемането на Всеобщата декларация за правата на човека (ВДПЧ, 1948 г.). Член 3 от ВДПЧ провъзгласява, че „всеки има право на живот, свобода и лична сигурност“, установявайки това право като универсално и неотменимо. Въпреки че не е обвързваща, Декларацията се е превърнала в част от обичайното право и е вдъхновила последващи договори като Конвенцията за геноцида (1948 г.) и Женевските конвенции (1949 г.), които забраняват умишленото убиване на защитени лица по време на война.

По-нататъшна кодификация идва с Международния пакт за граждански и политически права (МПГПП, 1966 г.), който правно обвързва държавите да защитават живота. Член 6 декларира, че правото на живот е присъщо на всяко човешко същество и забранява произволното лишаване от живот, като позволява смъртното наказание само при строги законови гаранции. Международният пакт за икономически, социални и културни права (МПИСКП, 1966 г.) допълва това, като задължава държавите да намалят детската смъртност и да насърчават здравето и жизнения стандарт, признавайки, че социалните условия пряко влияят върху защитата на живота. И двата пакта, ратифицирани от над 170 държави (включително Албания през 1991 г.), формират правния гръбнак на системата на ООН за правата на човека.

Европейската система за правата на човека

В Европа, Съветът на Европа (основан през 1949 г.) и Европейската конвенция за защита на правата на човека и основните свободи (ЕКПЧ, 1950 г.) институционализираха защитата на правата на човека след Втората световна война. Член 2 от ЕКПЧ гарантира, че правото на живот на всеки е защитено от закона и позволява лишаване от живот само при тясно определени обстоятелства (напр. защита, законен арест, контрол на безредиците). Европейският съд по правата на човека (ЕСПЧ) в Страсбург гарантира спазването на това право, а неговата съдебна практика значително разшири обхвата на защитата, установявайки позитивни задължения на държавите да защитават живота и да провеждат ефективни разследвания на смъртни случаи (напр. McCann срещу Обединеното кралство).

Европейският съюз, първоначално фокусиран върху икономиката, постепенно включи правата на човека чрез Хартата на основните права на ЕС (2000 г.), която в член 2 изрично премахва смъртното наказание и гарантира правото на живот. Хартата, правно обвързваща от Договора от Лисабон (2007 г.), интегрира принципи както от ЕКПЧ, така и от конституциите на държавите членки, укрепвайки всеобхватна европейска рамка за правата.

Тълкуване от ЕСПЧ

ЕСПЧ е развил богата съдебна практика по член 2. Той разграничава негативните задължения (да се въздържат от незаконни убийства) и позитивните задължения (да предотвратяват и разследват смъртни случаи). По чувствителни биоетични въпроси като абортите и евтаназията, Съдът прилага свободата на преценка, като позволява на държавите да действат по своя преценка според техните морални и културни традиции. Дела като *Vo срещу Франция* и *Pretty срещу Обединеното кралство* показват, че Конвенцията нито определя кога започва животът, нито признава своеобразно „право на смърт“, като подчертава необходимостта от балансиране между автономията и светостта на живота. Съдът обаче изисква процедурни гаранции, независим надзор и ефективни правни средства за защита, за да се гарантира истинска защита.

Премахване на смъртното наказание и държавните задължения

Чрез Протоколи 6 и 13, ЕКПЧ напълно премахна смъртното наказание в Европа, както в мирно, така и във военно време. На държавите е забранено също така да екстрадират лица в държави, където те рискуват екзекуция, както е потвърдено в делото *Soering срещу Обединеното кралство*. Практиката на Съда разширява отговорността на държавата за предотвратяване на смъртни случаи, произтичащи от полицейски действия, медицинска небрежност, домашно насилие (*Civek срещу Турция*) и невъзможност за защита на живота по време на задържане или при извънредни ситуации.

Критична перспектива

Учените отбелязват предизвикателства в системата на ЕКПЧ, като например забавяния, повтарящи се нарушения и неравномерно прилагане между държавите членки. Въпреки ограниченията си, Конвенцията остава най-ефективният регионален инструмент за правата на човека, балансирайки държавния суверенитет, индивидуалното достойнство и колективния мир. Развиващото се тълкуване на ЕСПЧ гарантира, че правото на живот остава жив, адаптивен принцип, който е централен за европейския правен ред **.**

1.3 Правото на живот в албанската конституционна и правна рамка

1. Конституционна основа

Конституцията на Република Албания гарантира правото на живот съгласно член 21, осигурявайки правна защита на живота на всеки човек. Това право се разглежда не само като защита срещу лишаване от живот, но и като обхващащо по-широки социални, правни и институционални гаранции – включително сигурност, благополучие и достойнство. Наказателният кодекс засилва тази защита, като криминализира различни форми на убийство и насилие, отразявайки ролята на държавата в предотвратяването и наказването на престъпления срещу живота. Мярката за ефективност на държавата обаче се крие повече в превенцията, отколкото в наказанието след извършване на престъплението.

2. Ролята на държавата

Държавата носи основната отговорност за създаването и поддържането на механизми, институции и правни рамки, които защитават човешкия живот. Превенцията се счита за конституционно задължение и неспособността да се гарантира безопасността или справедливостта може да представлява нарушение на правото на живот.

Конституцията представя живота като основа на всички други права, правейки го неприкосновено, неотменимо и неделимо право. Тя забранява практики, които биха могли да застрашат живота, и гарантира, че никой закон не може да ограничи или спре това право, дори при изключителни обстоятелства.

3. Правни изключения и ограничения

Въпреки че някои основни права могат да бъдат ограничени от закон, член 21 (Право на живот) е неотменим . Това означава, че никое конституционно или законово ограничение не може да оправдае отнемането на живот, освен при специфични законови обстоятелства (напр. необходима отбрана, употреба на огнестрелно оръжие от държавни органи и др.), в съответствие с член 2(2) от Европейската конвенция за правата на човека (ЕКПЧ).

Албанското законодателство разграничава разрешеното от държавата използване на сила (в защита или правоприлагане) от смъртното наказание, което е строго забранено. Конституционният съд на Албания обяви смъртното наказание за противоконституционно, с което националното законодателство се приведе в съответствие с европейските стандарти.

4. Албания и Европейската конвенция за правата на човека (ЕКПЧ)

Албания е страна по ЕКПЧ от 29 юли 1996 г., което прави нейните разпоредби пряко приложими съгласно албанската правна система. Конституцията (членове 5, 17, 116, 122 и 131) изрично интегрира международните норми за правата на човека, като им предоставя върховенство над вътрешното право в случаи на конфликт.

Влиянието на ЕСПЧ е видимо в албанската конституционна съдебна практика, особено в тълкуването на правата и свободите от Конституционния съд. Съдът гарантира съвместимостта между албанското законодателство и стандартите на ЕСПЧ, особено при оценката на нарушенията на правата на човека.

5. Изпълнение на решенията на ЕСПЧ (Обобщение в таблицата по-долу)

Таблица 1 – Резултати от изпълнението на решенията на ЕСПЧ от страна на Албания

Категория	Общо	Приключени	Отворени	Процент на

	случаи	**случаи**	**случаи**	**прекратяване**
Водещи случаи	48	18	30	38%
Всички случаи (общо)	126	62	64	49%
Просто удовлетворение (2012–2022)	52 081 320 евро	—	—	—

Тълкуване:

- Албания е решила/ прекратила 49% от всички дела пред ЕСПЧ, но само 38% от водещите (системни) дела.
- 62% от водещите дела остават висящи, което показва забавяне в изпълнението на сложни или политически чувствителни решения.
- Тези случаи често са свързани със съдебната независимост, правата на собственост и малтретиране.
- В сравнение с други държави:
    - Австрия: 96% процент на прекратяване
    - Финландия: 98%
    - Азербайджан: 23%
    - Грузия: 63%
    - 38% на Албания я поставят в среден диапазон на съответствие.

Идентифицирани предизвикателства:

- Институционални пречки и слаба междуведомствена координация
- Ограничени ресурси за изпълнение
- Липса на политическа ангажираност по нашумели случаи

Препоръки:

- Засилване на междуведомственото сътрудничество
- Повишаване на прозрачността и докладването относно спазването на ЕКПЧ
- Отделяне на специално финансиране за реформи в областта на правата на човека

6. Казус: *Rrapo срещу Албания*

- Ищец: Алмир Rrapo (с албанско-американско двойно гражданство)
- Твърдение: Нарушение на членове 2 и 3 (Право на живот и свобода от нечовешко отношение) поради екстрадиция в САЩ, където е рискувал смъртно наказание.
- Констатации на съда:
  Албанските съдилища не са поискали обвързващи гаранции, че Rrapo няма да бъде изправен пред смъртно наказание, ако бъде осъден. Този пропуск е нарушение на Протокол № 13 към ЕКПЧ, който абсолютно и категорично забранява смъртното наказание.
- Резултат:
  Европейският съд по правата на човека постановява, че Албания е нарушила задълженията си по Конвенцията. Това дело потвърждава, че екстрадиции не могат да се извършват, когато съществува реален риск от екзекуция.

2. Абортът: Правни и етични измерения на правото на живот

2.1 Дебатът за началото на живота и исторически преглед на абортите в Албания

(Аборт в Албания)

- Комунистическа епоха (1945–1990): Пълна забрана, пронаталистка политика, липса на контрацептиви; широко разпространени тайни аборти с висока майчина заболеваемост/смъртност; страх, порицание и „превъзпитание“, налагани от държавата.
- Либерализация след 1990 г.: От 1995 г. абортът е разрешен по желание в ранна бременност и по медицински/психо-социални причини след това; промяна, насочена към ограничаване на опасните процедури и привеждане в съответствие с европейските норми.
- Фокус върху правото и правата на човека: Правният режим дава приоритет на здравето и автономността на жените пред личността на плода; Конституцията защитава „живота на човек“ (след раждането), а съдебната практика на ЕСПЧ се цитира в подкрепа на вземането на решения от жените и ограничаване на бащинското вето.
- Ключови закони:
  - Закон № 8045/1995 (Прекратяване на бременността) определя процедурите, консултациите, сроковете и комисиите.

- Закон № 8876/2002 (Репродуктивно здраве) гарантира репродуктивните права и стандартите за заведения/лицензиране.
- Членове 93–95 от Наказателния кодекс наказват неконсенсуалното прекъсване на бременността и опасната практика, а не аборт по взаимно съгласие в рамките на закона.

- Времеви диапазон: Преди ~10–12 седмици абортът е възможен при поискване; до 22 седмици по медицински/определени социални причини (изнасилване/кръвосмешение, тежка фетална аномалия, сериозен риск за здравето) чрез тричленна (и където е приложимо мултидисциплинарна) комисия, състояща се от трима лекари; отказът от лекар по съвест е разрешен с насочване.
- Социални нагласи: Постоянният морален консерватизъм (отчасти вкоренен в контрола от комунистическата епоха) оформя стигмата и свободата на действие на предоставящите услугата; разликите между градските и селските райони, бюрократичните пречки и дефицитът на доверие в институциите са повтарящи се бариери.
- Данни и тенденции: Официално легалните аборти са хиляди годишно, но е вероятно да се отчитат недостатъчно (частният сектор, хапчета). Абортите при тийнейджърки съществуват, но са малък дял; повечето процедури включват жени на възраст 20–34 години. Общите нива са намалели от 90-те години на миналия век насам с по-добро използване на контрацептиви.
- Селективен аборт: Доказателства за предпочитане към синове (повишено съотношение раждаемост на мъже и жени ~111–113:100 в някои региони); изборът на пол е незаконен (присъединяване към Конвенцията за правата на човека и биомедицината; националните правила забраняват избора на пол, освен за избягване на сериозни заболявания, свързани с пола).
- Реалност на правоприлагането: Жените са освободени от наказателна отговорност; преследванията са насочени към опасни/неразрешени практики. Прилагането варира в зависимост от региона, като възраженията и ограниченията на ресурсите засягат реалния достъп.
- Подчертани пропуски в политиката: стигма, неравномерно консултиране/насочване, административна тежест и недостиг на услуги в селските райони. Предложените решения включват по-силни пътища за насочване, обучение на доставчици на медицински услуги, мониторинг срещу подбор на пол и публична информация за намаляване на опасните/самостоятелно управлявани нелегални аборти.

Таблица — Преглед на правната и политическата информация

Тема	Какво е посочено в документа
Основни закони	Закон 8045/1995 (Прекратяване на бременност); Закон 8876/2002 (Репродуктивно здраве); членове 93–95 от Наказателния кодекс (прекратяване на бременност без съгласие/небезопасно прекратяване).
Времеви ограничения	По заявка в ранна бременност (на практика се отбелязва около 10–12 седмици); до 22 седмици по медицински или определени социални причини чрез комисия; по всяко време за животонесъвместими фетални аномалии (на комисия).
Процедура и съгласие	Задължително консултиране/информиране; писмено потвърждение (7-дневен интервал); непълнолетните се нуждаят от съгласието на настойника/настойницата; комисии (медицински ± социални/правни) за по-късни прекратявания.
Възражение по съвест	Лекарите могат да откажат, но трябва да насочат към желаещ доставчик на медицински услуги; обвързано със защитите по член 9 от ЕКПЧ.
Криминален фокус	Защитава жените от прекъсване на бременността без съгласие и опасни практики; жените не носят наказателна отговорност за прекъсване на собствената си бременност по закон.
Избор на пол	Забранено (правилата на Конвенцията за биомедицината; национална забрана, освен за избягване на сериозни заболявания, свързани с пола).
Проблеми с достъпа	Неравенство между градските и селските райони; стигма; преценка на доставчиците; документи; недостатъчно отчитане и употреба на лични/хапчета; дефицит на институционално доверие.
Тенденции и рискове	Намаляващи общи нива на абортите от 1990-те години насам; повечето пациенти са на възраст между 20 и 34 години; усложненията се увеличават след 12-та седмица; смъртните случаи на майки от небезопасни аборти в миналото са били близо до нула след легализирането.

2.2 Глобални тенденции и сравнителни перспективи относно абортите

Сравнителен анализ на законите и практиките за аборт в световен мащаб подчертава уникалната позиция на Албания в глобалната среда. Докато някои страни, като Полша и Съединените щати, са свидетели на нарастващи ограничения върху правата за аборт,

други, включително Канада и Швеция, са засилили правната защита на репродуктивната автономност.

Законите за абортите в Албания остават сравнително либерални в европейския контекст. Въпреки това, предизвикателствата, свързани с достъпа, социалната стигма и проблемите със селективните аборти, показват, че страната трябва да усъвършенства политиките си, за да ги приведе в съответствие с най-добрите международни практики.

Процентът на абортите варира значително в различните европейски страни поради различия в правните рамки, достъпа до контрацептиви и културните нагласи. Според Световната здравна организация (СЗО) и Европейския институт за равенство между половете, следните статистически данни илюстрират тенденциите в абортите в ключови европейски региони:

Държава	**Процент на абортите (на 1000 жени на възраст 15-44 години)**	**Правен статус**
Албания	11.2	Законно до 12-а седмица
Франция	15.0	Законно до 14-а седмица
Германия	5.9	Законно до 12-а седмица
Италия	6.2	Законно до 12-а седмица
Полша	0.1	Законно само за изнасилване/кръвосмешение/майчино здраве
Швеция	18.9	Легално до 18-а седмица
Румъния	16.0	Легално до 14-а седмица
Сърбия	14.7	Законно до 10-а седмица
България	21.3	Законно до 12-а седмица

Таблица 2: Тенденции в абортите[1]

Процентът на абортите в Албания е по-нисък от този в Швеция и Румъния, но е сравним с този в други балкански страни като Сърбия. Експертите обаче смятат, че действителният

[1]Световна здравна организация. *„Аборт“.Световна здравна организация* , 2024, https://www.who.int/news-room/fact-sheets/detail/abortion .

процент в Албания е значително по-висок поради недостатъчното отчитане и незаконните процедури за аборт, извършвани извън регулирани клиники.

Албания има умерен процент на абортите от 11,2 на 1000 жени на възраст 15-44 години, което я поставя между европейските страни със силно рестриктивни закони (напр. Полша) и тези с по-либерални политики (напр. Швеция). Абортът е законен до 12-та седмица, което отразява относително достъпна, но не прекалено разрешителна рамка.

Законодателството за абортите в Европа варират значително - от силно либерални модели в Западна и Северна Европа до силно рестриктивни политики в някои източноевропейски страни. Законите за абортите в Албания са в съответствие с повечето западноевропейски страни, но практическата достъпност на услугите е ограничаващ фактор.

- **Албания** : Легално до 12 седмици, не се изисква съгласие от родителите, но със задължителна консултация преди аборт.
- **Франция** : Легално до 14 седмици, покрито от общественото здравеопазване, широко разпространено обучение за контрацепция.
- **Германия** : Законно до 12 седмици, задължително консултиране и тридневен период на изчакване.
- **Полша** : Силно ограничен, абортът е разрешен само в случаи на изнасилване, кръвосмешение или заплаха за майчиното здраве.
- **Швеция** : Един от най-либералните закони, позволяващ аборт до 18-та гестационна седмица, изцяло финансиран от правителството.
- **Италия** : Абортът е законен до 12-та седмица, но е изправен пред предизвикателства при прилагането му поради високия процент на лекари, които отказват да извършат процедурата по морални причини (70-80%).
- **България** : Абортът е законен до 12-та седмица от бременността.

Въпреки че законите на Албания са в по-голяма степен съобразени с либералните европейски политики, практическият достъп остава проблем поради отказите от болници, ограничените здравни услуги в селските райони и високите процедурни разходи.

Общественото възприятие за абортите варира значително в различните части на Европа. Докато Западна Европа показва висока обществена подкрепа за репродуктивните права, Източна и Южна Европа, включително Албания, са по-консервативни.

За разлика от това, здравната система на Албания е изправена пред значителни бариери:

- **В селските райони липсват клиники, които предлагат услуги за аборт** , което принуждава жените да пътуват на дълги разстояния.
- **Частните клиники доминират в услугите за аборти** , което прави достъпа по-скъп и ограничен за жените с по-ниски доходи.
- **Отказите и стигмата в болниците възпират жените да търсят легални аборти** , което води до тайни процедури.

Проучване на Албанския институт за обществено здраве установи, че 30% от жените, които са потърсили аборт, са се сблъскали с трудности поради цена или липса на местни услуги, в сравнение със само 5% от жените в Швеция.[2] Албания може да подобри системата си за репродуктивно здравеопазване, като се поучи от успешни политики в ЕС:

1. **Универсален достъп до контрацепция** : Страни като Франция и Швеция имат безплатни или евтини програми за контрацепция, което допринася за по-ниските нива на абортите. Албания би могла да разшири достъпа до контрацепция в обществените здравни заведения, за да намали нежеланите бременности.
2. **Засилено сексуално образование** : Холандия и Германия имат всеобхватни програми за сексуално образование, водещи до по-добра репродуктивна осведоменост и по-ниски нива на нежелани бременности. Албания няма структурирано сексуално образование в училищата и включването на такива програми би могло да се справи с дезинформацията и да намали нуждата от аборт.
3. **Намаляване на медицинската стигма** : В Италия лекарите могат да откажат да извършват аборти поради морални възражения, което води до значителни проблеми с достъпа. Албания е изправена пред подобни проблеми в държавните болници и правителството трябва да прилага политики за медицински неутралитет, за да гарантира правата на пациентите.
4. **Здравно осигуряване** : В Швеция и Франция абортът се покрива от националното здравно осигуряване, което гарантира равен достъп, независимо от доходите. Разходите за аборт в Албания остават високи, което прави аборта финансова тежест за много жени.

[2]Институт по обществено здраве. *Бюлетин 2-2024* . Институт по обществено здраве, 2024, https://www.ishp.gov.al/wp-content/uploads/2024/11/buletini-2-2024-full-pdf-FINAL.pdf .

5. **Законодателна яснота** : За разлика от силно ограничените страни като Полша, законите за абортите в Албания са прогресивни, но им липсва прилагане. Засилването на мерките за отчетност в болниците и селските клиники може да подобри спазването на правилата.

Таблица 3: Обобщение на Албания спрямо ЕС

Аспект	**Албания**	**Западна Европа (Франция, Швеция, Германия)**	**Източна Европа (Полша, Румъния)**
Законност	Законно до 12 седмици	Легално до 12-18 седмици	Предимно ограничено
Обществена подкрепа	40% подкрепят абортите	70-80% подкрепят абортите	20-35% подкрепят абортите
Медицински достъп	Ограничено в селските райони	Висока достъпност, обществено покритие	Високи ограничения
Сексуално образование	Слаб	Всеобхватно, подкрепеноот правителството	Ограничено или несъществуващо
Покритие на разходите	Предимно частни клиники	Напълно покрито от общественото здравеопазване	Частно и скъпо

За да укрепи успешно репродуктивните права на жените и да подобри ефективността на общественото здравеопазване, Албания трябва да приеме всеобхватна правна стратегия, моделирана по успешни европейски практики. Тази стратегия следва да включва законодателни реформи, институционално прилагане, промени в медицинската политика, кампании за повишаване на обществената осведоменост и съдебен надзор.

А. Законодателни реформи: Подобряване на правната защита и яснота

1. Кодифициране на репродуктивните права в Конституцията: Албания трябва изрично да признае репродуктивното здравеопазване и достъпа до аборт като основни човешки права, осигурявайки правна стабилност.
2. Разширяване на правния достъп: Настоящите закони за абортите позволяват прекъсване до 12 седмици, но много страни от ЕС разрешават аборт до 14–18 седмици. Следва да се обмисли преразглеждане, за да се приведат политиките на Албания в съответствие с нормите на ЕС.
3. Премахване на бюрократичните бариери: Изменение на член 375 от албанския Наказателен кодекс, за да се гарантира, че жените не се сблъскват с административни пречки, като например задължително консултиране преди аборт, което забавя достъпа.
4. Засилване на защитата срещу дискриминация в здравеопазването: Да се измени Законът на Албания за здравна защита, за да се криминализира отказът от медицински услуги поради лични или религиозни убеждения, като се гарантира, че достъпът до аборт остава неутрална здравна услуга.

Б. Институционално прилагане и промени в медицинската политика

1. Засилване на надзора върху публичните и частните здравни заведения: Създаване на Национална агенция за репродуктивно здраве (NRHA), натоварена със задачата да наблюдава услугите за аборт и да осигурява спазването на националните политики.
2. Задължително включване на услуги за аборт в държавните болници: Прилагане на политики, които изискват от всички държавни болници да предлагат услуги за аборт и обучение на медицински специалисти в безпристрастни практики за репродуктивно здраве.
3. Осигуряване на медицински неутралитет: Въвеждане на регламент за отказ от военна служба по съвест, подобен на този във Франция, където болниците са задължени да предоставят услуги за аборт, дори ако отделни лекари откажат.
4. Регулиране на частните клиники за аборти: Много услуги за аборти са частни, което води до високи разходи и неравнопоставен достъп. Министерството на

здравеопазването трябва да въведе стандартизирани ценови разпоредби за услугите за аборти, за да се предотврати финансовата експлоатация.

5. Въвеждане на задължителни стандарти за грижи след аборт: Изискване за последващи здравни грижи и психологическо консултиране за пациентите след аборт, осигуряване на цялостни услуги за репродуктивно здраве.

<u>В. Интеграция на общественото здравеопазване и достъп до контрацептиви</u>

1. Инициатива за универсален достъп до контрацептиви: Европейските държави с ниски нива на абортите (напр. Швеция, Германия) инвестират в безплатна или субсидирана контрацепция. Албания трябва да увеличи публичното финансиране за разпространение на контрацептиви в центровете за първична медицинска помощ.
2. Задължително сексуално образование в училищата: Приемане на учебна програма по модел на Холандия, където сексуалното образование включва контрацептивни методи, съгласие и репродуктивни права.
3. Разширяване на телемедицинските услуги за аборти: Пандемията от COVID-19 демонстрира осъществимостта на телемедицинските консултации за аборти в ранен етап. Това трябва да бъде въведено в Албания, за да се подобри достъпът за жените в селските райони.

<u>Г. Кампании за повишаване на обществената осведоменост и правно застъпничество</u>

1. Национални кампании за повишаване на осведомеността относно репродуктивните права: Сътрудничество с организации на гражданското общество и международни неправителствени организации за създаване на образователни програми, които дестигматизират абортите и предоставят фактическа информация.
2. Обучение на здравни специалисти относно етични практики за аборт: Изискване за задължително обучение по медицинска етика за здравните специалисти, за да се предотвратят предубедени или осъдителни практики срещу жени, търсещи аборт.
3. Обучение на съдебните и правоприлагащите органи: Провеждане на специализирано обучение за съдии и полиция за признаване на аборта като право в

областта на здравеопазването и за прилагане на закони, защитаващи жените от репродуктивна дискриминация.

Д. Съдебен надзор и международно съответствие

1. Привеждане в съответствие с прецедентите на Европейския съд по правата на човека (ЕСПЧ): Гарантиране, че Албания спазва решенията на ЕСПЧ относно правото на аборт, като например делото *A, B и C срещу Ирландия*, което подчертава задължението на държавата да осигури ясни разпоредби относно абортите.
2. Правна помощ за жени, изправени пред пречки пред аборт: Създаване на финансирани от правителството програми за правна помощ, които да помагат на жени, които са обект на дискриминация или незаконен отказ за аборт.
3. Създаване на омбудсман по правата, свързани с аборта: Създаване на специализирана правителствена служба, посветена на разглеждането на жалби от жени, на които са отказани услуги за аборт, и прилагането на правна защита.

Стратегията трябва да се изпълнява на три етапа:

- Краткосрочен план (1-2 години): Прилагане на законови изменения, създаване на Национална агенция по репродуктивно здраве и прилагане на политики за медицински неутралитет.
- Средносрочен план (3-5 години): Разширяване на достъпа до контрацептиви, образователни програми и кампании за повишаване на обществената осведоменост.
- Дългосрочна цел (5-10 години): Интегриране на политиките на Албания относно абортите в стандартите на ЕС за обществено здраве, превръщайки я в модел за прогресивно репродуктивно здравеопазване на Балканите.

Следвайки тези правни и институционални стратегии, Албания може да се приведе в съответствие с най-добрите европейски практики в областта на репродуктивното здраве, като същевременно гарантира автономността на жените, ефективността на здравеопазването и защитата на правата на човека.

3. Евтаназия: между автономията и отговорността на държавата

3.1Исторически, етични и правни перспективи върху евтаназията

Историческа еволюция

Терминът евтаназия, произлизащ от гръцките „eu“ (добър) и „thanatos“ (смърт), произлиза от Древна Гърция, където символизира почтена и мирна смърт. Гръцката и римската цивилизации са разглеждали доброволната смърт при определени условия като акт на достойнство, особено когато са били изправени пред нелечима болест или слабост. Философи като Сократ, Платон и стоиците са разглеждали доброволната смърт като рационална, докато Хипократовата школа твърдо ѝ се е противопоставяла, наблягайки на запазването на живота.

С появата на християнството, светостта на живота става централна. Животът се разглежда като божествена собственост, а евтаназията или самоубийството са осъдени като морално и правно неприемливи - принцип, отразен в ислямските и еврейските традиции. Тези религиозни доктрини оформят средновековните и съвременните европейски правни системи, като вграждат забраната за евтаназия в обществените норми.

XIX век бележи промяна в обществения дебат, тъй като медицинските постижения, като анестезията, направиха възможна безболезнената смърт. Мислители като Самюъл Уилямс предложиха евтаназията за прекратяване на страданието, което доведе до ранни опити за легализиране в САЩ (Законопроект на Охайо от 1906 г.) и Великобритания, макар че те се провалиха поради етични и процедурни съображения.

Философски и етични основи

В рамките на правата на човека, евтаназията оспорва баланса между човешкото достойнство и правото на живот – два принципа, считани за неразделни.

Доктрината за двойния ефект (ДДЕ), разработена от Тома Аквински, позволява действия с добри и лоши резултати, ако вредният ефект е непреднамерен и пропорционален на постигнатото добро. Това разсъждение продължава да влияе върху съвременните етични дебати относно медицинските решения за края на живота.

Концепцията за евтаназия еволюира успоредно с нарастващото осъзнаване на индивидуалната автономия, поставяйки човешкото достойнство и личния избор в центъра на правния и морален дискурс. Въпреки това, актът остава етично спорен, балансирайки състраданието със светостта на живота.

Албанска правна рамка

Албания е приела Конвенцията за правата на човека и биомедицината (Конвенцията от Овиедо) чрез Закон № 10 339 (2010 г.), гарантиращ зачитане на човешкото достойнство и информирано съгласие при медицински интервенции.

- Член 1: Защитава човешкото достойнство и идентичност в биомедицинските приложения.
- Член 2: Приоритизира човешкото благосъстояние пред интересите на науката или обществото.
- Член 5: Изисква свободно и информирано съгласие за медицински процедури.
- Член 11: Забранява генетичната дискриминация.

Допълнителни национални закони засилват тези защити, включително:

- Албанската конституция (чл. 21) – „Животът на човек е защитен от закона.“
- Закон № 10 107 (2009) – „За здравеопазването“.
- Закон № 10 138 (2009) – „За общественото здраве“.
- Наказателният кодекс – Криминализира небрежното медицинско лечение и отказът за помощ (чл. 96–97).

Албанската конституция е в съответствие с член 2 от ЕКПЧ, като защитава живота, като същевременно позволява ограничени законови изключения (напр. съдебно изпълнение). Член 17 допълнително предвижда, че ограниченията на правата трябва да служат на обществения интерес и да не надвишават ограниченията на ЕКПЧ, като гарантира баланс между държавния дълг и индивидуалната автономия.

Правото на живот срещу правото на смърт

Централният правно-философски въпрос е дали правото на живот предполага право на смърт.

Съществуват две тълкувания:

- Негативно право на смърт – ненамеса на държавата в индивидуалните решения за самоубийство.

- Позитивно право на смърт – правото на получаване на помощ при прекратяване на живота.

Повечето юрисдикции признават само негативното право, наказвайки асистираното самоубийство. Държавата запазва четири основни интереса, които надделяват над индивидуалната автономия:

1. Защита на живота (особено на уязвимите)
2. Превенцията на самоубийствата като проблем на общественото здраве
3. Защита на трети страни и лица на издръжка
4. Запазване на медицинската етика и професионалното доверие

3.2 Евтаназия съгласно член 2 от ЕКПЧ

Резюмета на ключови случаи

- *Мортие срещу Белгия* (2022): Съдът разглежда закона за евтаназията в Белгия след смъртта на майката на Том Мортие, която слага край на живота си поради депресия. Въпреки че не установява, че самият закон нарушава Конвенцията, ЕСПЧ критикува недостатъчния надзор и липсата на независимост в процедурите за преглед, като подчертава необходимостта от надеждни процесуални гаранции, особено в случаи, свързани с психични заболявания.

- *Прити срещу Обединеното кралство* (2002): Даян Прити, неизлечимо болна, твърди, че забраната на Обединеното кралство за асистирано самоубийство нарушава нейната автономност. Съдът отхвърля това, като постановява, че член 2 не предоставя „право на смърт“. Той приема, че забраната ограничава личната автономност, но намира ограничението за оправдано с цел защита на уязвимите лица от малтретиране.

- *Хаас срещу Швейцария* (2011 г.): Жалбоподателят е заявил право на достъп до смъртоносни лекарства за самоубийство. Съдът е приел, че лицата могат да имат автономия при вземането на решения за края на живота си съгласно член 8, но е потвърдил ограниченията на Швейцария, като е подчертал свободата на преценка на държавата и необходимостта от гаранции срещу принуда.

- *Gross срещу Швейцария* (2014): Съдът признава правото на жалбоподателя да избира как и кога да умре съгласно член 8, но приема изискването за лекарско предписание като необходима гаранция за обществена безопасност, потвърждавайки националната свобода на преценка при такова регулиране.

- *Ламбърт и други срещу Франция* (2015 г.): Това дело се отнася до спиране на животоподдържащо лечение на пациент във вегетативно състояние. Съдът не е установил нарушение на член 2, тъй като процедурата е следвала националните правни стандарти. Той е наблегнал на държавната дискреция (свобода на преценка) при регулирането на грижите в края на живота.
- *Никлинсън и Ламб срещу Обединеното кралство* (2015): Съдът отново отказва да признае правото на асистирано самоубийство за лица с тежки увреждания, като потвърждава, че ЕКПЧ не гарантира такова право, но отбелязва значението на продължаващия демократичен дебат.

3. Евтаназията по света

1. Нидерландия

Евтаназията е законно разрешена в Нидерландия от 2002 г. при строги условия. За да отговарят на условията, пациентите трябва да страдат от непоносими, нелечими състояния, а искането им за евтаназия трябва да е доброволно. Законът изисква независими медицински оценки и решението трябва да бъде преразгледано от комисия по евтаназия. Евтаназията е разрешена и за непълнолетни на възраст от 12 до 16 години със съгласието на родителите, а в някои случаи и за лица на 12-годишна възраст.

2. Белгия

Белгия легализира евтаназията през 2002 г., разрешавайки я не само за пациенти с физически състояния, но и за такива, страдащи от психични заболявания. За да бъде одобрена евтаназията, пациентът трябва да направи ясно и многократно искане, а двама независими лекари трябва да потвърдят, че състоянието на пациента е необратимо. Белгийските закони обаче са обект на критики заради широкото си тълкуване на „непоносимо страдание“, особено в случаите на психично здраве.

3. Швейцария

Швейцария има специфична правна рамка, в която асистираното самоубийство е разрешено, но евтаназията не е. На лицата могат да бъдат предоставени средства за прекратяване на живота им, стига зад помощта да няма егоистична мотивация. Организации като Dignitas подпомагат този процес при строги разпоредби, но на лекарите не е разрешено да прилагат смъртоносни дози директно.

4. Люксембург

В Люксембург евтаназията и асистираното самоубийство бяха легализирани през 2009 г., което позволява на лица, страдащи от терминални заболявания или силна физическа

болка, да поискат евтаназия. Законът изисква официално и многократно искане от пациента и две медицински мнения. За разлика от някои други страни, законът на Люксембург не позволява евтаназия, основана единствено на психично заболяване .

5. Испания

Испания легализира евтаназията през 2021 г., превръщайки се в една от последните европейски държави, които направиха това. Законът се прилага за лица със сериозни, нелечими състояния, причиняващи непоносимо страдание. За да отговаря на условията, пациентът трябва да поиска евтаназия, която ще бъде разгледана от медицински екип. Законът на Испания обхваща както евтаназията, така и асистираното самоубийство.

6. Франция

Франция не разрешава активна евтаназия, но допуска пасивна евтаназия – спиране на животоподдържащи лечения при определени условия. Законът Claeys-Leonetti (2016 г.) позволява на лекарите да спрат лечението на пациенти в дълбока кома или такива без надежда за възстановяване, но активната евтаназия и асистираното самоубийство остават незаконни .

7. Съединени американски щати

Евтаназията е незаконна в Съединените щати, но асистираното самоубийство е разрешено в някои щати като Орегон, Калифорния и Вашингтон. Тези щати имат закони, които позволяват на терминално болни пациенти да поискат лекарства, които ще сложат край на живота им. За да отговарят на условията, пациентите трябва да са психически способни, терминално болни и да имат прогноза за шест месеца или по-малко живот. Въпреки това, нито един щат не позволява евтаназия, при която лекар директно прилага летална доза.

8. Канада

Канада легализира както евтаназията, така и асистираното самоубийство през 2016 г. съгласно закона за медицинска помощ при края на живота(MAID). Този закон позволява на лица с терминални или тежки състояния, причиняващи непоносимо страдание, да поискат евтаназия. Пациентите трябва да направят доброволно искане, а законът включва строги гаранции, като например множество лекарски оценки, за да се гарантира, че искането е истинско.

9. Австралия

В Австралия евтаназията е законна само във Виктория, съгласно Закона за доброволна асистирана смърт, приет през 2017 г. и въведен в сила през 2019 г. Законът позволява на пациенти с терминални заболявания да поискат евтаназия.

10. Нова Зеландия

През 2021 г. Нова Зеландия прие Закона за избор в края на живота, легализирайки евтаназията и асистираното прекратяване на живота за лица с терминални заболявания. Законът изисква пациентите да направят доброволно искане и да отговарят на строги критерии, включително да бъдат диагностицирани с терминално заболяване с оставащи по-малко от шест месеца живот .

11. Колумбия

В Колумбия евтаназията е законна от 1997 г. по решение на Конституционния съд. Законът се прилага за терминално болни пациенти и такива, изпитващи силна болка, като им позволява да поискат евтаназия. Както евтаназията, така и асистираното прекратяване на живота са допустими, но има ясни изисквания за медицинско валидиране на състоянието на пациента.

12. Япония

Евтаназията е незаконна в Япония, въпреки че има известна допустимост за асистирано прекратяване на живота при определени обстоятелства, особено когато пациентите нямат достъп до подходящи палиативни грижи. Темата е предмет на продължаващо обсъждане и макар евтаназията да остава забранена, правителството обмисля нейните правни последици.

Тези страни демонстрират различна степен на правна всеотдайност към евтаназията, със строги разпоредби в някои и по-леки рамки в други. Докато Белгия, Нидерландия и Люксембург позволяват както евтаназия, така и асистирано прекратяване на живота, страни като Франция и Швейцария поддържат ограничения, като наблягат на предпазните мерки за предотвратяване на злоупотреби и защита на уязвимите лица.

3.3 Евтаназия, нейната практика и евтаназия в Албания

Видове евтаназия :

- **Активна евтаназия**

Активна евтаназия се случва, когато човек умишлено и преднамерено причини смъртта на терминално болен пациент. Това може да се направи например чрез прилагане на смъртоносна свръхдоза болкоуспокояващи, която води до смъртта на пациента. В почти всички случаи активната евтаназия е забранена и наказуема от закона, тъй като се извършва без съгласието на пациента и се счита за предумишлено действие. Най-разпространеният метод за активна евтаназия включва използването на смъртоносна

инжекция. В такива случаи действието често се класифицира законово като убийство, а не като евтаназия (Brock 2019).[3]

- **Пасивна евтаназия**

Пасивната евтаназия се осъществява чрез бездействие, което означава, че други не отнемат директно живота на терминално болен пациент, а вместо това допускат настъпването на естествена смърт. Това може да включва отказ или спиране на основно медицинско лечение, което поддържа живота. Например, лекарите могат да прекратят животоподдържащите лекарства или да се въздържат от извършване на операция за удължаване на живота (Garrard 2005).[4]

Въпреки че доставчиците на здравни услуги не предприемат активни действия за прекратяване на живота на пациента, те са напълно наясно, че тяхната ненамеса ще доведе до смъртта му. Пасивната евтаназия може да включва:

- Изключване на медицински устройства, които поддържат пациента жив, позволявайки на основното заболяване да протече по естествен път.

- Неизвършване на операция, която би могла да удължи живота на пациента за кратък период.

- **Доброволна евтаназия**

  Доброволната евтаназия се счита за най-типичната форма на евтаназия, тъй като включва изрично искане от страна на пациента, който желае да умре. В този случай пациентът, който е компетентен и напълно съзнателен, упълномощава лекар или близки роднини да извършат процедурата за прекратяване на страданието му. Пациентът ясно разбира последиците от решението и търси евтаназия като състрадателно решение на екстремното физическо страдание, което е станало непоносимо (Brock 2019).[5]

- **Недоброволна евтаназия**

Недоброволна евтаназия се случва, когато пациентът не е в състояние да даде съгласие поради фактори като млада възраст, тежко когнитивно увреждане или безсъзнание. В

[3]Брок, Дан У. „Доброволна активна евтаназия“. *Смърт, умиране и край на живота, том I и II* , редактирано от Лесли П. Франсис, Routledge, 2019, том 2, стр. 229–241.
[4]Гарард, Ив и Стивън Уилкинсън. „Пасивна евтаназия“. *Journal of Medical Ethics* , том 31, № 2, 2005 г., стр. 64–68.
[5]Брок, Дан У. „Доброволна активна евтаназия“. *Смърт, умиране и край на живота, том I и II* , редактирано от Лесли П. Франсис, Routledge, 2019, том 2, стр. 229–241.

такива случаи компетентен настойник или медицински орган взема решение от името на пациента.

Недоброволната евтаназия обхваща и случаи, включващи непълнолетни, при които детето, въпреки че е психически и физически способно да взема решения, няма законово разрешение да го прави, тъй като не е навършило законна възраст. В такива случаи родителите или законните настойници поемат отговорността за вземане на решение за края на живота му (Beaudry 2022).[6]

- **Непряка евтаназия**

Косвената евтаназия се отнася до предоставянето на медицински лечения (обикновено за облекчаване на болка), които косвено ускоряват смъртта. Например, лекар може да приложи високи дози морфин, за да облекчи болката на пациента, знаейки, че това може да съкрати живота му. Въпреки че основното намерение не е да се убие пациентът, очакваният и предвидим резултат е смърт. Тъй като целта е облекчаване на болката, а не умишлено убиване, косвената евтаназия често се счита за морално приемлива в медицинската етика и юриспруденция (Banovic et al 2017).[7]

Правен контекст в Албания

Евтаназията остава незаконна в Албания. Няма специфична законова рамка, която да я регулира, което води до потенциални злоупотреби и погрешни класификации съгласно наказателното право. Наказателният кодекс третира евтаназията като обикновено убийство (член 76) или убийство при смекчаващи вината обстоятелства (член 82), а терминът „евтаназия“ не е изрично дефиниран в закона.

Въпреки теоретичните дискусии, не е имало наказателно преследване на лекари за евтаназия. Само пасивна евтаназия се практикува неформално чрез палиативни грижи за терминално болни пациенти.

2. Етични и медицински измерения

Кодексът за медицинска етика (1998 г.) позволява облекчаване на страданието, но забранява ускоряването на смъртта. Докато активната евтаназия причинява директно смърт, пасивната евтаназия включва въздържане от лечение. Моралната дилема е между зачитането на автономията и запазването на светостта на живота.

[6]Бодри , Йонас- Себастиен . „Смъртта като „облага“ в контекста на недоброволната евтаназия.“ *Теоретична медицина и биоетика* , том 43, № 5, 2022, стр. 329–354.

[7]Банович , Божидар , Велко Туранянин и Анжела Милорадович . „Етичен преглед на евтаназията и лекарски асистираното самоубийство.“ *Iranian Journal of Public Health* , том 46, № 2, 2017 г., стр. 173.

3. Европейска перспектива за правата на човека

Съгласно член 2 от Европейската конвенция за правата на човека, държавите трябва да защитават живота, но не са задължени да разрешават евтаназия. По делото *Pretty срещу Обединеното кралство* ЕСПЧ потвърди, че правото на живот не предполага право на смърт или на подпомагане при смърт. Държавите имат задължението да предотвратяват смъртните случаи, а не да ги улесняват.

4. Социален и етичен дебат

Евтаназията повдига сериозни етични, философски, религиозни и социални проблеми. Поддръжниците ѝ наблягат на индивидуалната автономия и правото на достойна смърт, докато противниците ѝ наблягат на морални, социални и религиозни забрани. Аргументът за „хлъзгавия склон“ предупреждава, че легализирането на доброволната евтаназия може да доведе до неволни убийства или малтретиране на уязвими хора.

5. Религиозни спорове

Теологичната позиция категорично се противопоставя на евтаназията, утвърждавайки, че само Бог определя живота и смъртта.

Основни точки:

- Евтаназията нарушава божествената воля и светостта на живота.
- Страданието се разглежда като смислено, духовно изкупително и изпитание на вярата (папа Йоан Павел II подчертава неговата трансформираща сила).
- Човешкият живот има присъща стойност, независимо от способностите или статуса.
- Прекратяването на живота по избор отрича Божия суверенитет.

6. Етични и светски перспективи

Светската етика подчертава, че евтаназията:

- Подкопава уважението към живота и може да обезцени хората с увреждания или възрастните хора.
- Създава рискове от принудителна евтаназия и обществен натиск.
- Трябва да се оценява чрез балансиране на индивидуалните права с колективната морална отговорност.
- Подкопава задължението за грижа в медицината и моралната сплотеност на обществото.

7. Философски перспективи

Философите, защитаващи евтаназията, твърдят, че:

- Индивидите имат право да контролират собствените си тела и смърт.
- Свободата на избор трябва да включва свободата за прекратяване на страданието. Противниците отговарят, че ценността на живота е присъща и смъртта не трябва да се третира като решение. Дебатът поставя под въпрос дали смъртта е по своята същност лоша или просто личен избор, отразявайки различни интерпретации на автономията и морала.

8. Практични и ресурсно обосновани аргументи

Теорията за справедливото разпределение на медицинските ресурси предполага, че евтаназията би могла да помогне за по-ефективното разпределение на ограничените здравни ресурси, като позволи на терминално болните пациенти да изберат смъртта, освобождавайки ги от грижи за другите.

Противниците предупреждават, че това може да доведе до:

- Намаляване на мотивацията за палиативни грижи.
- Насърчаване на убийства, мотивирани от икономически подбуди.
- Подкопаване на медицинската етика и доверието между пациенти и лекари. Следователно, въпреки прагматичната си привлекателност, теорията се възприема като етично опасна и социално дестабилизираща.

ЗАКЛЮЧЕНИЕ

1. Практики на абортите и неравновесие между половете

Абортът в Албания е разрешен законово съгласно Закона за репродуктивното здраве от 2002 г., но абортите, основани на пола, остават широко разпространени, което води до дисбаланс между половете (до 119 момчета на всеки 100 момичета в Тирана). Тази тенденция отразява патриархалните традиции и културното предпочитание към децата от мъжки пол, изострени от достъпа до технологии за пренатален скрининг.

Слабото прилагане на закона позволява селективни аборти въпреки законовата забрана, особено в частните клиники. Резултатът е намаляване на институционалното доверие и влошаване на неравенството между половете. Дисбалансът създава и демографски рискове, като например изкривяване на брачния пазар, миграционен натиск и социална нестабилност.

Предложените реформи включват:

- По-строги правоприлагащи и медицински одити.
- Кампании за обществено образование, насърчаващи равенството между половете.
- Подобрен достъп до семейно планиране и контрацепция, особено в селските райони.
- Институционална прозрачност и отчетност в здравеопазването.

2. Евтаназия в Албания

Евтаназията е незаконна и криминализирана в Албания съгласно Наказателния кодекс, без правно разграничение между активни и пасивни форми. Темата остава културно и религиозно табу, силно повлияна от православните и ислямските морални доктрини, които разглеждат живота като свещен и неприкосновен. Общественият дебат е минимален и няма политическо или институционално движение към легализирането ѝ.

Налице са академични дискусии относно човешкото достойнство, автономията и терминалните болести, но те остават маргинални. Документът подчертава необходимостта от:

- Публичен диалог относно биоетиката и грижите в края на живота.
- Развитие на палиативните грижи като алтернатива на евтаназията.
- Етични и сравнителноправни изследвания за информиране на бъдещите политически обмисляния.

3. Ключови констатации

- Законодателство за абортите: Законно, но слабо прилагано; селективните аборти продължават.
- Дебат за евтаназията: Липса на правна рамка; силна религиозна и социална съпротива.
- Недостатъци на съдебната система: Ограничена независимост и прилагане на правата на човека.
- Обществена съпротива: Културните и религиозните ценности противоречат на международните норми.

Значението и приносът на изучаването на абортите и евтаназията във връзка с правото на живот в обществото

1. Задълбочава разбирането за правото на живот като основа на правата на човека. Изследването помага да се демонстрира, че без гарантиране на правото на живот не биха могли да съществуват други права. То поставя това право в основата на правните, етичните и социалните дискусии.

2. Разкрива правни и институционални пропуски в защитата на живота. Чрез анализ на начина, по който се разглеждат абортите и евтаназията в Албания, проучването идентифицира недостатъци в законодателството и съдебната практика, предоставяйки основа за правно подобрение и институционална реформа.

3. Насърчава етичното размишление и обществения дебат. Дискусията за абортите и евтаназията подтиква обществото да размисли върху моралните, религиозните и културните ценности, свързани с живота и смъртта, като по този начин насърчава социалната осведоменост и уважението към човешкото достойнство.

4. Осигурява международно сравнение и съответствие с европейските правни стандарти. Изследването позиционира Албания в рамките на международните конвенции и съдебната практика на Европейския съд по правата на човека, като оценява доколко националните закони са в съответствие с европейските стандарти за правата на човека.

5. Подкрепя разработването и реформите на политиките в областта на защитата на живота. Чрез своите констатации и анализ, проучването служи като ръководство за политиците, организациите за правата на човека и гражданското общество за разработване на по-хуманни и етично обосновани политики за защита на правото на живот.

Научни приноси на дисертационния труд

1. Извършен е детайлен анализ на правото на живот в съответствие с член 2 от Европейската конвенция за правата на човека (ЕКПЧ). Дисертационният труд представлява задълбочено разглеждане на правния обхват, тълкуването и развитието на член 2 от Конвенцията чрез призмата на съдебната практика на Европейския съд по правата на човека.
2. Сравнително изследване на националните и европейските правни рамки. Направено е сравнение как избрани европейски държави, включително Албания, тълкуват и прилагат правото на живот във връзка с абортите и евтаназията, като са идентифицирани разлики и тенденции за хармонизиране на албанското законодателство със стандартите на Съда в Страсбург.
3. Дисертационният труд си поставя за задача изясняването на правните граници между защитата на живота и индивидуалната автономия. Изследването изследва етичните и правни дилеми между правото на живот и личната свобода, предлагайки балансиран подход в съответствие с човешкото достойнство и международните стандарти за правата на човека.
4. Систематизиране на съдебната практика на Европейския съд - изследването категоризира и систематизира ключови решения на ЕСПЧ относно абортите и евтаназията, предлагайки структуриран преглед, полезен за юристи, учени и политици.
5. Идентифицирани са правни пропуски и препоръки за политики, като са подчертани несъответствията и пропуските във вътрешното законодателство и предлага конкретни предложения за привеждане на националните закони в съответствие с европейските стандарти за правата на човека.
6. Принос към академичния и правен дискурс в Албания - дисертацията въвежда рядко изследвана тема в албанската правна литература, допринасяйки за разбирането на биоетичните и човешки правозащитни предизвикателства през призмата на европейската съдебна практика.
7. В труда е разработена методологична рамка за анализ на дела, свързани с правата на човека. Установен е изследователски модел, който съчетава доктринален, сравнителен и юриспруденциален анализ, който може да служи като отправна точка за бъдещи

докторски и правни изследвания в областта на международното право на правата на човека.

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SOUTH-WEST UNIVERSITY "NEOFIT RILSKI"

FACULTY OF LAW AND HISTORY

DEPARTMENT OF "INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

"STANDARDS FOR HUMAN RIGHTS PROTECTION IN THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS"

(Some Aspects Related to Article 2 of the ECHR)

DISSERTATION FOR THE GRANTING OF THE SCIENTIFIC AND EDUCATIONAL DEGREE "PhD"

Scientific Leader: Prof. Dr. Gabriela BELOVA

Scientific Leader/Consultant: Assoc. Prof. Dr. Snezhana BOTUSHAROVA

Blagoevgrad, Bulgaria, 2025

DEDICATION:

I dedicate this work to my family, my grandparents and my life partner, who have been a constant motivation for achieving this goal!

Under my responsibility, I declare that this work has been written by me, has never been presented before any other institution for evaluation, and has never been published in its entirety.
The work does not contain material written by any other person, except in cases where it has been cited and referenced accordingly.

ACKNOWLEDGMENT:

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It is a privilege to be among you and your knowledge!

List of Abbreviations

- **ACPD-** Albanian Center for Population and Development
- **CEDAW** – Convention on the Elimination of All Forms of Discrimination Against Women
- **EC**- European Commission
- **ECHR** – European Convention on Human Rights
- **ECtHR** – European Court of Human Rights
- **EU** – European Union
- **ICCPR** – International Covenant on Civil and Political Rights
- **ICESCR** – International Covenant on Economic, Social and Cultural Rights
- **INSTAT-** Institute of Statistics
- **IPHR** – International Partnership for Human Rights
- **LGBTQ+** – Lesbian, Gay, Bisexual, Transgender, Queer
- **NGO** – Non-Governmental Organization
- **NHRI-** National Human Rights Institution
- **OHCHR** – Office of the United Nations High Commissioner for Human Rights
- **OSCE** – Organization for Security and Co-operation in Europe
- **SPAK** – Special Anti-Corruption Structure (Albania)
- **UN** – United Nations
- **UNDP** – United Nations Development Program
- **UNFPA** – United Nations Population Fund
- **UNICEF** – United Nations Children's Fund
- **US**- United States
- **WHO** – World Health Organization

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Foreword

This dissertation critically examines the right to life through the lens of abortion and euthanasia, focusing on Albania's legal framework in comparison to international human rights standards, particularly the European Court of Human Rights (ECHR).

The study deals with and explores the legal basis and the philosophical, societal and ethical dimensions of the right to life, particularly the abortion and euthanasia as a specific part of this human right, highlighting the relation between personal freedom to decide and individual autonomy, societal norms and legal basis for allowing that, as well the tensions that may beteem them in real life. The question of the right to life and the possibility to use abortion and euthanasia is enshrined in the legal documents and norms of the European Union, the Council of Europe, and Albania, and their respective standards and practices.

The research aims to analyze how the right to life is conceptualized, protected, and enforced in Albania, with a particular emphasis on:

- The Legal and Ethical foundations: tracing the historical and theoretical evolution of the right to life within international human rights law.
- Comparative Legal Analysis: Evaluating Albania's legislative framework on abortion and euthanasia in light of ECHR rulings and international treaties.
- Institutional and Judicial Challenges: Assessing the effectiveness of Albania's legal and judicial institutions in upholding human rights protections.
- Societal and Cultural Perspectives: Investigating how public opinion and cultural values influence the implementation of abortion and euthanasia policies.
- Offering viable recommendations, especially with a focus on *de lege ferenda*.

The dissertation underscores the complexities of ensuring the right to life in a society where cultural traditions, legal constraints, and human rights obligations intersect. Strengthening legal frameworks, promoting judicial independence, and enhancing public awareness initiatives are crucial for advancing human rights protections in Albania. By fostering informed debate and aligning with international human rights principles, Albania can move toward a more comprehensive and ethical approach to abortion and euthanasia.

Key words: right to life, fetus, abortion, euthanasia, human rights, Albania;

Introduction

1. The Meaning and Evolution of the Right to Life

There comes a time in life when every one of us contemplates some intrinsic, metaphysical questions, such as what life is and what our place in it is. It is at that time that we pause to reflect and truly begin to understand reality and the nature of our existence. Questions of morality, knowledge, existence, and dilemmas will undoubtedly continue to trouble humanity for eternity. Still, once and for all, we can all agree on the importance of one single right that we are all naturally bestowed with and more often take for granted: the right to life.

But can we also agree on what the right to life is? Theoretically and in most fundamental documents that constitute nation-states, documents that govern our societies, like constitutions, charters, declarations, conventions, etc., the right to life is undoubtedly one of the most essential human rights, the enjoyment of which constitutes the source of all other rights derived from it. Its importance cannot be overstated, as it forms the bedrock of all human rights.

The right to life is an inalienable, indivisible, and non-transferable right, closely connected to the human being. In terms of importance, the right to life ranks first as it is one of the fundamental rights related to human existence, the arbitrary deprivation of which would render all other social and economic rights non-existent. The Descartesian '*Cogito, Ergo Sum'* (I think therefore I am) that puts thought in the center of existence, can very well be inverted to '*Sum Ergo Cogito'*, (I am therefore I think), which puts existence in the center of our knowledge. Philosophers, scientists, lawmakers, and politicians have and will argue long before and after about theories surrounding life, reality, and knowledge. Nevertheless, we can all agree that to discuss and debate effectively, we need to protect our existence and our right to life, first and foremost.

The right to live is a fundamental right with a broad focus, encompassing aspects related to various issues. These aspects are directly or indirectly connected not only to the dignity and quality of life but also to the right to live. The entities obliged by law to guarantee the right to live are numerous and provide special, specific, concrete, or general protection. However, the State, as the primary guardian of this protection, plays a crucial role in constructing, institutionalizing, modernizing,

and monitoring the mechanisms and structures in every sector of life, as well as the means, methods, conditions, and opportunities for their effective functioning. In the framework of fulfilling this mission, the prevention of crime against life takes priority. The success of the state cannot and should not be measured by the level of measures taken to deal with situations or criminal events that result in death, but by the response to prevent them promptly. This highlights the government's responsibility and accountability in protecting the right to life.

Given its undeniable significance, the right to life is afforded special protection by both national and international instruments. International frameworks often prioritize the quality of living as an ongoing process. They prohibit the arbitrary deprivation of life, but in some instances and countries, they also legitimize it by permitting the death penalty under specific conditions outlined by domestic law.

Additionally, issues like abortion and euthanasia, which are crucial to the processes of life and human existence, continuously conflict with the importance attributed to life as a process. These issues are not just legal or ethical, but deeply personal and emotional, sparking ongoing debates and discussions that reflect the complexity and sensitivity of these matters.

Abortion, defined as the intentional termination of a fetus in the womb or inducing premature birth to cause the fetus's death, remains a contentious topic. This act aims to end the life of the fetus, making abortion a subject of debate today. It also touches upon women's rights and is a sensitive issue worldwide, sparking numerous discussions and debates. Most international laws do not criminalize abortion; instead, they view it as a woman's right to decide the fate of her fetus. In Albania, abortion is regulated by the Abortion Law, which respects a woman's right to make an independent decision. This law aims to appropriately honor human life while regulating societal reproduction methods and institutions, ensuring full equality for women, adhering to public reasoning, and avoiding influence from ideological or theological doctrines.

This study will explore various issues, focusing its attention on the right to life, *vis-à-vis* abortion and euthanasia. The latter, as a method of ending life, remains a highly debated topic, questioning whether it is an arbitrary act, its legal implications, the right to seek assistance from others in such

actions, and the accountability of these individuals under criminal law. Albanian legislation has gaps in this area; by not explicitly addressing euthanasia, it leaves room for legal ambiguities, potentially violating the procedural and substantive rights of the accused. Wherever legal gaps exist, there is always room for concern. Hence, this study aims to address some of these concerns, which include legal, ethical, and societal implications. After all, it is the prerogative of every researcher to contribute, with utmost modesty, to their society. By engaging in this research journey, I aim to address the legal and ethical gaps, as well as societal misconceptions, to provide a realistic and objective perspective on the cases under study.

2. Research Objectives

This study aims to examine the most effective solutions provided by both national and international legislation about much-contemplated issues such as abortion and euthanasia. A free and democratic society values individual freedom and rights. Historically, the primary focus of laws has been on affirming freedoms and creating legislation and legal structures to ensure and guarantee these rights. So, the goal of every lawmaker has been to identify the values we want to codify into our institutions. A society is fundamentally influenced and asserts itself in the world precisely by the kind of values it embodies in its structures. So, what is our goal as individuals, as agents of change? Probably, it differs in context, but in general terms, our shared goal is to deepen freedom and evolve. No institution shall be considered holy in a free society, because evolution means that everything is subject to change. In this context, the sanctity of life that we have so much veneer can alter its course to independent and autonomous rights to choose, in the case of abortion and euthanasia.

Essentially, this study aims to demonstrate that throughout the discovery process of identifying gaps in our understanding, we can explore new ideas that, although initially seeming absurd to us as a society, may help us advance without judgment. The right to life, abortion, and euthanasia are and probably will persist as very debatable topics. Still, our duty as students of knowledge and agents of change is to offer society unbiased, objective ideas and solutions.

The objectives of this study include assessing whether attitudes and treatments towards the right to life, particularly in cases involving fetuses and euthanasia, tend to respect this right. Additionally, the study seeks to identify the factors that influence these attitudes and treatments. The study's specific goals focus on:

- *The exploration of the right to life as outlined in Article 2 of the European Convention on Human Rights (ECHR);*
- *a detailed examination of the jurisprudence of the European Court of Human Rights, especially its recent rulings;*
- *identifying the main issues concerning the right to life;*
- *analyzing in detail the cases brought before the European Court of Human Rights against Albania and how Albania implements the standards set by the Council of Europe;*
- *emphasizing other international instruments that protect the right to life and their legal enforceability;*
- *defining the terms and status of abortion and euthanasia as limitations on the right to life;*
- *offering concrete recommendations and legal action plans.*

In June 2022, the U.S. Supreme Court renounced its responsibility to safeguard fundamental rights in a profoundly impactful ruling with long-lasting consequences.[1] It overturned *Roe v. Wade*, determining that there is no federal constitutional right to abortion. In a society where it is becoming more and more challenging to maintain and defend human rights, it is imperative to propagate factual information on the protection of the right to life, abortion, and euthanasia. Human rights issues are matters of universal morality and fundamental for every person to understand and recognize the existence of rationally identifiable, trans-cultural, and trans-historical moral truths.

One of the oldest Western philosophies on human rights posits that they originate from natural law, grounded in various philosophical and religious foundations. Other theories suggest that

[1] National Public Radio (NPR). *"The Supreme Court Has Overturned Roe v. Wade." NPR*, 24 June 2022, www.npr.org/2022/06/24/1102305878/supreme-court-abortion-roe-v-wade-decision-overturn. Accessed 9 Mar. 2025.

human rights encode a moral behavior, a social construct that has evolved biologically and socially *(a view associated with Hume)* (in Cohon 2004).[2] Additionally, human rights are described as sociological patterns of rule-setting, as seen in the sociological theory of law and the works of Weber (Hans 2006).[3] In this study, objectives assist in exploring the philosophy, doctrine, and jurisprudence of human rights issues that are inexorably connected with the right to life, the moral status of the fetus, abortion, and euthanasia.

3. Research Question and Hypothesis

The topic will primarily explain the evolution of the right to life, from its origins to its treatment within international and European legal frameworks. This analysis will examine the advancements and legal developments related to the right to life in Albania.

This research-oriented study aims to identify new developments, scientific concepts, and necessary improvements related to the issues of abortion and euthanasia. The study offers a critical analysis to evaluate the effectiveness of legislation in upholding the constitutional right to life, a fundamental and inalienable right. Throughout the study, we examine the challenges faced by international and national legislation in respecting the right to life.

A deductive approach begins with a theory, develops hypotheses based on that theory, and then collects and analyzes data to test those hypotheses. The theory we present here is that, although Albania has made significant improvements regarding the right to life, it still lacks consolidated institutions that work in synergy to ensure and enforce a legal system based on fundamental human rights and values. Abortion is still a 'forbidden apple' in Albanian societal norms, as cultural and religious norms refuse to accept the notion in a traditional society. Nevertheless, practice shows that abortion is widespread in the country. Nonetheless, there are many concerns in legal and practical terms. As for euthanasia, there is no public support or known practices as it defies

[2] Cohon, Rachel. "Hume's Moral Philosophy." *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta, Fall 2018 Edition, Metaphysics Research Lab, Stanford University, https://plato.stanford.edu/entries/hume-moral/. Accessed 16 Apr. 2025.
[3] Joas, Hans. *Max Weber and the Origin of Human Rights: A Study on Cultural Innovation*. IIIS Discussion Paper No. 145, Institute for International Integration Studies, 2006, https://ssrn.com/abstract=923846. Accessed 16 Apr. 2025.

Albanian historical values. In this context, even the legislation acts as a reflection, mirroring society's opinion, considering euthanasia a criminal offense.

To explore this topic, we have formulated several research questions that aim to provide an objective perspective on the notions of life, euthanasia, and abortion about the legal instruments currently in place to protect fundamental human rights. The research closely examines the practice of legal doctrine and application in Albania and the European Court of Human Rights by comparing local legal systems in Albania with relevant court cases from the ECHR. The primary focus is to analyze how well Albanian legislation aligns with global and EU standards, while recognizing some of the challenges that the right to life, abortion, and euthanasia face in Albania today. To understand the functioning of Albania's legal systems, we review what the ECHR has concluded about the respect for the right to life in Albania in recent years. This study seeks to address our main research question regarding the right to life, abortion, and euthanasia by proposing several hypotheses:

Q1: How important is the right to life in Albania? ***H1: Regardless of deep socio-economic and political struggles, the right to life in Albania is one of the most fundamental rights.***
Q2: How are these rights ensured and enforced in the legal and judiciary system, and how effective are these systems? ***H2: Legal reforms and effective enforcement mechanisms are required to ensure human rights. Albania must provide its citizens' right to life by all means, primarily through independence, transparency, and ethical professionalism in its judiciary.***
Q3: How does abortion affect Albanian society, and what is the general perception? ***H3: Selective abortion and uncontrolled abortion practices hurt the perception of public opinion and the trustworthiness of the institutions that are supposed to safeguard it. Abortion remains a widespread practice but with longstanding societal resistance.***

Q4: How is euthanasia perceived in Albania, and are there any agents that propagate the phenomenon? Are there any legal initiatives, or will there be?
H4: The general public perception is that euthanasia is not welcomed. Very few, not to say almost no one advocates euthanasia. The legislation mirrors public opinion, considering it a criminal offense.

4. Methodology

To achieve the objectives of this dissertation, a robust methodology has been developed. This methodology combines various scientific research methods and is grounded in national and international norms and institutions. It ensures a comprehensive exploration of the right to life, the right to die, and the right to abortion, addressing these issues from both a subjective and objective viewpoint.

Key Methodological Approaches

1. **Legislative Analysis:**

- A critical method employed in this study involves analyzing legal norms codified in laws, codes, and judicial decisions. This process identifies legal gaps, inconsistencies, and areas for improvement in Albania's legislative framework regarding abortion and euthanasia.
- To evaluate Albania's compliance with global norms, the interaction between domestic and international standards, including the European Convention on Human Rights (ECHR) and related jurisprudence, is explored.
- This method facilitates the formulation of recommendations to address identified issues, ensuring alignment between national and international legal frameworks.

2. **Contemporary Scientific Methods:**

- Deduction involves applying theoretical frameworks to specific aspects of the right to life, while analysis breaks down complex issues into component parts for detailed examination.
- Synthesis combines these elements into a cohesive understanding, enabling a clearer perspective on abortion and euthanasia within Albania's socio-legal context.

- Observing how courts interpret and apply legal norms related to the right to life and abortion provides practical insights into the strengths and weaknesses of existing systems.

3. **Qualitative Research:**
    - **Semi-Structured Interviews:**

- Semi-structured interviews were conducted to gain in-depth insights into abortion and euthanasia, allowing participants to share their experiences, opinions, and perspectives freely.
- This approach enriches the study by capturing the nuanced emotional and ethical dimensions of these issues.
    - **Implementation of Ethical Standards:**
- Participants were informed about the study's scope and purpose, and consent was obtained before proceeding with interviews.
- Interviews were recorded, transcribed, and anonymized to ensure confidentiality and ethical compliance. Transcriptions were shared with participants for validation, allowing them to affirm or revise their contributions.
- Strict ethical guidelines were adhered to, including preserving participant anonymity by encrypting data and avoiding identifiable references such as names, gender, or race. All participants signed confidentiality declarations.

Data Collection and Analysis

- **Timeline:**
    - Qualitative data collection occurred over a three-month period, providing sufficient time for data coding, thematic analysis, and interpretation.
- **Anonymity and Confidentiality:**
    - All interviews were anonymized, and data encryption protocols were employed to ensure participant privacy. Quotes used in the study do not attribute responses to specific individuals.
- **Thematic Analysis:**
    - Interview data were coded and analyzed thematically, identifying patterns, themes, and recurring viewpoints to inform the study's findings and conclusions.

By integrating legislative analysis, judicial practice review, ~~and qualitative research,~~ this methodology provides a multi-faceted approach to understanding the challenges and opportunities in protecting the right to life in Albania. The combination of legal and qualitative insights ensures a well-rounded perspective, contributing to formulating actionable recommendations and advancing the discourse on human rights in Albania.

5. Scope, Relevance, and Frame of the Research

The significance of this study is multifaceted. Firstly, meticulously reviewing the literature highlights the factors that have led to the inadequate implementation of legal norms regarding the right to life in both national and international law. The right to life, being one of the most fundamental rights, is of utmost importance, without which no other rights could exist. Despite its importance, the treatment of this right is limited, evidenced by the need for similar domestic studies, necessitating the exploration of previously unaddressed concepts. Examining abortion and euthanasia is a challenging task, especially when comparing analogous cases in the Albanian context due to a legislative void and lack of judicial practice, which would provide a more detailed understanding of these concepts.

This study aims to broaden knowledge of policies and issues concerning the right to life as a fundamental human right. Numerous international institutions and organizations have consistently flagged Albania for its human rights policies, urging more outstanding commitment and policy implementation to improve respect for human rights (EC 2023 Albania report).[4]

In Albania, human rights are frequently violated by individuals, social groups, institutions, or governmental structures. The media and medical community representatives have consistently highlighted the high rates and increasing trends of abortions (Merdani et al. 2016). [5] However, the question arises as to why Albanian society distances itself from euthanasia. Finding traces of euthanasia practices in Albania is difficult, even for documentation purposes, but it is not excluded

[4] European Commission. *Albania 2023 Report - Enlargement and Eastern Neighbourhood*. 2023, https://enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_690%20Albania%20report.pdf. Accessed 9 Mar. 2025.
[5] Merdani, Alba, et al. "Monitoring Trends of Abortion Rates in Albania for the Period 2010–2015." *Albanian Medical Journal*, no. 4, 2016, pp. 49–56.

that euthanasia might occur informally. The absence of euthanasia in Albania can be attributed to it not being part of Albanian traditions and culture. As previously noted, the scientific contribution regarding the legal conceptualization and treatment of the right to life is lacking, creating an information and legal gap in protecting this right.

There is a noticeable gap in Albanian legislation on the practices of abortion and euthanasia. Although Albanian laws and institutions have moved towards international standards set by international acts and institutions, adopted by contributing national states and members of international organizations, this adoption reveals an ambiguity regarding the precise practices encouraged or discouraged.

This study significantly contributes to understanding fundamental human rights in a transitioning society like Albania, where socio-economic and political challenges intersect with legal and ethical frameworks. By examining the importance of the right to life and how it is upheld or undermined within the legal and judiciary systems, the research critically evaluates Albania's institutional capacity and effectiveness in safeguarding human rights. The inclusion of abortion and euthanasia as focal points provides valuable insights into contentious bioethical debates, offering a comparative perspective with global trends while addressing the unique cultural and historical factors influencing Albanian society. Furthermore, the study bridges gaps in existing academic discourse by exploring the interplay between public perception, legal frameworks, and societal ethics, contributing to policy-oriented research and legal reform studies.

The right to life is a universal human right that has profound implications for individual dignity and societal harmony. By highlighting the mechanisms for ensuring and enforcing this right in Albania, the study can influence public discourse and raise awareness about the importance of transparent, independent, and ethical judiciary systems. Exploring sensitive issues like abortion and euthanasia addresses pressing societal concerns, shedding light on their effects on public opinion, institutional trust, and social cohesion. The findings can guide policymakers, human rights advocates, and community leaders in fostering informed debates, designing better legal frameworks, and implementing reforms that resonate with societal values. Ultimately, the study

emphasizes the critical need to balance individual rights with collective moral and ethical standards in a rapidly evolving Albanian society.

Several notable limitations characterize the completion of this research. Given the study's broad focus on the right to life, it cannot be considered an exhaustive examination of any of the analyzed issues. However, this research highlights certain concepts that are not thoroughly explored by Albanian legislation, potentially providing a foundation for future similar studies. This emphasizes the ongoing evolution of human rights law and the need for a more comprehensive understanding of the right to life.

The study's scope is extensive but is constrained by time and spatial limitations. The temporal limitations pertain to the period in which we have the earliest documented acts protecting the right to life, either prohibiting or permitting abortion and allowing euthanasia. The temporal nature of the study presents an inherent limitation. By focusing on a specific period, the research provides only a snapshot of Albania's evolving societal and legal landscape. The dynamic nature of public opinion, legal reform, and globalization means that the findings may not fully capture long-term trends or future developments in these areas. The spatial limitations refer to the lack of unified and mandatory legislation for all countries. The right to life and abortion laws varies between countries since not all states have yet adhered to or are part of international acts related to ensuring the right to life. This results in inconsistent enforcement of these issues.

For euthanasia, the limitations are even more significant due to its sensitivity as a topic. Although it should be considered an acceptable reality now, most countries still regard it as taboo and lack legal regulation. Another limitation worth mentioning is that interviews regarding abortion issues in Albania are conducted anonymously, and data pooling is complex because of the taboo and fear of speaking up.

Comparing abortion, fetus, and euthanasia issues with similar cases in the Albanian context has been challenging due to the lack of judicial practice. This judicial void hinders a more nuanced articulation of the concepts of euthanasia and the fetus, highlighting the complexity of these issues and the need for further research.

This study faces several inherent limitations that must be acknowledged to ensure a comprehensive and transparent analysis. One significant challenge arises from the socio-cultural sensitivities surrounding abortion and euthanasia in Albania. These topics are deeply entrenched in cultural, religious, and traditional norms, which may hinder participants' willingness to engage openly in discussions or surveys. This reluctance could lead to underreporting or biased responses, thereby limiting the study's ability to capture the full scope of societal attitudes.

Additionally, the availability of public data presents a notable constraint. In Albania, statistical information on issues such as selective abortions, unsafe procedures, or public opinion on euthanasia is often sparse or difficult to access. This lack of robust datasets complicates quantitative analysis and restricts opportunities for detailed comparisons with international trends or practices.

Legal and institutional transparency further compounds these challenges. Evaluating the judiciary's effectiveness in safeguarding the right to life requires access to detailed case law, enforcement data, and institutional practices. However, obtaining such information in Albania can be difficult due to limited public records or a lack of systematic reporting mechanisms, which undermines the depth of the analysis.

The comparative analysis aspect of the study, which juxtaposes Albanian practices with international standards, introduces additional complexity. The unique socio-legal context of Albania, shaped by its cultural and historical specificities, often diverges from the norms of other European states. This divergence may render direct comparisons less meaningful or harder to interpret, potentially affecting the validity of broader conclusions.

Moreover, the rapidly evolving nature of international norms presents another challenge. Legal principles surrounding the right to life, abortion, and euthanasia are not static but continually adapt to new scientific, moral, and societal developments. Capturing this fluidity within the confines of a single study period poses inherent difficulties, as the findings might risk becoming outdated.
There is also the risk of researcher bias influencing the interpretation of legal and societal developments, particularly when addressing controversial and divisive topics. Ensuring objectivity

and balance in analyzing sensitive issues such as abortion and euthanasia is critical, yet challenging, especially when attempting to navigate differing perspectives.

Regional and socio-economic disparities within Albania further complicate the study. Attitudes toward abortion and euthanasia are likely to vary significantly across urban and rural areas or between different socio-economic groups. Generalizing findings to represent the entire Albanian population without fully accounting for these variations could limit the accuracy of the conclusions.

Ethical considerations also play a critical role in shaping the study. Discussing contentious topics can evoke strong emotional responses, requiring the research to adhere to strict ethical guidelines, such as maintaining participant confidentiality and avoiding undue influence on respondents. These necessary safeguards, however, may constrain the scope and depth of the research. Acknowledging these limitations not only enhances the credibility of the research but also underscores the need for ongoing studies to address these complex issues comprehensively.

This research topic offers a rich opportunity to explore the evolution of the right to life within Albania, in the context of international and European legal frameworks. The right to life, enshrined in international human rights documents like the Universal Declaration of Human Rights (Article 3) and the European Convention on Human Rights (Article 2), represents a cornerstone of global legal and moral frameworks.

In Albania, this right is constitutionally recognized and protected, reflecting broader European and international commitments. However, societal, cultural, and legal nuances influence its application, particularly concerning controversial topics such as abortion and euthanasia. This study examines the progression of the right to life from its origins to its current treatment within Albania's legal system, contrasting this with European Court of Human Rights (ECHR) jurisprudence. The aim is to evaluate Albania's alignment with international norms and identify areas for improvement.

- **Progression of the Right to Life**

The historical and philosophical foundations of the right to life stem from natural law traditions, emphasizing the inviolability of human dignity. In Albania, this principle is codified in Article 21 of the Constitution, which guarantees life as an inalienable right. The country's legal framework has evolved significantly since the transition from a totalitarian regime to a democratic state, aligning its laws with European and international standards. However, enforcement remains a challenge due to weak institutional capacity and socio-economic struggles.

At the European level, the ECHR has shaped a dynamic understanding of the right to life. Cases such as *Pretty v. the United Kingdom* and *Vo v. France* illustrate the balance between individual rights and state obligations, often influencing national legal reforms. This contextual backdrop provides a lens through which to assess Albania's progress and shortcomings.

- **Analysis of Abortion in Albania**

Abortion remains a polarizing issue in Albania, reflecting deep-seated cultural and religious values. Although legalized under the Reproductive Health Law of 2002, societal stigma persists. Religious institutions and traditional norms continue to frame abortion as morally unacceptable, limiting public acceptance. However, the law provides women with autonomy up to the twelfth week of pregnancy, aligning Albania with EU standards in principle.

Despite legalization, selective and uncontrolled abortion practices present legal and ethical challenges. For instance, Albania faces a demographic imbalance partly attributed to sex-selective abortions, a practice fueled by cultural preferences for male offspring. This has prompted calls for stricter regulation and enforcement mechanisms to uphold the integrity of reproductive health laws.

The societal resistance to abortion contrasts sharply with its widespread practice, highlighting a dissonance between legality and cultural acceptance. Public awareness campaigns and education on reproductive rights are critical to bridging this gap and fostering a more balanced discourse.

- **Euthanasia: Public Perception and Legal Framework**

Euthanasia is a criminal offense in Albania, reflecting the broader societal resistance to the practice. Rooted in religious doctrines and historical values, Albanian society overwhelmingly rejects the notion of assisted dying. Unlike abortion, there is no significant public or political advocacy for euthanasia, and the topic remains absent from mainstream discourse.

This contrasts with the evolving legal and societal attitudes in many European countries, where euthanasia is increasingly viewed as a component of human dignity and autonomy. Countries like the Netherlands and Belgium have established comprehensive legal frameworks for euthanasia, grounded in stringent safeguards. Albania's reluctance to engage with this issue underscores the influence of traditional and religious values on its legal system.

Given the absence of public support and institutional capacity, it is unlikely that Albania will see any legislative initiatives on euthanasia in the foreseeable future. However, the global shift toward recognizing assisted dying as a right may eventually prompt a reexamination of this stance.

In the following chapters we give a thorough presentation and reflection of the literature on the topic, not simply by presenting it as such, but by constructing a critical lens on the debate that exists from philosophy, doctrine, law and public opinion. Conflicting realities of theory versus reality is aimed to bring the reader with a more comprehensive approach and understanding of the topic.

Part 1: The International Legal Protection of the Right to Life

1. Philosophical and Historical Development of the Right to Life

This chapter serves as a preamble to the study. By reviewing the existing literature on the right to life it helps to build a bridge between theory and practice, understanding and doing. It would be nonsensical to embark on a dissertation on human rights without immersing ourselves in the profound philosophical debate that underpins these rights. In our current era, human rights are a cornerstone of our society. But what exactly are human rights, and what is their philosophical foundation?

Philosophy, as the science of knowledge, has long grappled with the nature of human rights, often referred to in history as natural rights. These rights, unlike legal or religious rights, are not contingent on specific prerequisites but are to be upheld by reason alone. However, as with any philosophical debate, there has been a disagreement on devising a correct list of human rights and a great deal of effort into framing a universal theory of human rights. What should be on the list? Can socio-economic rights be in it? How about civil and political rights? Who gives and takes importance from one right to the other? To address these questions, society has developed the Universal Declaration of Human Rights, International Conventions, Courts, NGOs, etc. But has this intellectual exercise helped us comprehend and enforce human rights?

Human beings, by nature imperfect, create laws. Even with the best intentions, these laws are always subject to interpretation and subjectivity. This inherent imperfection underscores the need for continuous debate and improvement in the realm of human rights. Habermas and Rawls, when speaking of a prosperous democracy, emphasize a culture of public reason, which involves all citizens in collective action about the common good. So why all this inflation of human rights, to mention the concept John Tasioulas uses, ‘conceptual overreach’, when a particular concept undergoes a process of expansion or inflation in which it absorbs ideas and demands that are foreign to it, a sort of ‘all in one’ dogma. How did human rights come to be the ‘universal secular religion’?

As James Griffin notes in his *On Human Rights (2008):*

"It is a great, but now common mistake, to think that, because we see rights as fundamental in morality, we must make everything especially important in morality into a right."[6]

This moral downgrading of human rights, combined with the rise of human rights populism, has contributed to the loss of their value. This conceptual overreach, caused by a political power grab narrative by the elites to try and expand their scope and goals, has distorted our conception of what human rights are and where they stem from.

Human rights, deliberately or not, have come to represent many aspects of our lives, from human rights in nature, society, institutions, belief systems, and legal bindings. However, as Tasioulas (2012, 17) explains in his article *Towards a philosophy of human rights*, in the search for a normative core of human rights, the primordial nature of human rights lies deeper into our reason, which in turn creates a standardized norm.[7] So, what is it that creates this reason-giving standard and differentiates it from other normative concepts that humans have constructed over history?

1.1 Origins of human rights

- **Antiquity**

For every advocate of human rights globally, daunting opponents aimed to preserve privilege, hierarchy, hereditary rule, property, continuity, and caste. A free society disheartens the reverence of power. Human rights supporters face resistance from vested interests: Thomas Paine was hanged in English cities, Voltaire's writings were banned, and the Church haunted the scientific avant-garde like Giordano Bruno and Galileo. Conservative authors dismissed the concept of human equality as a *"monstrous fiction."* Jeremy Bentham rejected natural law, calling *it "simple nonsense"* and labeling human rights *"nonsense on stilts."* People, he argued, should know *"their proper place."* (Shelton 2007).[8]

[6] Hannam, Mark. "On Human Rights by James Griffin." *Democratiya*, no. 15, Winter 2008, pp. 115–119. Accessed 16 Apr. 2025.
[7] Tasioulas, John. "On the Nature of Human Rights." *The Philosophy of Human Rights: Contemporary Controversies*, edited by G. Ernst and J. Heilinger, De Gruyter, 2012, pp. 17–60.
[8] Shelton, Dinah L. "An Introduction to the History of International Human Rights Law." *GWU Legal Studies Research Paper* No. 346, 2007. SSRN. Accessed 16 Apr. 2025.

The concept of divine right to rule persisted in many countries, with ruling elites striving to maintain power and uphold cultural practices that subordinated women, children, racial minorities, and workers. Slavery was widespread, and torture was commonly used for investigation and punishment. Public executions were frequent, and capital punishment was applied for a wide range of offenses. Educational opportunities were reserved for the wealthy, while a few landholders controlled the numerous landless poor. Some human rights abuses troubled even rulers, as they led to prolonged and impoverishing wars. Notably, religious persecution, forced conversions, and massacres of religious minorities sparked conflicts worldwide. Following repeated and extended European wars, peace treaties began incorporating the first human rights provisions, guaranteeing freedom of religion (Casey-Maslen 2021).[9]

It has been argued that pursuing human rights is an ancient struggle rooted in the necessity to protect individuals from abuses of power by rulers, tyrants, or the state. Reflecting on the thirtieth anniversary of the Universal Declaration of Human Rights in 1978, US President Jimmy Carter emphasized that the most fundamental human right is freedom from arbitrary violence, whether inflicted by governments, terrorists, criminals, or those claiming authority under political or religious banners. Despite these enduring truths, the right to life is a relatively recent development in international law. While the moral imperative against killing a person is clear, its formalization into a *"right"* presents more complex philosophical challenges (Casey-Maslen 2021).[10]

The Code of Hammurabi is the oldest known comprehensive legal code in antiquity. Enacted by King Hammurabi of Babylon around the mid-18th century BCE, the code aimed to promote the welfare of humanity by establishing safeguards to protect the weak from the strong. In ancient China during the 4th century BCE, Meng Zi, a follower of Confucian teachings, asserted the innate common humanity, moral value, inherent dignity, and goodness shared by all people. Similarly, the philosopher Xunzi of the same era advocated establishing communal life based on explicitly acknowledging individual rights as the most effective means to mitigate conflicts.

[9] Casey-Maslen, Stuart, and Christof Heyns. *The Right to Life Under International Law: An Interpretative Manual*. Cambridge University Press, 2021.
[10] Ibid

In contrast, Europe historically played a less prominent role in articulating rights or protections for the vulnerable. During the late third and early second centuries BCE, Stoic philosophers argued that ethical principles were inherent in natural law and applicable to everyone. Zeno of Citium, a key figure in Stoicism, emphasized every human life's intrinsic worth and dignity. In Roman law, the jus gentium, or the law of nations, recognized certain rights as universal. However, this early legal framework explicitly permitted slavery and sanctioned severe mistreatment of individuals, particularly non-Romans.

By the fifth century CE, Justinian's institutes articulated a commitment to justice as an unwavering dedication to acknowledging the rights of all individuals. The Qur'an similarly emphasizes the sanctity of life and the obligation of believers to respect all human beings, as mandated by Allah (Casey-Maslen 2021).[11]

- **Middle Ages, Renaissance, Modernity**

The Magna Carta, drafted in thirteenth-century England, did not explicitly include the right to life. However, it did establish the right to trial by jury and prohibited the use of force without judicial authorization, measures that inherently safeguard the right to life. Similarly, England's 1689 Bill of Rights did not mention the right to life but outlawed cruel and unusual punishments. Concurrently, during the Enlightenment period, philosopher John Locke's Two Treatises of Government, published in the late seventeenth century, asserted that every individual, regardless of circumstance, inherently possesses the right to freedom and enjoys all the rights of natural law equally with others. He argued that individuals have the natural power to defend their life, liberty, and property against infringement and to judge and punish violations of that law in others (Locke 2013).[12]

In his 1764 Philosophical Dictionary, Voltaire, who significantly influenced the spread of Locke's philosophy in France, praised the British Constitution for achieving a level of excellence where

[11] Ibid
[12] Locke, John. "Two Treatises of Government, 1689." *The Anthropology of Citizenship: A Reader*, edited by Sian Lazar, Wiley-Blackwell, 2013, pp. 43–46.

individuals were restored to their natural rights, including complete freedom of person and property.

The initial legal text explicitly stating the right to life was the 1776 Virginia Declaration of Rights in the United States. The declaration, primarily authored by George Mason, a Virginian plantation owner and politician (also an enslaver), was presented at the Fifth Virginia Convention in Williamsburg. Adopted unanimously on June 12, 1776, it affirmed that *"all men are naturally equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty."* (Calabresi 2015).[13]

The Virginia Declaration of Rights formed the foundation for Thomas Jefferson's initial draft of the Declaration of Independence, which mentioned *"rights inherent & inalienable, among which are the preservation of life."* After revisions by the other four members of the 'Committee of Five' (John Adams, Benjamin Franklin, Robert Livingston, and Roger Sherman), the second paragraph of the first article in the 1776 Declaration of Independence famously proclaimed, *"We hold these truths to be self-evident, that all men are created equal, that their Creator endows them with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."* The foundation of the Declaration of Independence was simple yet exquisitely put forward by the Americans: *"First come rights, and then comes government"* (Barnett 2019).[14]

Thomas Paine's *"Rights of Man"* argued that human rights are rooted in nature and emphasized that elected governments must protect families and their inherent rights. Along with Paine, other writers such as Edmond Burke propagated that human rights stem from national tradition rather than abstract metaphysical rights. Rousseau wrote down his philosophical treatise in the "*Social Contract,"* arguing that people can only be free when their laws govern them. In perpetual conflict, the social contract keeps our animalistic instincts at bay. The philosophy of human rights during

[13] Calabresi, Steven G., and Sarah E. Vickery. "On Liberty and the Fourteenth Amendment: The Original Understanding of the Lockean Natural Rights Guarantees." *Texas Law Review*, vol. 93, no. 6, 2015, pp. 1299–1452.
[14] Barnett, Randy E. "The Declaration of Independence and the American Theory of Government: First Come Rights, and Then Comes Government." *Harvard Journal of Law & Public Policy*, vol. 42, 2019, pp. 23–40.

the 18th and 19th centuries produced some of the most fantastic and brilliant theories, which were written down and passed on to generations.

In 1790, Mary Wollstonecraft published *"A Vindication of the Rights of Woman: with Strictures on Political and Moral Subjects,"* where she argued that women, as human beings, deserved the same fundamental rights as men, asserting, *"I shall first consider women in the grand light of human creatures, who, in common with men, are placed on this earth to unfold their faculties."* She further advocated that just as the abstract rights of men are open to discussion and explanation, so should women's rights withstand the same scrutiny (Avarvarei 2014).[15]

Following the First World War, safeguarding minority rights was a significant concern within the League of Nations. As described by Julius Stone in his 1932 publication *"International Guarantees of Minority Rights"* from Oxford University Press, the League implemented protections for minority members through general and specific treaties. For instance, Article 63 of the Treaty of Saint-Germain-en-Laye of 1919 required Austria to ensure complete protection of life and liberty for all its inhabitants, regardless of birth, nationality, language, race, or religion. Similarly, the Minorities Treaty 1919 saw Germany and Poland making analogous commitments regarding minorities in Upper Silesia (Nickel and Etinson, 2024). [16]

The human right to life typically commences at birth, though the American Convention on Human Rights explicitly safeguards it "*generally, from the moment of conception."* This right is effectively terminated at death, although the explicit definition or conceptualization of death itself remains unspecified. In Roman mythology, Janus was the deity symbolizing beginnings and endings, known as the *"god who looked both ways."* Similarly, the right to life spans both past and future considerations. When death is suspected to have occurred unlawfully, evaluating the right to life involves assessing whether the loss of life was arbitrary. Throughout life, this right requires protection, necessitating every reasonable effort to prevent avoidable deaths.

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[15] Avarvarei, Simona. "The 'Scratched' Self – Or the Story of the Victorian Female Self." *Linguistic and Philosophical Investigations*, vol. 13, 2014, pp. 535–548.

[16] Nickel, James, and Adam Etinson. "Human Rights." *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta, Fall 2024 Edition, Metaphysics Research Lab, Stanford University, https://plato.stanford.edu/archives/fall2024/entries/rights-human/. Accessed 16 Apr. 2025

On October 24, 1648, the Articles of the Treaties of Peace signed at Munster and Osnabruck, known as the Treaty of Westphalia, ended the Thirty Years War between Protestant and Catholic regions of Europe. While historically recognized for establishing the nation-state system and modern international law, the Treaty of Westphalia also holds significance for incorporating provisions now integral to human rights law. Firstly, it granted amnesty for all offenses committed during the conflict (art. II) and outlined procedures for the restitution of property and ecclesiastical or lay status (art. VI-XXXIV). Secondly, it affirmed principles such as freedom of contract by invalidating agreements obtained under duress or threats. The treaty also enshrined freedoms of movement, commerce, and the right to legal protection. Particularly noteworthy is Article XXVIII, which states:

> *That those of the Confession of Augsburg, and particularly the Inhabitants of Oppenheim, shall be put in possession again of their Churches, and Ecclesiastical Estates, as they were in the Year 1624. as also that all others of the said Confession of Augsburg, who shall demand it, shall have the free Exercise of their Religion, as well in public Churches at the appointed Hours, as in private in their own Houses, or others chosen for this purpose by their Ministers, or by those of their Neighbors, preaching the Word of God.*[17]

Spanning centuries of human knowledge and philosophical postulates, what began as a metaphysical quest for meaning developed swiftly into societal norms and laws that nation-states founded as incremental in building civilizations. There can be no development and progress without establishing a social contract that builds upon natural law and develops into a legal body that protects us from abuse and injustice.

1.2 Moral foundations on human rights theory

The most notable thesis of human rights, the “orthodox thesis” asserts that human rights are moral rights all humans possess by virtue of humanity. According to Tasioulas (2012) these theories are comprised of two main components, namely universality and natural reason.[18] While the former is more straightforward, the latter holds that human rights are intrinsically discerned from the

[17] Georgetown University Berkley Center. "The Peace of Westphalia: Sections I–XXVIII and LXXVII." *Berkley Center for Religion, Peace & World Affairs*, Georgetown University, n.d., https://berkleycenter.georgetown.edu/quotes/the-peace-of-westphalia-sections-i-xxviii-and-lxxvii. Accessed 16 Apr. 2025.
[18] Ibid

premise of natural reasoning rather than deriving from legal norms. Other authors like Griffin define "human rights as protections of our normative agency" (Griffin 2009, 9; cf. Ignatieff 2001, 57 in Follesdal 2017). [19]

The above description offered by human rights scholars emphasizes the core of the orthodox view. A deconstruction of the orthodox thesis emphasizes three core elements: moral foundation, universality, and natural reasoning.

(1) 'Human rights are moral rights…' (2) '…possessed by all human beings…' (3) '…simply in virtue of their humanity'.[20]

First and foremost, human rights are independent of socially constructed legal conventions. Secondly, its overarching universality applies to all humans regardless of, and third, their grounding on human traits, by the virtue of our humanity is a foundation of the moral philosophy on human rights.

When human rights theorists like James Griffin, Alan Gewirth, Maurice Cranston, John Tasioulas, Onora O'Neill, and John Simmons, analyze human rights, they all share the same foundation, although they differ in their beliefs as to which specific human rights we possess (Hussey 2015, 25). [21] Another interesting point which needs to be addressed is exactly the debate which confronts human rights with the "very important interest" of human rights, or what Tasioulas calls the 'reductive view'. This view reduces the importance of human in rights, placing a much bigger emphasis on the latter, while trying to identify an exhaustive list of universal interests. Alan Gewirth, notes that 'human rights are a species of moral rights', meaning they are a distinct category of moral rights, whose foundation is morality rather than legal, political, or social. The justification for human rights does not depend on their formal inclusion in any treaty or declaration (in Hussey 2015, 31).[22]

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[19] Føllesdal, Andreas. "Theories of Human Rights: Political or Orthodox—Why It Matters." *Moral and Political Conceptions of Human Rights: Implications for Theory and Practice*, edited by Reidar Maliks and Johan Karlsson Schaffer, Cambridge University Press, 2017, pp. 77–96.
[20] Ibid
[21] Hussey, Simon. *Challenging the Orthodox View of Human Rights*. Doctoral dissertation, University of Oxford, 2015.
[22] Ibid

In scholarly work a lot of time and effort has been put towards the explanation of differences between morality and law. Nevertheless, it seems that these distinctions are contingent on the distinctions between moral duties and legal duties, so in order to get a deeper understanding of the debate on human rights, we need to briefly redirect our analysis to human duties.

When Herbert George Wells asked Mahatma Gandhi for an opinion on his The Rights of Man: or What Are We Fighting For?, Gandhi replied with these words: You will permit me to say that you are in the wrong track. (...) Begin with a charter of Duties of Man (both M and D capitals) and I promise the rights will follow as spring follows winter (in Biasetti 2014, 1042).[23]

Moral duty is closely intertwined with moral right, as it is the pulling force behind our reasoning and the limiting factor of our egoistical self-interest. Bentham's utilitarian approach holds that natural rights are absurd and the only source of human rights is the law (the existence of political power is a prerequisite for establishing real rights according to him), as mentioned below:

"Right, is the child of law : from real laws come real rights; but from imaginary laws, from imaginary, from laws of nature fancied and invented by poets, rhetoricians, and dealers in moral and intellectual poisons, come imaginary rights, a bastard brood of monsters" (in Harrar 2008, 4).[24]

The distinctive moral dimension of human rights is an analysis that goes beyond Bentham's utilitarianism, which evolves around the domain of interest or capabilities. Both interests and capabilities are individualistic, but the overarching pedigree of morality of rights is much more than just consequentialism (Sinnot-Armstrong, 2023).[25]

Maximizing consequentialism, which analyses the best consequences, along with a reductionist view on human rights, has contributed to the inflation of human rights to the extent that the

[23] Biasetti, Pierfranco. "Rights, Duties, and Moral Conflicts." *Etica e Politica*, vol. 2, 2022, pp. 1042–1062.. 2014.
[24] Harrar, Souad Chaherli. "Mill's Conception of Human Rights." *ISUS-X: Tenth Conference of the International Society for Utilitarian Studies*, 3 Sept. 2008, University of California, Berkeley. eScholarship. Accessed 16 Apr. 2025.
[25] Sinnott-Armstrong, Walter. "Consequentialism." *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta, Winter 2023 Edition, Metaphysics Research Lab, Stanford University, https://plato.stanford.edu/archives/win2023/entries/consequentialism/. Accessed 16 Apr. 2025.

emphasis is more on the 'rights' than on the 'human', thus bringing human rights farther away from moral philosophy and into a more practical approach.

In a world of conflicting loyalties and troublesome moralities, one cannot be assured of a binding natural force of humanity just for the sake of its virtues. For this reason, legal forces were deployed into this battleground, establishing the Universal Declaration on Human Rights, Conventions, Courts, state institutions, organizations, NGOs, which help enforce human rights.
Hence, according to Tasioulas (2012, 41), the orthodox natural thesis has developed over time into:

> *"Human rights are moral rights, possessed by all human beings simply in virtue of their humanity, and regarding which there are always pro tanto reasons to enact them as legally enforceable rights."*[26]

In ethical or philosophical discussions, a 'pro tanto' reason is a reason that contributes to the justification of an action or belief, but it may be outweighed or countered by other reasons in a different context, the so-called "competing reasons". Philosophically, this kind of reasoning is crucial in balancing conflicting moralities, be they rights or duties (Tasioulas 2007).[27] The most recent example is the overriding reasoning behind COVID-19's competing rights and duties. On the one hand, movement was restricted which infringed on our freedom of movement, and on the other hand, the duty of the state to protect the public's health, which in retrospect proved to be a more compelling duty. The COVID-19 pandemic has emphasized how different human rights can come into conflict, and how decisions about protecting one right may sometimes undermine or challenge the protection of others. The challenge lies in balancing these competing reasons to ensure that all human rights are respected while addressing urgent public health concerns.

The competing reasons that resulted from the COVID-19 pandemic showed that humans had been taking rights for granted and highlighted how influential the utilitarian approach is on human rights. During the pandemic, restrictions that maximized public health were supported, even if they

[26] Tasioulas, John. "On the Nature of Human Rights." *The Philosophy of Human Rights: Contemporary Controversies*, edited by G. Ernst and J. Heilinger, De Gruyter, 2012, pp. 17–60.
[27] Tasioulas, John. "The Moral Reality of Human Rights." *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor*, edited by Thomas Pogge, Oxford University Press, 2007, pp. 75–102.

temporarily limited the freedom of movement (the utilitarian approach). But who made sure that the benefits of such an approach were evenly distributed? For instance, online education was not accessible to marginalized groups, which consequently contributed to widening the educational gap (Irvin et al 2023). [28] The kind of approach to human rights that bases itself on "interest" fuels our desires as humans bringing us further away from our needs. What humanity needs ideally is less interest and more justice and fairness. What human rights need is more moral duties and values based on needs rather than desires, the former being essential while the latter not inasmuch.

Human rights have evolved over the last century into a juridical positivism. Using reasoning, man has rationalized reality and realized rationality, to cite Descartes' famous *"Cogito, ergo sum."* It is precisely this power of reason that has drifted man away from nature. Positivists extract the foundations of rights from the artificial manmade laws of the state. When Hobbes argued that *"A free man is he, that in those things, which by his strength and wit, can do; he is not hindered from doing what he has the will to do,"* he laid the foundation for a positivist approach to human rights. According to Haule moral values are less important as long as actions are not based on moral values but by sanctioning the law (Haule 2006, 374).[29] However, can rights be seen through the same lens as the law? Are they the same thing? Should not justice and morality stem from something more significant than state authority, or is the latter making the law and holding the rightfulness over truth?

Nevertheless, modernity has changed things. Haule argues that three traits characterize our modern society: pluralism, secularism, and pragmatism. I am more interested in the latter as it further conveys my thesis that man is being stripped away from his nature. Pragmatism is a focus on the doing rather than on the being. This conflicting urge to base our lives on the product of our own "being" is what Heidegger refers to when he uses the words *"forgetfulness of being"* (Haule 2006, 377).[30] Today, more than ever in the digital age, we see the systematic sickness of this alienation

[28] Irvin, Risha, et al. "A Path Forward: COVID-19 Vaccine Equity Community Education and Outreach Initiative." *Health Security*, vol. 21, no. 2, 2023, pp. 85–94.
[29] Haule, Romuald R. "Some Reflections on the Foundation of Human Rights—Are Human Rights an Alternative to Moral Values?" *Max Planck Yearbook of United Nations Law*, vol. 10, 2006, pp. 367–395
[30] Ibid

slowly killing us. Our direction is not pointed toward our core moral values, human instincts, and reasoning, but is influenced by the affluent society.

Perhaps it is the rigid legal infrastructure of human rights that has slightly drifted us away from the 'natural' in rights, creating artificial distinctions. That is because most human rights are accompanied by some duties that are only sometimes legally enforceable. As Amartya Sen (2005) has pointed out the legislative route is only one of the many pathways towards implementing human rights.[31] He uses the example of the moral entitlement of a slow speaker not to be snubbed in public by a rude articulate sprinter, which is important for both the self-respect of the leisurely speaker and for the public good. However, it is likely to be a bad subject for punitive legislation (Ernst and Heilinger 2011, 43).[32]

In jurisprudence and moral philosophy, two major perspectives have historically addressed human rights: natural rights and legal positivism. The natural rights viewpoint, championed by the likes of Aristotle, Plato, the Stoics, St. Thomas Aquinas, and modern social contract theorists like John Locke and Jean-Jacques Rousseau, holds that a political or legal system cannot be deemed legitimate unless it recognizes, respects, or embeds in its constitution certain inherent rights owed to all human beings simply by virtue of their humanity. These rights are seen as immutable and non-revocable, often described in modern constitutional language as "entrenched" rights (Benhabib 2007, 18).[33] These engrained rights cannot be subject to political whims and legislators by virtue. Nonetheless, practice begs to differ.

Humans have harbored feelings of hatred, such as detestation and ill will, toward one another throughout history. For instance, in AD 83–84, the Caledonian leader Calcagus referred to the Romans as conceited "robbers of the world" who create "desolation" by looting, killing, and stealing and then label it "peace." Similarly, Hegel highlighted "the imperative of right" by stating:

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[31] Sen, Amartya. "Human Rights and Capabilities." *Journal of Human Development*, vol. 6, no. 2, 2005, pp. 151–166.
[32] Ernst, Gerhard, and Jan-Christoph Heilinger, editors. *The Philosophy of Human Rights: Contemporary Controversies*. De Gruyter, 2011.
[33] Benhabib, Seyla. "Another Universalism: On the Unity and Diversity of Human Rights." *Proceedings and Addresses of the American Philosophical Association*, vol. 81, no. 2, 2007, pp. 7–32. American Philosophical Association.

"be a person and respect others as persons" (in Mullender 2012).[34] So did the other famous German philosopher Immanuel Kant, whose principle of right referred to your freedom as a moral being that can be restricted only by reasons that would generally and reciprocally apply to each (Moka-Mubelo 2016).[35] Kant claims that, "There is Only One Innate Right" i.e., freedom, understood as "independence from being constrained by another's choice" (Caranti 2012).[36] But what is it that deprives human rights from its moral foundations? In the work of Joseph Raz (2007) "Human Rights without foundations" he attributes this merit to the political dogma, which has contributed to our estrangement from the traditional (moral) view of human rights. [37]

The extraterritorial moral activism resulting in political and military interventions from the West with the goal of democratizing the East has also contributed to the inflation of the human rights concept (Ignatieff, 2011).[38] Raz suggests that rights cannot be universal because of the socioeconomic structure of one society. One does not value rights equally because of the influence of economics and societal components. Hence, his thesis is that assigning all people the same rights is not correct. But this is a political statement of human rights. True, societies differ and are so diverse, especially in our age, but the binding force of togetherness remains our human values. That is, one cannot simply, by pure socio-economic factors, decide not to provide the right to education to a society simply because that society does not value this right. Education is a fundamental aspect of human life and prosperity and, as such, should be enforced by institutions regardless of what value people assign to it.

Schaber (2012) argues that it should not be a concern whether states respect human rights based on notions of Kantian morality or utilitarianism as long as they respect them.[39] He goes on to say

[34] Mullender, Richard. "Hate Speech, Human Rights, and G. W. F. Hegel." *Handbook of Human Rights*, edited by Thomas Cushman, Routledge, 2012, pp. 45–58.
[35] Moka-Mubelo, Willy. *Reconciling Law and Morality in Human Rights Discourse: Beyond the Habermasian Account of Human Rights*. Springer, 2017.
[36] Caranti, Luigi. "Kant's Theory of Human Rights." *Handbook of Human Rights*, edited by Thomas Cushman, Routledge, 2012, pp. 35–44.
[37] Raz, Joseph. "Human Rights Without Foundations." *The Philosophy of International Law*, edited by Samantha Besson and John Tasioulas, Oxford University Press, 2010, pp. 321–338.
[38] Ignatieff, Michael. *Human Rights as Politics and Idolatry*. Edited and introduced by Amy Gutmann, Princeton University Press, 2001.
[39] Schaber, Peter. "Human Rights Without Foundations?" *The Philosophy of Human Rights: Contemporary Controversies*, edited by Gerhard Ernst and Jan-Christoph Heilinger, De Gruyter, 2012, pp. 61–72.

that the emphasis should be put on the moral point of view. The justification of rights differs in different cultural backgrounds, but this does not mean there is no common justification for human rights. One does not exclude the other; on the contrary, the former is a political standpoint on human rights, and the latter is a matter of morality, and morality is the foundation of human rights. It was Kant who observed that there is a distinction between the "political moralist," who misuses moral principles to justify political decisions, and a "moral politician," who tries to remain faithful to moral principles in shaping political events.

The mixed account of the political and moral conception of human rights has produced, over time, more "political moralists" who use human rights often for their political agendas (Wood 2014).[40] Human rights should not and cannot be objects in the hands of politicians, but should be given back to humans, as agents of normative authority. That is because human rights in virtue of our humanity are ascribed to humans as purveyors of agency.

As Karl Popper (2012), another great figure of philosophy puts it in The Open Society and Its Enemies: "What we need and what we want is to moralize politics, not to politicize morals."[41] What we have been doing is exactly contrary to Popper's thesis. Politicians worldwide claim to be the harbinger of morality fueling morality in the political discourse for the sake of personal political gains. Politics needs to be shaped by moral values and ethical reasoning rather than reducing moral questions to tools for political conflict or manipulation.

The pioneer of the political conception of human rights, John Rawls (1999, 79), argued that:

> *"human rights are a class of rights that play a special role in a reasonable Law of Peoples: they restrict the justifying reasons for war and its conduct, and they specify limits to a regime's internal autonomy."*[42]

[40] Wood, Allen W. *The Free Development of Each: Studies on Reason, Right, and Ethics in Classical German Philosophy*. OUP Oxford, 2014.
[41] Popper, Karl, Ernst Hans Gombrich, and Václav Havel. *The Open Society and Its Enemies*. London, Routledge, 2012.
[42] Rawls, John. *Collected Papers*. Edited by Samuel Freeman, Harvard University Press, 1999.

While the role of the political approach is to define what it means for a right to be a human right, the moral approach seeks to direct the emphasis on the justification of human rights. Nevertheless, again, the human rights debate cannot seem to escape the traps of naturalistic fallacy, possessive individualism, political conceptions, for which Benhabib (2007, 14) argues:

> *"In order to be able to justify to you why you and I ought to act in certain ways, I must respect your capacity to agree or disagree with me based on reasons the validity of which you accept or reject. However, to respect your capacity to accept or reject reasons the validity of which you evaluate means for me to respect your capacity for communicative freedom."*[43]

According to Diderot, our primary moral status is what justifies our individual rights, and it is participation that appoints moral status: "It is for the general will to determine the limits of all duties. You have the most sacred natural right to everything not resisted by the whole human race… Say to yourself: 'I am a man, and I have no other truly inalienable natural rights except those of humanity'" (Debes 2018).[44] That is why the importance of agency and communication is crucial in the right to have rights debate, as it begets the recognition of your identity as diverse as the other (Benhabib 15). [45]

One cannot simply acknowledge someone else's right to have rights only on the basis of us being the same because that means denying one's individuality, and the same goes with denying common human values, hence humanity, when one neglects to recognize rights just because one is different. When trying to define universalism, Behhabib infuses a locus of our everyday experiences across diversity, conflict, and struggle, arguing that universalism is not granted just by our virtues of being human but especially from the diverse experiences we share throughout agency and communication. Benhabib calls it the 'legal constitution of a discursive procedure of legislation' (21), where people use their normative authority in an amalgamation with legal and political institutions to produce goodwill laws that regulate our lives. [46]

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[43] Benhabib, Seyla. "Another Universalism: On the Unity and Diversity of Human Rights." *Proceedings and Addresses of the American Philosophical Association*, vol. 81, no. 2, 2007, pp. 7–32.
[44] Debes, Remy. "Dignity Is Delicate." *Aeon*, 17 Sept. 2018, https://aeon.co/essays/human-dignity-is-an-ideal-with-remarkably-shallow-roots. Accessed 16 Apr. 2025.Aeon+2Humanistic Management International+2PMC+2
[45] Benhabib, Seyla. "Another Universalism: On the Unity and Diversity of Human Rights." *Proceedings and Addresses of the American Philosophical Association*, vol. 81, no. 2, 2007, pp. 7–32.
[46] Ibid

Griffin (2008, 45) argues that the concept of 'normative agency' makes humans act for reasons against a background of what they see as a good life, or simply put because we value certain things, we protect them as a consequence.[47] Getting a good grade for this paper might be of high value to me, but that does not give me the right to get a good grade. So, while values give us reason, it is rights that contain duties within these reasons that constitute the rights' realm. If I value a good grade on this paper, it is my duty to work hard for it.

Furthermore, Douzinas (2007, 24) writes that human rights are supposedly above politics, but in his Nietzschean interpretation of the demise of human rights, he paraphrases the famous quote from the philosopher: "If God, the source of natural law, is dead, he has been replaced by international law."[48] Hence, our struggle remains one of contemplation and self-reflection whether we want to equate morality with the law and politics or we want to go back to our natural intrinsic values, which can, in turn, produce more "beings" than "doers," more morality in politics than political moralists.

In the Universal Declaration of Human Rights, a passage reads: "that all human rights derive form the dignity and worth inherent in the human person". So, our quest is one of restoring human dignity by putting back moral philosophy to human rights. Human dignity is the kind of worth everyone has and has equally. As Kant (1785) pointed out in his Groundwork for the Metaphysics of Morals :"Whatever has a price can be replaced by something else as its equivalent; on the other hand, whatever is above all price, and therefore amidst of no equivalent, has a dignity." (Moka-Mubelo 2016). [49]

In this context, human dignity is conceived as an equal moral status for all human beings. Dignity is not an old concept but relatively young, writes Remy Debes (2018), as used first by the Christian Renaissance writer Giovanni Pico, then Kant and Diderot.[50] Nevertheless, it has come to be

[47] Griffin, James. *On Human Rights*. OUP Oxford, 2008.
[48] Douzinas, Costas. *Human Rights and Empire: The Political Philosophy of Cosmopolitanism*. London, Routledge-Cavendish, 2007.
[49] Moka-Mubelo, Willy. *Reconciling Law and Morality in Human Rights Discourse: Beyond the Habermasian Account of Human Rights*. Springer, 2017.
[50] Debes, Remy. "Dignity Is Delicate." *Aeon*, 17 Sept. 2018, https://aeon.co/essays/human-dignity-is-an-ideal-with-remarkably-shallow-roots. Accessed 16 Apr. 2025.

ubiquitous, especially in the Western world discourse, where it has been marketed and sold massively. This creates a tension of morality as the West itself has been trumpeting a moral higher status and values while practicing slavery, colonialism, imperialism, racism, etc. That is to say that human dignity loses its inherent worth when used as a propaganda tool, and to paraphrase Kant; nothing remains above all price if there comes a time when a price can be put on everything, even on dignity.

So where does this leave us in our humble attempt to bring back moral values to human rights if even human dignity is polluted by the allures of politics? I believe that it should leave all of us with drops of humility, in the reassuring feeling of hope that through agency and communication, we can all be civil participants in accepting the hard truths: that there is still much to learn and so much more to do better; to restore human values and morality as a core foundation to our conceptualization of human rights, albeit above all to establish a more profound, much deeper commitment to the process of our 'being,' being a human, being an individual, being a parent, a spouse, a member of a community, a member of a society, a member of the world, sons and daughters of the almighty nature.

Nature is diverse, awe-inspiring, adaptive, interconnected, resourceful, regenerative, and harmonic, just to name a few values, and we come from it, so there is no reason to believe we are not able to dignify the same values. It is our duty to do so. After all, the issue of human rights debate should not be the playground of only philosophers, politicians, and legislators but an overarching dignifying process where we are all co-contributors.

2. Overview of the Right to Life in International Law

Jus cogens and ergo omnes (customary law and treaty law).

Humanity's physical existence must be safeguarded as a jus cogens norm, which states cannot deviate from, even in times of extreme emergency or open warfare. Concurrently, the "right to living" requires the maintenance of a minimum quality of life. Governments are legally obligated to ensure minimum subsistence levels. While determining these levels must be case-specific, the critical point is that governments must adopt policies to guarantee access to survival resources for all individuals within their territory.

Related areas, such as the right to peace, survival, and a safe environment, are pertinent. Environmental hazards cannot be downplayed, as the connection between the right to live and a clean environment is inseparable. States have a strict duty and a legal obligation - a right ergo omnes - that extends to the international community. Consequently, global and regional organizations must take measures to prevent failures that threaten human lives. Thus, human rights are crucial to protecting human life domestically and internationally (Gormley 1987).[51]

2.1 The United Nations System: UDHR, ICCPR, ICESCR

It was not until 1945 that essential human rights, including the right to life, were formally incorporated into international law. The aftermath of the Second World War led to adopting the United Nations Charter (UN Charter). The preamble of the Charter expressed the collective resolve of the UN member states to *"reaffirm faith in fundamental human rights"* and to recognize *"the dignity and worth of the human person."*[52]

One of the stated goals of the United Nations is to foster international cooperation in *"promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."* Additionally, UN member states commit to *"take joint and separate action"* in collaboration with the United Nations to achieve *"universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."* However, beyond addressing the prohibition of discrimination, the Charter does not specify which human rights and fundamental freedoms must be respected. Thus, more than the Charter alone was needed to address specific rights. For this reason, the Universal Declaration of Human Rights in 1948 addressed this notable gap.

Article 3 of the Declaration asserts that *"everyone has the right to life, liberty, and security of person."*[53] While the Declaration is considered a soft-law instrument without direct legally binding power, many of its articles reflect customary law. That same year, the UN General Assembly

[51] Gormley, W. Paul. "The Right to Life in International Law." *Denver Journal of International Law and Policy*, vol. 16, no. 1, 1987, p. 10.
[52] United Nations. *Charter of the United Nations*. 1945, https://www.un.org/en/about-us/un-charter/full-text.
[53] United Nations. *The Universal Declaration of Human Rights*. 1948, https://www.un.org/en/about-us/universal-declaration-of-human-rights.

adopted the Convention on the Prevention and Punishment of the Crime of Genocide.[54], which is a treaty with explicit legal obligations to prevent and punish severe violations of the right to life committed with the intent to destroy, in whole or in part, a minority. Notably, the Convention itself does not explicitly mention the right to life.

Adopted just a year later, the four 1949 Geneva Conventions prohibit the willful killing of *"protected persons"* in international armed conflicts, including sick, wounded, or shipwrecked combatants and civilians in occupied territories, classifying such acts as crimes of universal jurisdiction. In non-international armed conflicts, Article 3, common to the 1949 Geneva Conventions, states that *"violence to life and person, especially murder of all kinds"* against anyone *"not actively participating in hostilities."*[55]

It is strictly prohibited at all times and places. Additionally, executions carried out without a prior judgment from a regularly constituted court with essential judicial guarantees are forbidden and constitute war crimes under the jurisdiction of the International Criminal Court. Although the Geneva Conventions are primarily international humanitarian law rather than human rights treaties, their provisions effectively protect the lives of those not directly involved in hostilities during armed conflicts.

The American Declaration on the Rights and Duties of Man, also known as the Bogota Declaration, was adopted on May 2, 1948, seven months before the Universal Declaration of Human Rights. Article I states, "*Every human being has the right to life."* [56] In 1950, the European Convention on Human Rights, a regional treaty adopted by the Council of Europe, explicitly recognized the right to life, asserting that *"everyone's right to life shall be protected by law"* and that no one shall be intentionally deprived of life except in execution of a court sentence for a crime. As of May 1, 2021, forty-seven states were party to the Convention. However, it wasn't until 1966, with the

[54] United Nations. *"Atrocity Prevention and Responsibility to Protect."* United Nations, n.d., https://www.un.org/en/genocideprevention/documents/atrocity-.
[55] "Geneva Conventions." *Encyclopaedia Britannica*, Encyclopaedia Britannica, Inc., n.d., https://www.britannica.com/event/Geneva-Conventions.
[56] Organization of American States. *American Declaration of the Rights and Duties of Man*. 1948, https://www.oas.org/en/iachr/mandate/Basics/american-declaration-rights-duties-of-man.pdf.

adoption of the International Covenant on Civil and Political Rights by the UN General Assembly, that the right to life was established as a global treaty norm in the modern era.

A treaty is the foremost of the three primary sources of international law listed in the Statute of the International Court of Justice, which the Court must apply to resolve disputes about international law principles. Treaties, described as *"international conventions, whether general or particular,"* are defined in the 1969 Vienna Convention on the Law of Treaties as *"international agreements concluded between States in written form and governed by international law, whether contained in a single instrument or multiple related instruments, regardless of their particular designation."*[57]

For this study, we shall engage in a literature review of the right to life sanctioned by international law. This review aims to offer a more overarching perspective on the variety of norms, be they universal, regional, or local, that constitute the legislative corpus that defends our most essential rights. Understanding how our world works requires knowledge of what history teaches us. In this context, we stand to learn and live a free and protected life because of the historical struggle of generations.

In a blissful world, humanity would have evolved by protecting human rights a priori as fundamental and universal through enforced international treaties. Part of Rousseau's philosophy stems from the idea that our inherent right to live makes the social contract we are part of. We give up freedom for the sake of security. However, humanity would have to wait until the violent and vehement force was used against one another in shocking acts of barbarism to recognize that the inherent dignity and equal, inalienable rights of all members of the human family form the foundation of freedom, justice and peace worldwide, are deemed necessary to protect human rights, including the right to life, through legal provisions.

[57] United Nations. *Vienna Convention on the Law of Treaties*. 1969, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

Thus, on December 10, 1948, the United Nations General Assembly adopted and proclaimed the Universal Declaration of Human Rights (UDHR)[58] It is the fundamental international document outlining all human family members' indivisible and inalienable rights. The UDHR comprises 30 articles and is now part of the legislation in many countries, setting a standard for all nations to strive for these rights.

The Declaration was announced as a *"common standard of achievement for all peoples and all nations"* to respect human rights. Article 3 of the Declaration states, *"Everyone has the right to life, liberty, and personal security,"* giving universal importance to the concept of the right to life. This complements Article 1, which states, *"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood,"* thus affirming the right to life. This article further fulfills the meaning and scope of Article 1 by specifying three fundamental rights: the right to life, liberty, and personal security. These three rights form the foundation of human rights, serving as a starting point without which the existence and continuity of humanity are not guaranteed.

While all three rights in Article 3 of the UDHR are significant, the right to life is inalienable and viewed as such; the right to live one's life is individual and irreplaceable, belonging solely to the person, and cannot be delegated to anyone else. In this lens, Article 3 of the UDHR addresses the right to life from two perspectives:

1. Life is treated as a value and necessity, emphasized in the first part of the article, stating, "Everyone has the right to life," highlighting its individual and inalienable nature.
2. Life is seen as a universal value alongside liberty and security: "Everyone has the right to liberty and personal security," indicating that personal liberty is dependent on but not conditional upon others' liberty. Personal security is understood as the assurance of necessary freedom to realize the right to life under conditions that do not alienate or deform the human .[59]

From the perspective of our study, the critical question that arises and points to the elephant in the room is: From what moment does the Declaration begin to protect the right to life, from conception

[58] United Nations. *Universal Declaration of Human Rights*. United Nations, 1948, https://www.un.org/en/about-us/universal-declaration-of-human-rights.
[59] Office of the United Nations High Commissioner for Human Rights. *International Human Rights Instruments: Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*. United Nations, n.d., https://www.ohchr.org/sites/default/files/Documents/Publications/Compilation1.1en.pdf.

or birth? Different viewpoints exist regarding when life protection begins. Some experts argue that protection starts at conception, condemning induced abortion. Others say that life protection begins at birth. Answers might vary indefinitely over time. Still, the real debatable issue here is the deep divide between those who value the sanctity of life and those who value the quality and autonomy of it.

The recognition of equal and inalienable rights of the human race is the cornerstone of freedom, justice, and peace in the world, stemming from the inherent dignity of every person. Individuals can only enjoy civil and political liberties if the states responsible for promoting universal and effective respect for human rights create the conditions that allow these rights to be enjoyed. Thus, on December 16, 1966, the United Nations General Assembly adopted the International Covenant on Civil and Political Rights (ICCPR)[60]. This Covenant stipulates that individuals have duties to others and the community to respect the rights recognized within it. It addresses fundamental civil and political liberties that state parties must guarantee to all individuals under their jurisdiction. State parties must take necessary legislative measures to implement the recognized rights in line with the Covenant's procedures (Oette and Oberleitner 2018).[61]

The core principle of the Covenant is non-discrimination, requiring state parties to respect and ensure all individuals within their territory and jurisdiction enjoy the rights recognized in this Covenant, regardless of race, color, sex, language, etc. The Covenant also affirms gender equality between men and women. It does not permit any restriction or deviation in respecting fundamental human rights recognized by laws, conventions, acts, or other customs. It specifies the civil and political rights that state parties are committed to ensuring for all individuals without discrimination. These include the right to life, freedom from torture or cruel, inhuman, or degrading treatment or punishment, the right to liberty and security, the humane treatment of persons deprived of liberty, the right to move freely within the territory, and the right to a fair trial.

[60] United Nations. *International Covenant on Civil and Political Rights*. 1966, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.
[61] Oette, Lutz. "The UN Human Rights Treaty Bodies: Impact and Future." *International Human Rights Institutions, Tribunals, and Courts*, edited by Gerd Oberleitner, Springer, 2018, pp. 95–115.

The ICCPR is a legally binding instrument obligating states to commit to respecting the human rights outlined in the UDHR (Megret 2010).[62]

Article 6, paragraph 1 of the Covenant addresses the right to life: *"The right to life is an inherent right of the human person. This right shall be protected by law. No one shall be arbitrarily deprived of their life."* This article emphasizes that the right to life cannot be arbitrarily infringed upon, as individuals have this right from birth. The right to life is only limited by the imposition of the death penalty in states where domestic legislation permits it. Regarding the death penalty, paragraph 2 of Article 6 states: "*In countries which have not abolished the death penalty, it may be imposed only for the most serious crimes by the law in force at the time of the commission of the crime and not contrary to the provisions of this Covenant and the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be imposed under a final judgment rendered by a competent court."* Therefore, paragraph 2 establishes that an individual can only be deprived of the right to life through a final judgment by a competent court.

In cases where the deprivation of the right to life constitutes a crime of genocide, state parties to the Covenant must adhere to the obligations under the Convention on the Prevention and Punishment of the Crime of Genocide. Additionally, the Covenant stipulates that those sentenced to death have the right to seek pardon or commutation of the sentence. Paragraph 4 of Article 6 states, *"Amnesty, pardon, or commutation of the death penalty may be granted in all cases."* The Covenant restricts the application of the death penalty to specific categories of persons. According to paragraph 6 of this article: *"The death penalty shall not be imposed for crimes committed by persons under 18 years of age and shall not be carried out on pregnant women."*

The International Covenant on Economic, Social, and Cultural Rights was a treaty adopted by the United Nations General Assembly in December 1966 and entered into force in 1976.[63] Its purpose is to recognize, proclaim, and regulate human rights related to economic, social, and cultural

[62] Mégret, Frédéric. "Nature of Obligations." *International Human Rights Law*, edited by Daniel Moeckli, Sangeeta Shah, and Sandesh Sivakumaran, Oxford University Press, 2010, pp. 124–149.
[63] United Nations. *International Covenant on Economic, Social and Cultural Rights*. 1966, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights.

aspects. Human rights are categorized into two main groups: Civil and Political Rights and economic, Social, and cultural rights. The first group (Civil and Political Rights) includes fundamental personal rights such as the right to life, physical integrity, and religious freedom, addressed by the International Covenant on Civil and Political Rights.

The second group (Economic, Social, and Cultural Rights) involves ensuring equal rights for individuals to participate in their country's social, cultural, and economic life. Ensuring the first group of rights requires states to avoid interfering in personal lives and to establish mechanisms to address violations. In contrast, securing the second rights group necessitates active state involvement in developing and implementing agreements. Given that the right to life begins at birth and is linked to several other rights, this Covenant plays a crucial role in realizing the right to life.

The Covenant directly protects the right to life, as stated in Article 12, paragraph 2, which states that the measures taken by states must include efforts to reduce stillbirths and infant mortality and promote the healthy development of children. This obligation requires member states to establish measures to achieve these goals. Other economic, social, and cultural rights also indirectly influence the right to life. For instance, the right to adequate healthcare is critical—if inadequate or delayed healthcare leads to death, it deprives an individual of their right to life.

The Covenant is open to new accessions, with the procedure outlined in Article 26. Paragraph 1 states that it is available for signature by any United Nations member state or specialized agency, any state party to the International Court of Justice Statute, and other states invited by the General Assembly. As an international legal document, it requires ratification, with the instruments of ratification deposited with the UN Secretary-General. Paragraph 3 specifies that it remains open for accession by any state mentioned in paragraph 1. Paragraph 4 details that accession is achieved by depositing an instrument of accession with the UN Secretary-General, who will notify all states that have signed or acceded to the Covenant of each ratification or accession. Currently, 173 states

have ratified this significant human rights instrument. Albania has been a full member of the Covenant since April 9, 1991 (Human Rights Watch).[64]

2.2 The European System of Human Rights

The European human rights system is structured on three levels: the Council of Europe, the Organization for Security and Co-operation in Europe (OSCE), and the European Union. The European Human Rights system emerged in response to the widespread human rights abuses during World War II. The European legal framework is fundamentally based on human rights, the rule of law, and pluralistic democracy. Both the Council of Europe and the European Union have developed legislation that ensures the recognition and protection of human rights within the European legal context (Kelemen and Pavone, 2018).[65]

Following World War II, the Council of Europe was established in 1949 to create a shared democratic and legal space dedicated to safeguarding fundamental human rights and freedoms. In pursuit of this goal, the High Contracting Parties adopted the European Convention on Human Rights (ECHR) in Rome in 1950.[66] The ECHR was the Council of Europe's first primary legal instrument addressing human rights protection. Since its inception, the Convention has been amended and expanded multiple times, serving as a foundation for developing numerous other conventions under the Council of Europe's auspices. Additionally, supplementary protocols have enhanced the Convention, reinforcing the mechanisms for human rights protection.

The European Union initially focused on economic integration without addressing civil and social rights and evolved to prioritize fundamental human rights due to social and economic shifts. This led to adopting the Charter of Fundamental Rights on December 7, 2000, in Nice, marking the EU's first formal document encompassing civil, political, economic, and social rights.[67] Given the

[64] Human Rights Watch. *World Report 1992: Human Rights Watch Report on Global Developments*. 1992, https://www.hrw.org/reports/1992/WR92/HSW-01.htm.
[65] Kelemen, R. Daniel, and Tommaso Pavone. "Mapping European Law." *The European Union at an Inflection Point*, edited by Kyriakos N. Demetriou, Routledge, 2018, pp. 10–30.
[66] Council of Europe. *European Convention on Human Rights*. https://www.coe.int/en/web/human-rights-convention. Accessed 9 Mar. 2025.
[67] European Parliament. *Charter of Fundamental Rights of the European Union*. 2000, https://www.europarl.europa.eu/charter/pdf/text_en.pdf. Accessed 9 Mar. 2025.

importance of the EU and the Council of Europe, their legal frameworks and human rights protections will be discussed separately.

The European Union is built on core values such as respect for human dignity, freedom, democracy, equality, the rule of law, and human rights (Article 2 TEU)[68]. However, as noted earlier, the original treaties lacked explicit recognition of fundamental human rights. The European Court of Justice (ECJ) played a pivotal role in identifying and advancing these rights, with its rulings later affirmed by the treaties. The Court had to address the gaps in the treaties by continually developing human rights protections until they were formally acknowledged in the treaties. For a considerable period, the European Community gave limited attention to fundamental human rights. The 1957 founding treaties of the European Community did not include provisions for human rights protection, as the focus was on establishing an economic union. This meant individuals were recognized not as human beings but as workers or economic participants within the broader economic framework of interacting states.

The 1957 founding treaties did not technically contain any human rights protection clauses and did not require Community institutions to uphold these rights in their activities. The EU legal order also references the European Convention on Human Rights. Fundamental rights first appeared in the European Union's founding treaties, including the free movement of goods, people, services, and capital and the prohibition of discrimination based on nationality and gender. These fundamental freedoms were crucial in achieving the common market, a key goal for the states that signed the treaty (Barnard and Peers, 2023).[69]

Initially, some EU member states were reluctant to adopt a treaty focused on human rights protection, concerned that including a document on Fundamental Rights would remove constraints on the Community's institutions, allowing them to address economic and political issues. The Maastricht Treaty introduced Article "f" (now Article 6), which states in paragraph 2 that the European Union respects fundamental rights as guaranteed by the 1950 Treaty of Rome on human

[68] European Union. *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*. 2007, https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF. Accessed 9 Mar. 2025.
[69] Barnard, Catherine, and Steve Peers, editors. *European Union Law*. Oxford University Press, 2023.

rights and fundamental freedoms, as well as the common constitutional traditions of its member states, treating them as general principles of Community law.

The Amsterdam Treaty later revisited this issue, enhancing the importance of fundamental rights within the EU framework and ensuring their protection in various ways. The revised Article "f" of the EU Treaty refers to "principles of freedom, democracy, respect for human rights and fundamental freedoms, and the rule of law, which are shared among member states," on which the EU is based. Article "O" also established adherence to these principles as a condition for EU membership (Graziatti 2018).[70]

Over time, the status of human rights in the EU's legal system has significantly evolved. The Lisbon Treaty further strengthened fundamental rights in Article 6 TEU. The EU recognizes the rights, freedoms, and principles outlined in the Charter of Fundamental Rights of the European Union, adopted on December 12, 2007, in Strasbourg, which has equal legal status as the treaties. The Charter's provisions do not extend the EU's competencies as defined by the treaties. The Charter's rights, freedoms, and principles are to be interpreted based on the general provisions of Title VII of the Charter, which govern its interpretation and application and concerning the explanations provided by the Charter. The fundamental rights guaranteed by the European Convention on Human Rights and those derived from the common constitutional traditions of member states are incorporated into EU law as general principles.

Overall, the fundamental rights protected in the EU include those specified in the founding Treaties, the European Convention on Human Rights, and the general principles of Community law. Specific rights for non-EU immigrants, particularly relevant, are mainly managed by member states. While recent EU policies aim to address citizens' needs, immigrant rights are governed by European and national legislation, with the latter influenced by international law (Pilgram 2011).[71]

[70] Graziatti, Lucia Vallecillo. "The Treaties of Maastricht, Amsterdam, and Nice." *MEST Journal*, vol. 6, no. 1, 2018, pp. 105–118.
[71] Pilgram, Lisa. *International Law and European Nationality Laws*. Comparative Report 2011/01, EUDO Citizenship Observatory, Robert Schuman Centre for Advanced Studies, European University Institute, 2011. https://hdl.handle.net/1814/19455.

Consequently, creating a catalog of fundamental economic, political, and social rights guaranteed and respected within the EU was deemed necessary. The Charter of Fundamental Rights of the European Union explicitly includes the right to life, which will be explored further in the next section.

Article 2 of the Charter of Fundamental Rights of the European Union explicitly states the right to life. Officially declared in Nice on December 7, 2000, by the Presidents of the European Parliament, the Council, the European Commission, and the EU member states, the Charter was initially adopted as a political declaration.[72] The goal was to create a European catalog of fundamental rights to ensure more effective protection. For that reason, EU leaders stressed the need for a basic rights charter "to affirm the essential importance of individual rights and freedoms explicitly" (Dura 2016).[73]

Taking into account the EU's powers and responsibilities, as well as the principle of subsidiarity, the Charter reiterates rights mainly derived from the common constitutional traditions and international obligations of member states, including the European Convention on Human Rights, the European Social Charter, and the jurisprudence of the EU Court of Justice and the European Court of Human Rights. The Charter is interpreted by both EU and member state courts, considering explanations provided by the Presidium of the Convention that drafted the Charter and updated by the Presidium of the European Convention.

The Charter is seen as the first formal EU document consolidating civil, political, economic, and social rights into one text. Although initially proclaimed as an important document, its legal status was unclear since it was not part of EU law, making its implementation challenging. It gained the status of primary law in 2007 through the Lisbon Treaty, which explicitly granted the Charter the status of primary law.

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[72] European Union. *Charter of Fundamental Rights of the European Union*. 2000, https://www.europarl.europa.eu/charter/pdf/text_en.pdf. Accessed 9 Mar. 2025.
[73] Dura, Nicolae V. "Rights, Freedoms and Principles Set Out in the Charter of Fundamental Rights of the EU." *Journal of Danubian Studies and Research*, vol. 6, no. 2, 2016, pp. 105–118. https://journals.univ-danubius.ro/index.php/research/article/view/3464. Accessed 16 Apr. 2025.

The Lisbon Treaty, through the amendment of Article 6, made the Charter legally binding. The Charter upholds fundamental rights and freedoms as recognized by member states' constitutional practices, the European Convention on Human Rights, and rights further developed by the Court of Justice of the European Union and the European Court of Human Rights.

Article 2 of the Charter addresses the right to life:
1. Everyone has the right to life.
2. No one shall be sentenced to death or executed.

The first paragraph of Article 2 confirms that the right to life is inherent to every person from birth. The second paragraph explicitly prohibits the death penalty, aligning with other human rights instruments like the European Convention on Human Rights (ECHR) and the American Convention on Human Rights.

Specifically, the first paragraph of Article 2 draws from the first sentence of Article 2, paragraph 1, of the ECHR, which states that *"Everyone's right to life shall be protected by law."* The second part, regarding the death penalty, was replaced by Protocol No. 6 of the ECHR, which abolishes the death penalty and prohibits its application or execution.

This provision reflects the intent and purpose of Article 2 and the Additional Protocol. Consequently, the "negative" definitions and obligations from the ECHR apply similarly to the Charter:

a) Article 2, paragraph 2 of the ECHR states:
Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than necessary:
(a) in defense of any person from unlawful violence;
(b) to effect a lawful arrest or to prevent the escape of a person lawfully detained;
(c) in action lawfully taken to quell a riot or insurrection.
b) Article 2 of Protocol 6 to the ECHR:
A State may make provision in its law for the death penalty for acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate the relevant provisions of that law to the Secretary General of the Council of Europe.

Founded in 1949, the Council of Europe's main goal was to create a democratic space where fundamental human rights and freedoms are upheld. The Council addresses various issues, including education, social cohesion, healthcare, and combating discrimination and intolerance (Greer et al. 2018).[74] Establishing a comprehensive Catalogue of Human Rights was essential for democratic governance. The Council drafted the European Convention on Human Rights shortly after its creation. This Convention and its 14 additional protocols adopted over the years remain the Council's principal instrument.

In addition to the ECHR, the significance of the European Social Charter, first issued in 1961 and revised in 1996, along with the additional protocols from 1985 and 1995, should be noted. The 1961 European Social Charter aimed to enhance economic and social rights (Lukas 2020).[75] Initially, it faced challenges due to a weak enforcement system and a need for mechanisms like the ECHR. However, from the late 1980s, as global focus on economic and social rights increased, the European Social Charter also gained renewed attention. Amendments in 1988 and 1995 introduced provisions for collective complaints. The Charter guarantees, among other things, the right to benefit from measures promoting the highest attainable health standards, eliminating disease causes, providing advisory and health education services, and social and medical protection.

The European Court of Human Rights plays a crucial role in the European human rights protection mechanism. The European Convention on Human Rights is considered one of the most essential and efficient treaties for human rights protection.

The European Convention on Human Rights was created from the Universal Declaration of Human Rights. It was signed in Rome on November 4, 1950, and became effective on September 3, 1953. Since then, it has undergone several amendments to enhance the protection of human rights, particularly the right to life (Mitilelu 2015, 248).[76]

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[74] Greer, Steven, Janneke Gerards, and Rose Slowe. *Human Rights in the Council of Europe and the European Union: Achievements, Trends and Challenges*. Cambridge University Press, 2018.
[75] Lukas, Karin. "The European Social Charter." *Research Handbook on International Law and Social Rights*, edited by Christina Binder and Jane A. Hofbauer, Edward Elgar Publishing, 2020, pp. 127–141.
[76] Mititelu, Catalina. "The European Convention on Human Rights." *EIRP Proceedings*, vol. 10, 2015, pp. 243–252. https://proceedings.univ-danubius.ro/index.php/eirp/article/view/1608. Accessed 21 Apr. 2025

The European Convention on Human Rights is among the most significant conventions ratified by Albania, holding a crucial position in the hierarchy of legal acts. It was ratified by Law No. 8137, dated 31.07.1996, *"On the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms."* The Convention encompasses various rights, including civil, political, economic, social, and cultural rights. It is legally binding rather than merely declarative, as it imposes negative and positive obligations on member states to protect human rights.

Since the Convention came into force, fourteen Protocols have been adopted, bringing significant amendments to it. Protocols No. 1, 4, 6, 7, 12, and 13 have introduced additional rights and freedoms beyond those guaranteed by the Convention, while Protocol No. 2 granted the Court the authority to provide advisory opinions. Protocol No. 9 allowed individual applicants to bring their cases before the Court, subject to ratification by the respondent State and acceptance by a review panel. Protocol No. 11 reformed the control system, merging the procedures before the Committee and the European Court of Human Rights and transferring all functions to the Court. The Court is now solely responsible for examining complaints regarding the right to life and other rights. Protocols No. 3 and No. 13 have also been added to the ECHR, ensuring the right to life by abolishing the death penalty.

We focus on analyzing critical judgments and exploring the mechanisms and safeguards used by the European Court of Human Rights to protect the rights enshrined in Article 2 of the Convention, which is fundamental to the democratic framework and the rule of law. Protocols No. 15 and No. 16 have recently been incorporated into the ECHR. Protocol No. 15 of the European Convention, *"For the Protection of Human Rights and Fundamental Freedoms,"* aims to make it easier for citizens to exercise their rights and interests more effectively.

States that ratified Protocol No. 15, which amends the European Convention on Human Rights, reaffirm the role of the ECHR in protecting human rights in Europe. Protocol No. 16 allows the highest courts of a High Contracting Party, as designated by the latter, to request advisory opinions from the European Court of Human Rights on fundamental questions regarding the interpretation or application of the rights and freedoms outlined in the Convention or its protocols. This Protocol was a response to the ECHR's growing workload, which had warned the Council of Europe about

the increasing number of cases requiring review, threatening the Convention system's functionality and Strasbourg's ability to manage the caseload. To address this, the Court proposed and implemented new filtering mechanisms, such as "advisory opinions," which domestic courts could request from the ECHR. This approach shifts more responsibility for human rights protection to national courts. Three States have ratified Protocol No. 16. Albania ratified Protocol No. 16 through Law No. 48/2015 "On the Ratification of Protocol No. 16 to the Convention *"For the Protection of Human Rights and Fundamental Freedoms,*" adopted on May 7, 2015 (Bana 2015).[77] Protocol No. 16 aimed to enhance our country's courts' efficiency significantly. Consequently, the primary responsibility for protecting human rights could be increasingly transferred to our courts. The primary responsibility for liaising with the Strasbourg Court lies with the country's highest courts (appeal courts, the Constitutional Court, and the High Court). The Convention system is based on the absence of obligation, relying on the voluntary decision of national courts to submit questions to Strasbourg, which is not mandatory. This approach will not put undue pressure on our courts. The advisory opinion process represents the first step toward further institutionalizing the relationship between national courts and the Strasbourg Court.

As previously mentioned, if a case is formally submitted to the Strasbourg Court under Article 34 of the ECHR while similar cases are still pending in the highest national courts, and these courts decide to request advisory opinions on the same or related issues, the individual application will take precedence. Albanian courts have some limitations in their ability to request advisory opinions, as they can only do so in the context of a pending case. This means the relevant legal question must arise from a specific issue related to individual rights, and the procedure will not allow abstract legislation reviews. (Bana 2015).

The European Convention on Human Rights (ECHR) serves as a robust framework, guaranteeing a spectrum of rights and freedoms. The pivotal role of the European Court of Human Rights (ECtHR) in ensuring that the legislative and executive branches of the High Contracting Parties uphold these rights cannot be overstated. The Court's rulings, often resulting in sanctions against

[77] Bana, Sokol. "Analizë e Draft Protokollit Nr. 16 të KEDNJ-së, risitë dhe roli i këtij protokolli." *Jus & Justicia*, no. 12, Winter 2015, pp. 196–197. https://uet.edu.al/jus-justicia/wp-content/uploads/2023/01/Analize-e-Draft-protokollit-Nr.16-te-KEDNJ-se-risite-dhe-roli-i-ketij-protokolli.pdf. Accessed 21 Apr. 2025

states that violate human rights, including the right to life, underscore its authority. The Court's insistence on practical steps, such as thorough investigations when individuals go missing, is a clear demonstration of its impact on state actions.

Additionally, according to Article 47 of the ECHR, the Committee of Ministers can ask the Court for advisory opinions on legal issues related to interpreting the Convention and its protocols. However, this does not cover the content or scope of the guaranteed rights or procedural matters arising from the Convention's authority. The Court's most significant role involves handling individual and inter-state contentious cases. By ratifying the ECHR, states automatically accept the Court's jurisdiction over inter-state disputes under Article 33 and individual complaints under Article 34.

Civil rights, as recognized in the Convention, involve individuals' rights about each other and the state, including contract, commercial, compensation, family, employment, and property rights. The ECtHR can only be approached after all domestic legal remedies have been exhausted, in line with international law principles, and within six months of the final domestic decision. The Court’s decisions are binding: if a violation is found, the state must implement the decision, taking steps to prevent future violations and remedy the consequences for the victim. The Court can also order the state to compensate the applicant or take other specific actions, such as releasing a detainee or restoring contact with a child.

The European Court of Human Rights (ECtHR) has played a significant role in expanding the protection of rights under Article 2 of the Convention. The Court's proactive approach involves assessing whether a challenged measure is necessary in a democratic society, addressing pressing social needs, and aligning with shared values. The Court's careful determination of whether the circumstances of a case represent a violation of the right to life or other rights under Article 2 is a testament to its commitment to upholding human rights.

2.3 European Court of Human Rights: Protection of Life Under Article 2 of the ECHR and Additional Protocols

The right to life enshrined in Article 2 of the European Convention on Human Rights (ECHR) is among the most fundamental rights under the Convention. It is the cornerstone of all other rights and is non-derogable even in times of emergency (Article 15 ECHR). However, this apparently absolute right reveals deep ambiguities when applied to sensitive bioethical matters such as abortion and euthanasia. The European Court of Human Rights (ECtHR) has attempted to resolve these tensions by adopting a nuanced interpretative approach—anchored in the principles of proportionality, subsidiarity, and the margin of appreciation (Harris et al. 51).[78]

This chapter provides a doctrinal and jurisprudential analysis of the right to life under Article 2 in light of selected case law and legal scholarship. It evaluates how the ECtHR has applied the right to life in complex bioethical contexts and discusses the implications for Albania.
Article 2(1) imposes both negative and positive obligations: to refrain from the arbitrary deprivation of life and to take measures to protect life. Furthermore, the Convention demands effective procedural investigations into potential violations of the right to life (Reid et al. 103).[79] The Court's interpretive approach stresses that the Convention must be applied in a way that is "practical and effective," particularly when it comes to fundamental rights (Van Dijk et al. 78).[80]

Unlike the American Convention on Human Rights, Article 2 ECHR does not explicitly recognize the right to life from conception. This omission has given the ECtHR room to interpret when life begins. In Vo v. France, the Court held that:

"[T]he issue of when the right to life begins comes within the margin of appreciation which it generally considers that States should enjoy in this sphere" (ECtHR Guide 13).[81]

[78] Harris, D., O'Boyle, M., & Warbrick, C. (2023). *Law of the European Convention on Human Rights* (5th ed.). Oxford University Press.
[79] Reid, K., Grgić Boulais, A., Uzun Marinkovic, A., & Cano Palomares, G. (2023). *A Practitioner's Guide to the European Convention on Human Rights* (7th ed.). Sweet & Maxwell
[80] Van Dijk, P., Van Hoof, F., Van Rijn, A., & Zwaak, L. (Eds.). (2018). *Theory and Practice of the European Convention on Human Rights* (5th ed.). Larcier-Intersentia.v
[81] European Court of Human Rights. *Guide on Article 2 of the European Convention on Human Rights: Right to Life*. Council of Europe, 31 Aug. 2022, https://hudoc.echr.coe.int/eng?i=GUIDE-ART2-ENG.

In Vo, a therapeutic abortion caused by medical negligence did not lead the Court to determine whether the fetus had rights under Article 2. The Court emphasized the lack of a European consensus on this issue and concluded that states have wide discretion in regulating abortion within their own jurisdictions. This doctrinal approach aligns with academic commentary emphasizing that Article 2's silence on prenatal life reflects a compromise among member states. Jacobs, White, and Ovey describe this as a "constructive ambiguity" that allows space for national diversity (Jacobs et al. 145).[82]

The Court has not recognized a "right to die" under Article 2. In Pretty v. the United Kingdom, the ECtHR rejected the argument that Article 2 includes the right to choose death. Instead, it confirmed the state's positive duty to protect life. Nonetheless, the Court has acknowledged that conditional decriminalization of euthanasia may be compatible with the Convention if supported by robust safeguards. In Mortier v. Belgium, the Court evaluated:

- The adequacy of the legal framework for pre-euthanasia procedures;
- Compliance with that framework;
- The independence and effectiveness of post-euthanasia review mechanisms (ECtHR Guide 23).[83]

While the Court found no fault in Belgium's legal regime on euthanasia itself, it identified a violation due to the post-euthanasia oversight board's lack of independence. Similarly, in Lambert and Others v. France, which concerned the withdrawal of life-sustaining treatment, the Court reaffirmed the margin of appreciation in end-of-life decisions but emphasized the primacy of the patient's will, whether expressed directly or indirectly.

The Court's reliance on the margin of appreciation is especially visible in abortion and euthanasia cases. The ECtHR avoids imposing a uniform standard across member states, particularly where

[82] Jacobs, F. G., White, R. C. A., & Ovey, C. (2021). *The European Convention on Human Rights* (8th ed.). Oxford University Press.
[83] European Court of Human Rights. *Guide on Article 2 of the European Convention on Human Rights: Right to Life*. Council of Europe, 31 Aug. 2022, https://hudoc.echr.coe.int/eng?i=GUIDE-ART2-ENG.

there is no consensus (as in the case of euthanasia), allowing national governments to legislate in line with cultural, ethical, and legal traditions. Still, this margin is not absolute. National frameworks must be accompanied by procedural safeguards to ensure that the protection of life is effective and not merely formal. This includes independent oversight, legal clarity, and effective access to remedies (Grabenwarter 311).[84]

As a Council of Europe member, Albania must ensure its domestic legislation aligns with Article 2 and its evolving interpretation by the ECtHR. Albania permits abortion under specific conditions, but access can be bureaucratically or socially limited. On euthanasia, Albania maintains a strict prohibition. While this aligns with most European states, Albania must still ensure that its framework includes mechanisms that:

- Respect the autonomy and dignity of individuals in end-of-life contexts;
- Guarantee procedural clarity in abortion access;
- Comply with the ECtHR's demand for effective oversight and redress.

Given Albania's aspirations toward deeper European integration and alignment with human rights norms, reforms in both legislative and institutional frameworks should be considered, particularly regarding procedural safeguards and access to medical care. The ECtHR's jurisprudence on Article 2 illustrates the delicate balance between protecting life and respecting individual autonomy in morally contested areas. While states retain discretion, that discretion must be exercised within a framework that respects the rights of all individuals, including women seeking abortion and individuals at the end of life. For Albania, maintaining this balance is critical both for the protection of human dignity and for ensuring compliance with international human rights obligations.

ARTICLE 2

Right to life

1. *Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally saved in executing a sentence in court following his conviction of a crime for which this penalty is provided by law.*

[84] Grabenwarter, C. (2014). *European Convention on Human Rights: Commentary*. Hart Publishing.

2. *Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than necessary:*
   (a) in defense of any person from unlawful violence;
   (b) to effect a lawful arrest or to prevent the escape of a person lawfully detained;
   (c) in action lawfully taken to quell a riot or insurrection.

The right to life, found in Article 2, is the most fundamental human right; if someone could be arbitrarily deprived of their life, all other rights have little significance. Its importance is underscored by the fact that it is "non-derogable," meaning it cannot be suspended, even during "times of war or other public emergencies are threatening the life of the nation." However, as explained later, "deaths resulting from lawful acts of war" are not considered violations of the right to life (Article 15 (2)).

In its Grand Chamber judgment in *McCann and others v. the United Kingdom*, the Court emphasized that Article 2 is one of the Convention's most crucial provisions, allowing no derogation during peacetime under Article 15. Alongside Article 3 [the prohibition of torture], it represents a core value of the democratic societies in the Council of Europe. As such, the Court stressed that *"its provisions must be interpreted strictly."* Consequently, this should result in little room for interpretation. However, the ECHR case law has been absent for a long time. A simple search under the HUDOC database results in more than 20000 cases, showing that, regardless of this international legal instrument, the right to life is often subject to the European Court's judgment.[85]

Regarding the second paragraph, Article 2 permits exceptions to the right to life only when it is "essential" for one of the purposes outlined in sub-paragraphs (2)(a)-(c). This represents a more stringent standard compared to other provisions in the Convention, which allow restrictions on rights when such measures are merely "necessary in a democratic society" for the "legitimate aims" specified within them.

In the case of *McCann and others v. the United Kingdom*, the Court reiterates:

[85] *HUDOC - European Court of Human Rights.* Council of Europe, hudoc.echr.coe.int. Accessed 4 May 2025.

In this respect, the use of the term "necessary" in Article 2 § 2 indicates that a stricter and more compelling test of necessity must be employed from that normally applicable when determining whether State action is "necessary in a democratic society" under paragraph 2 of Articles 8 to 11 of the Convention. In particular, the force used must be strictly proportionate to the achievement of the aims set out in sub-paragraphs 2 (a), (b) and (c) of Article 2.6

Also, the Court has ruled that Article 2 places a "positive obligation" on States to investigate deaths that may have occurred in violation of this article. This procedural obligation was first established in the McCann case, which involved killings by State agents, and was expressed in the following terms:

The Court and the Commission are united in their view. They both recognize that a general legal prohibition of arbitrary killing by State agents would be ineffective without a review procedure to assess the lawfulness of lethal force use. The duty to protect the right to life under this provision, in conjunction with the State's general duty under Article 1 of the Convention to 'secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention,' implies the necessity of an effective official investigation when individuals are killed due to the use of force by State agents.

Article 2 safeguards the right to "life" for "everyone." In this context, "life" refers specifically to human life; the right to life does not extend to animals or the existence of "legal persons." Animals are not considered "persons" and thus do not fall under the term "everyone" (toute personne), meaning the Convention does not protect them. On the other hand, "legal persons," like companies, are recognized as "persons." They can invoke certain protections under the Convention, such as the right to property, the right to a fair trial regarding civil rights and obligations, the right to freedom of expression (as in the case of newspaper companies and publishers), the right to freedom of association, and the right to freedom of religion for religious groups. However, none of these legal entities have "life" in the sense that Article 2 intends to protect.

The Convention does not clearly define what "life" is when it begins and ends and, thus, when the protection of Article 2 applies. Given the lack of a legal or scientific consensus in Europe or globally on this issue, the former Commission, and now the Court, has been reluctant to establish exact guidelines. As the Court expressed in the case of *Vo v. France:*

... the issue of when the right to life begins comes within the margin of appreciation which the Court generally considers that States should enjoy in this sphere, notwithstanding an evolutive interpretation of the Convention, a "living instrument which must be interpreted in the light of present-day conditions" [...].

The reasons for that conclusion are, firstly, that the issue of such protection has not been resolved within the majority of the Contracting States themselves, in France in particular, where it is the subject of debate and, secondly, that there is no European consensus on the scientific and legal definition of the beginning of life. ...

Given these considerations, the Court believes it is neither desirable nor feasible to definitively answer whether an unborn child is considered a person under Article 2 of the Convention. Instead of enforcing a uniform standard, the Commission and the Court have chosen to address issues related to the beginning of life in a limited, case-by-case manner, allowing States significant discretion to regulate these matters themselves. However, States are expected to handle these issues appropriately, considering the competing interests and carefully balancing them. This approach is evident in the Court's case law on topics such as abortion, euthanasia, and assisted suicide.

In cases related to abortion, applicants have invoked not only Article 2 but also Article 8, which safeguards "private and family life," as well as Article 6, which ensures "access to court" for determining a person's "civil rights and obligations." Additionally, Article 10, concerning freedom of expression, has been cited about the dissemination of information about abortion. Moreover, the Convention bodies have sometimes made remarks in cases involving these other articles that are relevant to Article 2. For example, in an early case, *Brüggemann and Scheuten v. Germany*, the applicant contended that she had the exclusive right to decide to have an abortion under Article 8, which guarantees the right to respect for "private life." However, the Commission ruled that:
Article 8 § 1 cannot be interpreted as meaning that pregnancy and its termination are, as a principle, solely a matter of the private life of the mother.

In the case of *X v. the United Kingdom*, the Commission observed that Article 2 of the Convention does not explicitly mention abortion. Notably, abortion is not included in the list of actions in Article 2's second paragraph, which outlines situations that are *"not [to] be regarded as inflicted in contravention of this article."* Based on this, the Commission identified three possible interpretations: either Article 2 does not apply to an unborn fetus at all, it recognizes the fetus's right to life with certain limitations, or it grants the fetus an absolute right to life.

The Commission explicitly rejected the third option, as it would prevent consideration of any risk to the mother's life. Such an interpretation would imply that the fetus's "unborn life" holds more significant value than that of the pregnant woman. This, according to the Commission, could not be the correct interpretation of Article 2 concerning abortion. By 1950, when the Convention was drafted, nearly all Contracting Parties allowed abortion when necessary to save the mother's life, and this has remained the case since then.

In this early case, the Commission leaned toward the first interpretation. It examined the limitations on the right to life, as outlined in the second sentence of the first paragraph and the second paragraph of Article 2, concluding that: *"All the above limitations, by their nature, concern persons already born and cannot be applied to the fetus."*

Therefore, both the general use of the term "everyone" ("toute personne") throughout the Convention and the context in which it appears in Article 2 suggests that it does not include the unborn. However, in a later case, *H. v. Norway*, the Commission moved somewhat closer to the second interpretation by acknowledging the possibility that "in certain circumstances," a fetus might receive "a certain protection under Article 2, first sentence," despite the "considerable divergence of views" among Contracting States on whether or to what extent Article 2 protects unborn life. In the case of *H. v. Norway*, the Court ruled in 1979 that:

"... abortion laws must necessarily be based on a compromise between respect for unborn life and other essential and valid considerations. This compromise led the legislature to allow self-determined abortion under the conditions outlined in the [1978 Norwegian Act on Termination of Pregnancy]."

The Court acknowledged that such a balance between conflicting interests inevitably raises ethical concerns and will lead to differing opinions about the legal framework established by the Act. While many view the Act as a violation of fundamental moral principles, others – also from an ethical perspective – see it as a necessary correction to an unacceptable legal situation.

The Commission examined the provisions of the 1978 Norwegian Termination of Pregnancy Act in detail. It noted that the Act permitted "self-determined abortion" only within the first 12 weeks of pregnancy. After that, abortions could be performed between 12 and 18 weeks only with the

approval of two doctors if the pregnancy, childbirth, or child-rearing could put the mother in a difficult situation. Terminations after the 18th week were only allowed under dire circumstances and never if there was reason to believe that the fetus was viable. In this case, the woman had received authorization to terminate at 14 weeks. Reflecting the views of the Norwegian Supreme Court, the Commission concluded:

The present case shows different opinions on whether such an authorization strikes a fair balance between the legitimate need to protect the fetus and the legitimate interests of the woman in question. However, having regard to what is stated above concerning Norwegian legislation, its requirements for the termination of pregnancy as well as the specific circumstances of the present case, the Commission does not find that the respondent State has gone beyond its discretion. The Commission understands the complexity of this issue, and therefore, it finds that the applicant's complaint under Article 2 of the Convention is manifestly ill-founded within the meaning of Article 27 § 2 of the Convention.

A few years later, the Commission reviewed the case *Reeve v. the United Kingdom* , in which the mother of a two-year-old child, born with severe congenital disabilities that the doctors should have detected during her pregnancy, filed a complaint on behalf of her child. The applicant argued that the child was prevented from pursuing a "wrongful life" action against the health authority that employed those doctors. The mother claimed that denying this claim violated the Convention, specifically the child's right to "access to court" under Article 6. The applicant contended that the State's refusal to allow the child to seek damages was unjust, given that had she been fully informed, she would have opted for an abortion.

However, the mother was still able to claim damages for loss of earnings and the costs of care associated with having a disabled child. The Commission determined that the restriction on "access to court" aimed to uphold the right to life and fell within the State's margin of appreciation. It concluded that the limitation was "reasonably proportionate," especially since claims could still be made for any wrongful act contributing to the child's disabilities and that parents could pursue damages for their suffering and the costs of care incurred.

The Court provided its most comprehensive examination of abortion-related issues in the case of *Vo v. France*. In this instance, the applicant, a woman who intended to carry her pregnancy to term, was expecting her unborn child to be viable or at least healthy. However, during a hospital visit, she was mistaken for another patient with a similar name and had an intrauterine coil inserted,

which led to the leakage of amniotic fluid. Consequently, she underwent a therapeutic abortion, resulting in the fetus's death. Mrs. Vo alleged that the doctors acted negligently and should face charges for unintentional homicide. However, the French Court of Cassation ruled that, given the need for strict interpretation of criminal law, a fetus could not be considered a victim of unintentional homicide.

The central issue raised by the application was whether the lack of a criminal remedy within the French legal system to penalize the unintentional destruction of a fetus represented a failure by the State to legally protect the right to life as defined by Article 2 of the Convention. In addressing this question, the Court summarized the Commission's case law from *X v. the United Kingdom and H. v. Norway* , as well as its ruling in Boso, and concluded that:

It follows from this recapitulation of the case law that in the circumstances examined to date by the Convention institutions – that is, in the various laws on abortion – the unborn child is not regarded as a "person" directly protected by Article 2 of the Convention and that if the unborn do have a "right" to "life," it is implicitly limited by the mother's rights and interests. However, the Convention institutions have not ruled out the possibility that safeguards may be extended to the unborn child in certain circumstances. That is what appears to have been contemplated by the Commission in considering that "Article 8 § 1 cannot be interpreted as meaning that pregnancy and its termination are, as a principle, solely a matter of the private life of the mother" (see Brüggeman and Scheuten, cited above, § 61) and by the Court in the Boso mentioned above decision. It is also clear from examining these cases that the issue has always been determined by weighing up various, and sometimes conflicting, rights or freedoms claimed by a woman, a mother, or a father about one another or vis-à-vis an unborn child.

The above discussion indicates that, beyond the substantive content of Article 2, the Court is also concerned with the procedures established in a given State to ensure that the right is effectively protected. The law must not only strike a "fair balance" in theory, but those directly affected must also have access to a process to challenge this balance. This concept of a "procedural limb" of Article 2 was initially developed in cases involving the use of force. It is important to note that the Court now clearly applies this requirement more broadly to cases related to abortion as well. Furthermore, recent case law demonstrates that unborn life is afforded a measure of protection under the Convention. However, much is still left to the discretion of the State Parties in this regard. To safeguard the lives of individuals within its jurisdiction, appropriate measures must be taken and implemented by democratic states. This includes providing information about potential life-threatening risks resulting from state actions, as well as discouraging individuals from putting their

health at serious risk (Akandji-Kombe 2005, 22).[86] Scholars have broadened the scope of protection further, placing additional responsibilities on the state in areas like safeguarding against environmental dangers and addressing negligent medical practices.

The Court's case law regarding protecting life and physical integrity is characterized by coherence and balance. The State's obligations can be outlined as follows: prevent violations (to the greatest extent possible); pursue those responsible (if prevention fails); punish offenders appropriately; and carry out punishments in a humane manner (while respecting the dignity of the individuals involved) (Akandji-Kombe 2005, 25).[87] In its latest rulings, the European Court of Human Rights continues to uphold this stance on the positive obligations of States to protect the lives of individuals under their jurisdiction. Notable cases include *Isenc v. France (February 4, 2016), Cavit Tinarlioglu v. Turkey (February 2, 2016), Lopes de Sousa Fernandes v. Portugal (December 15, 2015), and Mihu v. Romania (March 1, 2016).*

In its ruling in *Mihu v. Romania on* March 1, 2016, the Court emphasizes that the first sentence of Article 2 mandates States to take all necessary measures as positive obligations to safeguard health from medical treatments and negligence. In this case, the Court did not determine a violation of the substantive protections under Article 2 of the ECHR; instead, it found a procedural violation of the same article.

A specific State violates its duty to protect individuals' lives not only when it lacks a legal framework—either criminal or civil—to uphold the right to life but also when it does not correctly enforce existing laws. The Court reaffirmed this in the recent case of *Civek v. Turkey*[88] on February 23, 2016, where local authorities failed to protect Selma Civek from ongoing violence inflicted by her husband, which ultimately resulted in her death. The Court determined that the authorities neglected to safeguard Selma Civek's life, even though she had sought help multiple times. In this

[86] Akandji-Kombe, Jean-François. *Positive Obligations under the European Convention on Human Rights: A Guide to the Implementation of the European Convention on Human Rights*. Human Rights Handbooks, no. 7, Council of Europe, Jan. 2007, https://www.refworld.org/reference/research/coe/2007/en/67106. Accessed 21 Apr. 2025.
[87] Ibid

case, the Court identified a violation of the right to life under Article 2 of the ECHR, both in substantive and procedural terms.

Article 2 emphasizes the importance of legality. The first paragraph indicates that laws must not only regulate interferences with the right to life but also actively "protect" individuals from actions that are not justified under the second paragraph. The sub-clauses in the second paragraph reinforce the need for legality and protection from unlawful actions. Moreover, the requirement of "absolute necessity" in Article 2 stipulates that any force used for the purposes outlined in the article must be "strictly proportionate" to achieving the aims specified in sub-paragraphs 2(a), (b), and (c).

The Court thoroughly examined these issues in the case of McCann and others v. the United Kingdom. This case involved the fatal shooting of three IRA terrorist suspects by soldiers from a British special forces (SAS) regiment in Gibraltar, a British colony located at the southern tip of the Iberian Peninsula and a significant naval base. The suspects had traveled to Spain intending to detonate a car bomb in Gibraltar and had parked a vehicle next to their intended target. However, it later became evident that they were unarmed at the time of their deaths and that their car did not contain a bomb—though explosives and a timing device were discovered in their hideout in Malaga, just across the border in Spain. The Court determined that the three suspects had been intentionally killed and that these killings constituted a violation of Article 2 of the Convention. This marked the first instance in which the Court found any European Government guilty of unlawfully using lethal force by law enforcement officials. In the case of *Matzarakis v. Greece*, Grand Chamber judgment of 20 December 2004, the Court holds that:

Article 2 does not grant a carte blanche. Unregulated and arbitrary action by State officials is incompatible with adequate respect for human rights. This means that as well as being authorized under national law, policing operations must be sufficiently regulated within a system of sufficient and adequate safeguards against arbitrariness and abuse of force […], and even against avoidable accidents. … police officers should not be left in a vacuum when exercising their duties, whether in the context of a prepared operation or a spontaneous pursuit of a person perceived to be dangerous: a legal and administrative framework should define the limited circumstances in which law enforcement officials may use force and firearms, in the light of the international standards which have been developed in this respect […].6

In assessing compliance with the substantive requirements of Article 2, the Court has followed a rigid guideline:

The Court must, in making its assessment [as to whether there was a violation of Article 2], subject deprivations of life to the most scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination.
[The Court] confines itself to noting, like the Commission, that a general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life under this provision, read in conjunction with the State's general duty under Article. One of the Convention to 'secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention' requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by inter alias, agents of the State.

Case law is rich regarding the use of lethal force by agents of the State, including deaths in custody, unresolved killings and collusion, disappearances, and also in the prevention of suicide by prisoners, medical malpractice, extradition, expulsion, deportation, and the death penalty. Regarding the latter, the second paragraph of Article 2 indicates that the death penalty solely depends on a judicial ruling. It pertains to countries that include the death penalty in their criminal codes, which can only be imposed by a court in cases outlined by national legislation. For the States that are Parties to the Convention, this provision has been replaced by clauses in Protocol 6 of the Convention, which abolishes the death penalty during peacetime and in all circumstances. This paragraph has now been superseded by clauses in Protocols No. 6 and No. 13 of the Convention, which eliminate the death penalty both in peacetime and wartime.

Protocol No. 6, aimed at abolishing the death penalty, was enacted on March 1, 1985. Article 1 of this protocol explicitly states, *"The death penalty shall be abolished. No one shall be sentenced to death or executed."* This provision is further reinforced by Articles 3 and 5 of Protocol No. 6, which declare that no derogation from this article can occur under Article 15 of the Convention. The Convention later advanced its position on the death penalty with Protocol No. 13, which came into effect on August 1, 2003, calling for the complete abolition of the death penalty in all circumstances. Following the ratification of Protocols No. 6 and No. 13, Europe began to be seen as a region where the death penalty would only apply during wartime, as it would no longer be part of European court practices.

It's important to highlight that a state's obligations extend beyond merely not applying the death penalty; states that have ratified these protocols are also required not to permit the extradition of

individuals who could face the death penalty in the requesting countries. This indicates that the principle governing extraditions that could expose individuals to treatment violating Articles 2 and 3 in a non-Convention State now extends to extraditions that may result in the death penalty during peacetime. If there are valid reasons to believe that there is a "real risk" that a person extradited to a non-party State will face charges leading to capital punishment and, if convicted, will receive the death penalty and be executed, the extraditing State must secure explicit and binding guarantees from the receiving State that the individual will not be sentenced to death or, at the very least, that if such a sentence is imposed, it will not be enforced.

Providing vague assurances that judicial authorities will inform the court about their intent to try the individual—especially when the extraditing State prefers that the death penalty not be applied or executed, as seen in the assurances from Virginia in the Soering case—is insufficient. Extraditing the individual without obtaining such guarantees would violate the Convention.

2.4 A critical perspective on the ECHR

In "*Europe's Border Disorder,"* Bueno Lacy and van Houtum do some critical thinking concerning the EU project:

"Why is the once romantic dream of a united Europe steadily acquiring the anguishing undertones of a disturbing flashback? Where are the Monnets and Schumans of our time? Where are the long-term political visionaries laying out the grand schemes for a future prosperous Europe?" (Bueno Lacy and Van Houtum, 2013). [89]

Wetzel and Orbie (2015) argue that there is an inconsistency in the conceptual basis of democracy promotion of the EU, summarizing it as a "fuzzy liberalism" with no clear definition. [90] Initially, the Convention focused more on safeguarding the democratic character of its member states through human rights and fostering international cooperation than on offering individuals a way to seek redress for human rights abuses by national authorities. Although it is an international

[89] LBueno Lacy, Rodrigo, and Henk van Houtum. "Europe's Border Disorder." *E-International Relations*, 5 Dec. 2013, https://www.e-ir.info/2013/12/05/europes-border-disorder/ Accessed 21 Apr. 2025.
[90] Wetzel, Anne, Jan Orbie, and Fabienne Bossuyt. "One of What Kind? Comparative Perspectives on the Substance of EU Democracy Promotion." *Cambridge Review of International Affairs*, vol. 28, no. 1, 2015, pp. 21–34.

treaty, the Convention is distinctive in allowing individuals to file complaints with the European Court of Human Rights in Strasbourg. However, this option was initially optional for member states.

For the first thirty years, the Convention was primarily overlooked by various groups, including victims of human rights abuses, legal professionals, politicians, and academics. The Strasbourg institutions received only about 800 individual complaints annually during this period. However, from the mid-1980s onward, there was a dramatic shift. The number of separate applications to the Court surged, reaching over 40,000 annually by the late 2000s—more than fifty times the average from the first thirty years. This increase was partly due to the significant expansion of the Convention system's membership, which grew from ten countries in 1950 to forty-six by the late 1990s, including nearly all former communist states in Central and Eastern Europe, excluding Belarus. Interstate complaints—just under two dozen throughout the Convention's history—also proved largely ineffective, as they often conflicted with the Council of Europe's objectives. Litigation is generally seen as adversarial and not ideal for promoting international cooperation. Finally, the Convention's visibility and awareness among lawyers and the general public in member states have significantly increased, contributing to the rise in applications (Greer 2008).[91] Initially, the Convention system was not designed to provide individual justice. Its primary goal was to foster peace in Western Europe during the Cold War by offering a unique platform for states to manage international relations. Although the European Union now also promotes European peace, the Convention's core purpose remains to uphold the integrity of European political, constitutional, and legal systems through human rights rather than directly benefit individual applicants.

Due to changes over the past fifty years, expecting that every deserving applicant will receive justice is unrealistic. With a systematic approach, individual justice can become arbitrary and inadequate. The European Court of Human Rights, similar to national constitutional courts, can

[91] Greer, Steven. "What's Wrong with the European Convention on Human Rights?" *Human Rights Quarterly*, vol. 30, no. 3, 2008, pp. 680–702.

only address a small fraction of the applications it receives—less than 5 percent—despite finding violations in about 94 percent of these cases (Greer 2008).[92]

Thus, the Court can only be considered to provide individual justice for the very few cases it decides if it can be assured that the vast majority of rejected applications have no merit whatsoever. However, this level of assurance could be more realistic. It is crucial that the cases the Court chooses to adjudicate address the most severe issues of Convention compliance in Europe and are resolved with the most significant authority and impact, thereby ensuring constitutional justice. Unfortunately, this is not currently how applications are selected. To achieve this, it would require an honest acknowledgment that some deserving applicants will inevitably be turned away—not because their claims were unfounded, but because the Court deems their issues less critical than other, more pressing systemic compliance problems.

Another major issue with the Convention system, closely related to concerns about delays in justice, is the Council of Europe's inadequate handling of ongoing Convention violations by member states. Although many national laws have been revised due to successful Court applications, a paradox exists: patterns of violations in Western Europe, where the Convention has been in effect the longest, show significant resistance to change. Two leading indicators highlight this issue. First, approximately 60 percent of the Court's rulings involve "repeat applications," where the complaints are about violations already condemned in the relevant state. Despite the initial judgment and subsequent rulings, the underlying issues remain unresolved.

Unfortunately, the Council of Europe has never systematically and scientifically examined the national factors leading to low Convention violation rates. The absence of a dedicated research department has been a point of criticism. However, some evidence suggests that two national factors are particularly significant: a deeply ingrained culture of respect for rights among national judicial and non-judicial authorities and effective judicial mechanisms for challenging violations, such as constitutional complaint procedures. Contrary to popular belief, formally incorporating the Convention into national law is not a decisive factor. The data suggest an inverse relationship, with

[92] Ibid

states with the highest violation rates incorporating the Convention long ago while those with the lowest rates did so more recently. What is crucial is that domestic judges take Convention standards seriously, regardless of whether these standards are formally part of national law.

Europe's challenge is to find effective ways to foster adherence to Convention standards, particularly among persistent violators. National Human Rights Institutions (NHRIs) could play a vital role in national constitutional systems. The Council of Europe should adopt a more vigorous and committed policy. NHRIs should focus on "domesticating" the European human rights discourse and "Europeanizing" national practices. Ideally, they would facilitate a two-way flow of information between Strasbourg and the national public regarding compliance with Convention standards. Instead of engaging in dispute resolution, NHRIs should be empowered to bring test cases before national courts and the European Court of Human Rights.

3. Case Study: The Right to Life in Albanian Constitutional and Legal Framework

The Constitution of the Republic of Albania guarantees the right to life. According to Article 21 of the Constitution, everyone is entitled to legal protection of their life. In a democratic society, the right to life is seen in terms of its immediate protection and, more broadly, includes aspects of security, freedom, well-being, and various social, institutional, legal, cultural, educational, and political conditions.

In democratic societies, protecting fundamental human rights, particularly the right to life, is crucial because life is unique and irreplaceable. Therefore, the Penal Code provides legal and criminal safeguards for this right through various provisions related to different forms of murder and their associated penalties. Many entities are responsible for ensuring the right to life, with the State being the primary one. The State establishes, modernizes, and oversees mechanisms, structures, tools, methods, conditions, and opportunities to ensure effective functioning. Preventing crimes against life is a priority in this mission. The effectiveness of the State is not measured by how it handles criminal events resulting in death but by its ability to prevent such occurrences promptly.

The protection and respect for the right to life, recognized and established as one of the most fundamental human rights, is the cornerstone of our constitutional and penal frameworks. The law guarantees the protection of life, which is enshrined in the Constitution of the Republic of Albania. This provision explicitly affirms the protection of human life as a constitutional value. The Constitution presents the right to life as a foundational value from which all other rights derive. The chapter on fundamental human rights and freedoms is based on the principle of their inviolability. According to Article 15 of the Constitution, these basic rights and freedoms are indivisible, inalienable, and essential to the legal system, creating a primary constitutional obligation for the state to respect and protect them. Constitutional provisions fully support the principles of life protection. The section on human rights in the Constitution includes a comprehensive catalog of civil, political, economic, social, and cultural rights grounded in international human rights standards (Cenaj and Elezi 2014).[93]

The right to life is a fundamental attribute of human existence and is protected constitutionally due to its undeniable value. However, protecting human life is not uniform across all situations, as various factors can influence it. The legislator can address these factors through laws to ensure this right. Exceptions to this protection can only be made through the law, particularly when safeguarding a more crucial constitutional right necessitates taking someone's life. The law has the authority, under specific circumstances related to death, as outlined in Article 2, Paragraph 2 of the European Convention on Human Rights, to permit the taking of life. Such cases are regulated by general provisions in the Penal Code, which include the concept of necessary defense, or by the "Law on the Use of Firearms," which authorizes the Armed Forces, police, and armed civil guards to use firearms in specific situations.

According to this Convention provision, the taking of human life by the state through its organs is not equivalent to capital punishment imposed by courts. Still, it is linked to the exceptional cases described. This is how our legislation is structured, and this understanding forms the basis of human life protection. Our legislation aligns with the needs of a modern, advanced society with a

[93] Cenaj, Kasem, and Myzafer Elezi. "Governance of Human Rights in Albania." *Acta Universitatis Danubius. Juridica*, vol. 10, no. 1, 2014, pp. 105–118. https://journals.univ-danubius.ro/index.php/juridica/article/view/2266/2712. Accessed 21 Apr. 2025.

solid democracy. In this context, Albanian legislation is more progressive than societal and traditional attitudes, which in turn can have a boomerang effect on the evolution and progress of the society itself.

Conversely, the Constitution allows for limitations on fundamental rights and freedoms under the law, but such limitations must be legal and constitutional. These rights and freedoms cannot be considered absolute and unrestricted. Legal limitations on fundamental rights and freedoms are acceptable but must be prescribed by law and aimed at protecting the rights of others. These constitutional limitations include cases of discrimination (Article 18/3), forced labor (Article 26), deprivation of liberty (Article 27), public disclosure of personal data (Article 35), residence control (Article 37), and property rights (Article 41), among others. However, some provisions in the chapter on fundamental rights and freedoms only outline general rules and do not allow for exceptions. This means there are certain rights and liberties that the law or the Constitution cannot limit. The absence of such exceptions is evident in several constitutional provisions, specifically those that do not permit exceeding the limitations set by the European Convention on Human Rights (Article 17, Paragraph 2), minority rights (Article 20), freedom of conscience and religion (Article 24), prohibition of torture (Article 25), right to defense (Articles 28, 31), presumption of innocence (Article 30), and others. The right to life (Article 21) is among these provisions, with no allowed limitations.

Thus, the state cannot accept situations or practices that infringe on the right to life. These constitutional principles are the basis on which the Constitutional Court deemed capital punishment incompatible with the Constitution in Albania.

3.1 The Constitution of the Republic of Albania vis a vis ECHR

The Albanian Constitution explicitly defines the ECHR's position within Albanian domestic law. Several constitutional provisions highlight this. Article 5 states, "The Republic of Albania applies mandatory international law.” Article 116, paragraph 1, lists ratified international agreements, including the Convention, as normative acts with power throughout Albania. Article 17, which addresses limitations on constitutional rights and freedoms, specifies that “these limitations cannot

undermine the essence of freedoms and rights and cannot exceed the limitations prescribed by the ECHR."

The Convention covers various rights, including the right to life, protection from torture and inhumane treatment, liberty and security, the right to a fair trial, and the right to privacy and family life. Subsequent protocols have added further rights, such as abolishing the death penalty. Albania has been a party to this Convention since July 29, 1996. Through this treaty, Albania and 46 other European countries have committed to protecting fundamental human rights for all individuals under their jurisdiction. These rights are expected to be better guaranteed at the national level because local governments are closer to individuals and are more aware of their situations, making their methods potentially more effective than international ones.

The Albanian Constitution largely mirrors the rights outlined in the Convention. The Convention's significance lies in the breadth of rights it includes and the protective mechanisms in Strasbourg that investigate reported violations and enforce Convention obligations. The Convention's provisions have increasingly influenced member states' laws and social realities. National courts in these states increasingly refer to Strasbourg's decisions and apply the established standards and principles. Many states have modified their legislation and administrative practices before ratifying the Convention, especially those recently joining the Council of Europe. In addition to the ECHR, the Commissioner for Human Rights was established in 1999 to promote human rights education and awareness in member states. Although the Commissioner lacks legal authority, they play an advisory and informational role in protecting human rights and preventing violations.

The ECHR's role in the Albanian Constitution is of significant importance. The ECHR is integrated into the Albanian Constitution, and several provisions reflect its important position compared to domestic legislation. From this perspective, the unenumerated rights in the Constitution have a substantial impact on legislators, courts, and the executive branch. The ECHR, as an interpretive authority of the Convention, plays a crucial role in shaping the Constitutional Court's jurisprudence in line with ECHR standards. Nationally, ECHR decisions have an ergo omnes effect in some respects, meaning that although ECHR decisions are inter partes, the Albanian state should consider the impact of decisions in similar cases to avoid repeating legal issues.

Following the ratification of the European Convention on Human Rights, Albania experienced positive changes in its constitutional framework, leading to a more vital rule of law. The fundamental constitutional provisions and the 1998 Constitution established basic rights and freedoms and created mechanisms to ensure their effective exercise. The Constitutional Court has played a vital role in these processes. Ensuring that legislation complies with ECHR standards is a primary duty of the Constitutional Court. Article 131 of the Constitution states that the Constitutional Court decides on the *"compatibility of laws with the Constitution or with international agreements*" (as outlined in Article 122). Among the various constitutional review issues, decisions on human rights standards as per the ECHR hold a special place. The Constitutional Court has significantly contributed to increasing institutional accountability in meeting European standards for respecting individual rights and freedoms through its rulings.

Understanding and reflecting on ECHR standards and the European Court of Human Rights jurisprudence is essential. Specifically, ECHR jurisprudence offers valuable insights for reflecting and perfecting Convention standards. Ensuring compliance with ECHR and its guiding principles is a delicate and crucial aspect of the Constitutional Court's decision-making. It is important to note that the Court has had to build and refine its experience over its brief existence, overcoming many challenges and obstacles. In many cases, the Court has had to create new paths and develop its jurisprudence as a guardian of constitutional respect, responding to unconstitutional legal acts.

State/ État
☑ Albania
☑ Andorra

LEADING CASES TRANSMITTED FOR SUPERVISION/ AFFAIRES DES RÉFÉRENCE TRANSMISES POUR SURVEILLANCE

Update 16/04/2024

TOTAL NUMBER OF CASES TRANSMITTED FOR SUPERVISION/ NOMBRE TOTAL D'AFFAIRES TRANSMISES POUR SURVEILLANCE

State/ État	Leading Total/ Référence Total	Leading Closed/ Référence Close	Leading Closed/ Référence Close %	Leading Pending/ Référence Pendante %	Total/ Total	Closed/ Close	Closed/ Close %	Pending/ Pendante %
Albania	48	18	38%	63%	126	62	49%	51%
Andorra	5	5	100%	0%	5	5	100%	0%
Armenia	75	47	63%	37%	204	131	64%	36%
Austria	120	115	96%	4%	438	431	98%	2%
Azerbaijan	66	15	23%	77%	488	169	35%	65%
Belgium	110	90	82%	18%	295	261	88%	12%
Bosnia and Herzegovina	44	33	75%	25%	167	136	81%	19%
Bulgaria	292	202	69%	31%	865	696	80%	20%
Croatia	173	145	84%	16%	632	559	88%	12%
Cyprus	39	30	77%	23%	88	74	84%	16%
Czechia	71	66	93%	7%	244	236	97%	3%
Denmark	18	14	78%	22%	48	39	81%	19%
Estonia	41	36	88%	12%	66	61	92%	8%
Finland	54	53	98%	2%	174	169	97%	3%
France	325	299	92%	8%	1,145	1,104	96%	4%
Georgia	75	47	63%	37%	185	104	56%	44%
Germany	88	77	88%	13%	256	243	95%	5%
Greece	215	185	86%	14%	1,431	1,353	95%	5%
Hungary	106	59	56%	44%	1,289	1,107	86%	14%
Iceland	17	17	100%	0%	43	43	100%	0%
Ireland	14	12	86%	14%	37	35	95%	5%
Italy	242	171	71%	29%	4,530	4,247	94%	6%
Latvia	95	88	93%	7%	138	131	95%	5%
Liechtenstein	7	7	100%	0%	8	8	100%	0%
Lithuania	103	80	78%	22%	193	156	81%	19%

Table 1: Total number of cases in ECtHR[94]

Albania ranks high on the pending cases list in the ECtHR, along with countries such as Azerbaijan, Georgia, and Russia. The amount of just satisfaction awarded between 2012 and 2022 is **52,081,320 euros.**

As of April 2024, Albania's record in implementing European Court of Human Rights (ECHR) rulings reveals both progress and persistent challenges. Among the 48 leading cases transmitted for supervision—those deemed high-priority due to their systemic implications—only 18 (38%) have been successfully closed. This leaves 30 (62%) still pending, indicating that a majority of critical rulings remain unresolved. When considering all cases, including non-leading ones, Albania's performance improves slightly: out of 126 total cases, 62 (49%) have been resolved, while 64 (51%) remain open.

[94] European Court of Human Rights. *Country Profile - Albania*. 2023, https://www.echr.coe.int/documents/d/echr/cp_albania_eng. Accessed 9 Mar. 2025.

These figures suggest that while Albania is making some headway in addressing ECHR judgments, high-impact cases face significant delays. The lower closure rate for leading cases (38%) compared to the overall average (49%) implies that the most legally or politically complex rulings—often involving structural human rights issues—are progressing more slowly. This could stem from institutional bottlenecks, lack of political will, or resource constraints in enacting necessary reforms.

When compared to other Council of Europe states, Albania's compliance rates are moderate but lag behind top performers. For instance, Austria and Finland have closed 96% and 98% of leading cases, respectively, while Albania's 38% closure rate is closer to countries like Azerbaijan (23%) and Georgia (63%). This places Albania in a middle tier—neither the worst nor the best in terms of execution.

The high pending caseload (51% overall, 62% for leading cases) raises concerns about long-term systemic compliance. Unresolved cases risk perpetuating human rights violations and undermining public trust in the legal system. To improve, Albania may need to strengthen interagency coordination, allocate dedicated resources for ECHR implementation, and enhance transparency in reporting progress. Given that leading cases often involve issues like judicial independence, property rights, or ill-treatment, their timely resolution is crucial for upholding the rule of law.
In summary, while Albania has made some progress, the disparity between leading and non-leading case resolution rates highlights an area needing urgent attention. Accelerating reforms in high-priority cases should be a key focus to ensure full adherence to its international human rights obligations.

3.2 The case of Rrapo v. Albania

The case began with an application against the Republic of Albania filed by a dual Albanian and American citizen, Mr. Almir Rrapo, on October 11, 2010. The applicant claimed that there was a violation of Articles 2 and 3 of the Convention due to his extradition to the United States, where he would face the death penalty for eight criminal offenses committed in that country. The Court noted that:

"It is unfortunate that the lower courts permitted the applicant's extradition without considering the alleged risks he claimed. It is alarming that these courts never sought assurance from the requesting government that the death penalty would not be applied if the applicant was convicted."

This concern was raised during the proceedings in the Supreme Court at a time when, regrettably, the applicant had already been extradited. In this context, the Court notes that Protocol No. 13, which became effective in Albania on June 1, 2007, along with the obligations of the responsible state under Articles 1, 2, and 3 of the Convention, clearly stated that individuals should not be extradited to face capital punishment for any reason. Additionally, the responsible state must ensure that individuals are not exposed to a real risk of receiving the death penalty and being executed unless adequate and binding guarantees are requested and provided by the authorities of the requesting state.

Part 2: Abortion: Legal and Ethical Dimensions of the Right to Life

1. The debate on the beginning of life.

One of the most debated subjects in modern-day science and philosophy is when human life begins. Recent advancements in reproductive technologies have fueled this ongoing discussion. Combining scientific data and theories with philosophical perspectives and broader humanities is essential to address ethical, legal, and social issues.

Often, science is expected to resolve conflicting opinions and beliefs, which can cancel each other out. Determining when human life starts necessitates input from various fields of knowledge. This debate involves navigating the intersection of science and religion, which requires thorough exploration. Bioethics and science prioritize respect for human life at its start and end. Still, other fields like philosophy, psychology, technology, sociology, law, and politics offer differing viewpoints on the beginning of life.

The issue's complexity must be recognized in its entirety. While an embryo provides material for biological and genetic analysis, it also demands philosophical and religious reflection because we are discussing the origin of human life. Legal and ethical perspectives are also critical for its protection, and our focus is to zoom in on the debate precisely at this point of intersection.

The question of when legal protection for human life should begin—whether at conception, implantation, or birth—remains difficult to answer. Most countries, except Ireland and Liechtenstein, base their legal frameworks on Roman law, which grants rights to a fetus only if it is born or expected to be born.

Few nations recognize legal personhood from conception, and many do not confer legal status to in vitro embryos within 14 days of fertilization. Nevertheless, even without legal rights, the embryo undeniably marks the start of human life and belongs to the human family. Therefore, every country must consider which practices uphold the dignity and security of human genetic material. The answer to when life begins can only be found through the interconnected insights of history,

philosophy, medical science, and religion. It has been challenging to delineate the boundaries between science and metaphysics in this complex philosophical area. Ultimately, where that boundary lies depends on one's fundamental philosophical perspective. Views on the beginning of life will always differ based on individual, cultural, religious, and group perspectives. In a democratic society, there are always differing opinions and stability is maintained when the majority recognizes the importance of minority views. For these reasons, this debate is as crucial and dynamic and requires legal foreclosure from those holding it for strategic personal reasons to target different groups and opinions (Kurjak and Barisic 2021).[95]

1.1 ECtHR Case Law on Abortion

As science and religion move closer to one another, so does the legal framework, especially the European legal framework and ECHR cases, even though the European stanzas on the case leave the fetus's legal protection at national discretion. Article 2 of the European Convention on Human Rights imposes a duty on states to ensure the safety of life within public health. The European Court of Human Rights has noted that, even if it is assumed that the fetus is entitled to protection, the state's responsibility does not extend to providing legal or criminal measures in cases of accidental fetal termination.

There is also the question of whether compensation can be claimed for harm to a fetus caused by medical actions before birth. Should the doctor be held criminally responsible in such a case? Since a fetus lacks legal standing, it cannot be the basis for compensation before birth. Therefore, seeking damages for fetal injury is not possible, as the fetus does not have a separate legal capacity from the mother.

Complex questions emerge in discussions about the right to life: Is life an absolute concept, beginning at a specific point, or is it gradual, where the fetus is considered increasingly alive as it develops? Is a fetus included when referring to a "person"? The European Court has suggested that the answer to when life begins should be determined by national law, as most countries ratifying

[95] Kurjak, Asim, and Lara Spalldi Barišić. "Controversies on the Beginning of Human Life: Science and Religion Closer and Closer." *Psychiatria Danubina*, vol. 33, suppl. 3, 2021, pp. S257–S279. PMID: 34010252..

the Convention have not reached a consensus. There is no unified European stance on the scientific or legal definition of life's beginning.

The Convention does not clearly define what constitutes "life," nor does it specify when and where Article 2's protection begins or ends. Due to the lack of a European or global agreement on this issue, neither the former Commission nor the current Court has been willing to set exact standards in this area. Moreover, the Court has not provided an interpretation on whether an unborn child can be considered a "person" under Article 2 of the Convention.

In the case of *Vo v. France*, the Court ruled that determining when the right to life begins falls within the discretion of states, recognizing that the Convention is a "living instrument" that must be interpreted in line with contemporary conditions. The Court pointed out that, first, this issue has not been resolved in most of the Contracting States, particularly in France, where it remains a matter of debate, and second, there is no European consensus on the scientific and legal definition of when life begins. As a result, the Court concluded that it is not possible to give an abstract answer to the question of whether an unborn child qualifies as a person under Article 2.

The question arises: at what point can a fetus "gain" the right to life? This issue divides legal experts into two camps: those who support abortion, asserting that life begins at birth, and those who oppose it, believing that a fetus is a human being from the moment of conception and thus has a right to life from that point onward.

The debate over when life begins is central for those drafting laws related to abortion. When examining the stages of fetal development to understand the concept of life, we identify conception, implantation of the fertilized egg in the uterus, tissue differentiation, the onset of brain activity, fetal viability, and birth. While birth appears to be a clear and understandable milestone, there are still disagreements regarding when a child is considered born. Is it when part of the baby is outside the mother? When the entire baby is outside? Or when the fetus must rely on its means to survive? Some people argue that it is absurd for a being's right to life to depend on whether it is inside or outside the womb. Thus, there are challenges in determining the precise moment when a

fetus acquires the right to life. Consequently, it may be more appropriate to recognize that a fetus gradually develops or earns the right to life over time.

In addressing this issue, the Commission and the Court have opted not to impose a uniform standard but to evaluate questions about the beginning of life on a case-by-case basis. They grant considerable autonomy to states to regulate these matters, provided they handle them appropriately and balance the interests at stake. This approach can be observed in the case law of the Convention's bodies concerning abortion. Socially and morally, the more developed the fetus, the more challenging it is to justify abortion, leading to greater emphasis on the rights of the fetus compared to those of the mother.

In contrast to Article 4 of the American Convention on Human Rights, which asserts that "life must be protected from the moment of conception," Article 2 of the European Convention on Human Rights (ECHR) does not address the time limits for the right to life nor does it specify who falls under the term "everyone" whose life is protected by the ECHR. The Convention also does not define the moment when human life begins or whether the right to life applies to the unborn child, making it a contentious issue in abortion discussions. This raises questions such as: Is it lawful to harm a fetus? Does a woman have the right to terminate a pregnancy? Should a fetus be regarded as a living being? When can it be classified as a human? What happens in cases where the fetus is harmed without the woman's consent?

Recognizing the sensitive and emotional aspects of abortion is crucial, as well as the strong opposition to this issue, even among medical professionals. Factors such as human philosophy, personal experiences, awareness of the limits of existence, religious upbringing, individual perspectives on life, family, and values, and the moral standards people set for themselves all influence their views on life and abortion.

Similar to how U.S. state laws vary widely, legislation among the member states of the ECHR differs significantly regarding when life begins and how the concept of "human" is defined. Scientifically, there are two positions on the moral status of embryos and the corresponding legal protection they should receive: one view holds that human embryos are not considered human

beings and, therefore, receive limited protection; the other view argues that human embryos have the same moral status as human beings, meaning they should receive equal protection.

Article 8 of the Convention does not establish a right to abortion but emphasizes a woman's right to respect for her physical and psychological integrity, a core aspect of "private life." States must ensure that their healthcare services respect medical professionals' freedom without hindering pregnant women's access to those services. However, pregnancy termination impacts not only prospective mothers' rights but also those of fathers. Consequently, Strasbourg's judges determined that any potential rights of the father concerning respect for his private and family life cannot be broadly interpreted to include the right to consultation or legal challenges relating to a wife's decision to have an abortion. The Court views the respect for a pregnant woman's private life as taking precedence over any rights of the father.

In the Boso case, the father's complaint that his wife's decision to have an abortion was not discussed with him was dismissed as unfounded. Case law indicates that when balancing the interests of prospective parents, a woman's decision not to become a parent prevails over a man's wish to become one. If the mother's physical integrity is at risk, her right to autonomy is given near-automatic precedence. While the Court has found that a father's rights are secondary to the mother's in abortion matters, the situation changes when decisions involve initiating a pregnancy. In the Evans case, the Court examined human rights protections about "new reproductive technologies" and reproduction-related rights. This case focused on retrieving the plaintiff's eggs for IVF treatment. The plaintiff argued that domestic laws allowed her former partner to withdraw his consent for the storage and use of the embryos, preventing her from having a genetically related child. The Court initially concluded that "private life" includes the right to make decisions about becoming a parent and emphasized equal treatment for men and women in IVF, despite their differing roles in the process. Therefore, preserving and implanting fertilized eggs requires the continuous consent of both parties. More recently, this principle has been extended to encompass decisions regarding how to become a parent.

The Court determined that personal autonomy is fundamental in interpreting Article 8 guarantees, meaning the right to decide about parenthood also includes choosing the circumstances under

which one becomes a parent. The Court views birth circumstances as an undeniable aspect of a person's private life, protected under this provision.

However, claims of morality on this issue stem not only from the historical developments of philosophy, politics, or law but also from the scientific novelties in medicine. The problem of women's self-determination is a topic that has also involved medical scientists. Dr. Samuel Clagett Busey, an obstetrician, notes:

"If a pregnant woman possesses the natural and inalienable right to terminate the life of her child at term, she cannot be denied the right to terminate it at any period of gestation, and criminal abortion would then become an accomplishment of the highest significance. The early destruction of embryonic life would be the simplest and surest escape from the perils of utero-gestation and parturition; it would effectually withdraw from the further scientific pursuit of the advances in obstetrics that seek the elimination of craniotomy, more certainly extinguish the instincts and attribute of maternity; nullify the laws of reproduction; and reduce a woman to a level more degrading than any to which the most barbaric of primitive consigned her" (in Jonathan B. Imber- Fetal rights, pg. 385). [96]

In this context, medical progress has provided women with the opportunity to decide for themselves whether or not to go on with a pregnancy. Simultaneously, the same medical advancements have protected fetal rights. So, the debate over the right to abortion is not strictly speaking only a philosophical, political, and religious one but also, in a much more pragmatic sense, a medical one. The fetus started to be treated as a "patient" on its own under the medical term "prenatal care."

The United States has long been the battleground for the debate over fetal rights and abortion. As one of the judges of the famous *Roe v. Wade* reminisces about the decision:

"The Roe framework, then, is clearly on a collision course with itself. As the medical risks of various abortion procedures decrease, the point at which the State may regulate for reasons of maternal health is moved further toward actual childbirth. As medical science becomes better able to provide for the separate existence of the fetus, the point of viability is moved further back toward conception. Moreover, it is clear that the trimester approach violates the fundamental aspiration of judicial decision-making through the application of neutral principles "sufficiently absolute to give them roots throughout the community and continuity over significant periods…"

[96] Imber, Jonathan B. "Fetal Rights." *Handbook of Human Rights*, edited by Thomas Cushman, Routledge, 2012, pp. 384–388.

Nowadays, medicine has made it possible for "viability" to exist as early as 22 weeks of pregnancy, which in itself poses a more significant "threat" to women's rights. This overcomplicates the issue of human rights and poses a considerable challenge to fetal rights. So, the real question becomes whether human rights failed humans, as there is a deep discord between human rights and our quest for prosperity.

In the following chapter, we examine this conflicting dichotomy in the Albanian playground, where conflicting loyalties between human rights and traditional values persevere, and the debate is relatively embryonic.

2. Historical Overview of Abortion in Albania

During the Communist era in Albania (1945–1990), the government implemented a pro-birth policy and prohibited the import of birth control, leaving women with no options to control their reproductive choices. Under dictator Enver Hoxha, abortion was criminalized and heavily punished. However, the ban did not stop abortions from occurring, and many Albanian women resorted to illegal abortions, either self-induced or performed by others. It is estimated that half of all pregnancies ended in abortion, with more abortions than births recorded in the capital, Tirana, by 1980. Since abortion was illegal, it was conducted in secret, and accurate statistics from this period are scarce. Official government data for 1986 claimed only seven abortions, neglecting a large number of illegal procedures. These abortions were often performed by untrained women, resulting in mutilations, infections, and even deaths. Albania had the second-highest maternal mortality rate in Europe at the time. Women and their families feared speaking out about abortions due to potential government retaliation. Those caught were publicly shamed by the Communist Party or sent to re-education programs.

Moral conservatism, not as an individual value but as a system to be imposed on society, is not new or unfamiliar to Albanians. Albanians have known this conservatism well, particularly during the communist era. Albanian communism was at its peak in its conservatism. A female doctor wearing a skirt slightly above the knee could be harshly criticized by a party secretary or even

exiled for "immoral behavior." Someone targeted by the party could be accused of being a "pederast" and sentenced to up to ten years in prison, regardless of whether the accusation was true. An actor playing a role requiring a beard in theater or film needed special permission. Otherwise, the party police would stop him in the street and force him to shave.

This moral conservatism of the Party of Labor, a political party that played a significant role in shaping Albanian politics during the communist era, should not surprise us. Moralism is a strong justification for imposing power on others, and as Hannah Arendt explains, a revolutionary force becomes conservative the day it takes control.

The moral conservatism of Albanian communism was much more extreme than communist regimes in other Eastern European countries. For example, while many countries had heated political battles over the right to abortion, this issue was never politically debated in Albania. Even in 1995, when the majority of the Democratic Party in parliament and then-President Sali Berisha passed the law that still allows assisted abortion today, no significant segment of the population was scandalized. This issue of abortion also shows that, even during communism, moral conservatism was more of party propaganda than a social reality.

In a country where abortion was punishable—two years in prison for the assistant and "re-education through labor" for the woman—abortion was a widespread reality throughout the country. Consequently, being an active phenomenon of society, one cannot say that people were not exposed to it. However, what seems interesting enough is the ongoing moral conservatism that is instilled deep into the fabric of the post-communist transition in Albania. As a result, even in terms of political agendas, it has proven that the (im) morality of politics has targeted vulnerable audiences prone to believe that we need stronger leaders for a healthier and prosperous life. A more decisive leader can reflect a society that struggles with human rights since he turns to the same moral conservatism and authoritarianism that has proven disastrous in the past. However, regarding the perception of safety, a solid authoritarian stance on politics is a known and safe variable for Albanians.

Interestingly, when men were asked questions on their views on abortion, most of them considered it a ruling against life. When asked furthermore if they somehow accept it when it puts into risk the life of the mother or whether a woman has the right to abort because she was a victim of rape, answers vary from: only God can take and give life to every life is sacred.

While there exist conflicting loyalties when the same question is personalized to ask what would they do if their wives, sisters were in such a position, while some refuse to answer, others are not timid when they affirm that only in very extreme circumstances would approve of abortion to save their partners, or loves ones' lives. So, the moral conservatism they pretend to have and attach themselves to is long gone and becomes flexible when moral dilemmas involve loved ones. However, the problem is that "only special circumstances" (albeit already provisioned in the law since 1995) can change beliefs and perceptions. Otherwise, they are prone to neglect the right of a woman to self-determination, which again is a parochial patriarchal testimony of a claim to gender superiority. In most cases of abortion, men are not just contributing factors to decision-making, but indeed, sometimes the ones who decide.

In communism, the state chooses to do everything, and inasmuch, communism has undeniably forged a strong masculinist society that orders and violates through power. Today, the role of the party-state has been transferred back into the hands of the patriarchal family, where the men decide. During the communist era, there were many accounts of persecuted women and their personal experiences of oppression. State policies heavily impacted women's privacy, sexual freedom, and access to abortion, leading to imposed divorces and dehumanization of the maternal figure. The dogmatic propaganda and the violent, gender-discriminatory policies that persisted for 50 years during communism have contributed to a fearful society. Despite claiming a transition to democracy for the past 30 years since the fall of communism, people still hesitate to think and speak freely. Citizens acting as agents of change are rare in a society that increasingly needs civic movements.

It is not surprising, then, that research indicates perceptions of abortion are still significantly influenced by the moral conservatism fostered during the communist period. This ideology was

fundamentally a tool for propagandistic control, leading to widespread resistance to abortion rights, which can sometimes manifest as fundamentalism.

2.1 The Legal Framework on Abortion in Albania

The legal and social stance on abortion in Albania has evolved significantly over the years. Under the communist regime, abortion was strictly regulated and only permitted in exceptional cases, such as when the life of the mother was at risk. The state enforced pronatalist policies, emphasizing population growth as essential for economic development and national strength. Contraceptives were difficult to obtain, and abortion was largely criminalized, forcing many women into dangerous, clandestine procedures. However, with the collapse of the regime in the early 1990s, Albania liberalized its abortion laws, allowing the procedure upon request within the first 12 weeks of pregnancy. This shift mirrored broader socio-political transformations in post-communist Eastern Europe. The move toward liberalization was influenced by economic instability, increased international engagement, and the country's aspirations to align its policies with broader European standards. Despite the legal access to abortion, societal attitudes have remained deeply influenced by cultural and religious norms, leading to ongoing debates regarding the morality and implications of abortion.

Albanian legislation currently aligns with international human rights agreements that emphasize women's reproductive autonomy, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).[97] However, the implementation of these laws has faced challenges due to inadequate healthcare infrastructure, lack of public awareness, and resistance from religious institutions. Comparatively, while some European nations have moved toward more restrictive abortion policies, Albania has maintained a liberal framework, though enforcement varies by region. Additionally, while the legal framework theoretically supports reproductive choice, many women encounter significant bureaucratic obstacles and medical professionals who exercise their own moral discretion in denying abortion services.

[97] United Nations. *Convention on the Elimination of All Forms of Discrimination Against Women*. 1979, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women. Accessed 9 Mar. 2025.

According to a 2021 report by the Albanian Institute of Statistics (INSTAT), there were over 6,000 registered abortions performed legally in the country, but experts suggest that unregistered and clandestine abortions significantly exceed this figure.[98] This discrepancy highlights issues in reporting mechanisms and possible underutilization of legal medical services due to stigma or financial constraints.

The legal framework, however, has not always been consistently applied. Many women seeking abortion services report facing bureaucratic obstacles, judgmental attitudes from healthcare providers, and limited access to safe and high-quality reproductive healthcare services. Furthermore, rural areas tend to have more restrictive access compared to urban centers, leading many women to seek unsafe and clandestine abortion procedures. These disparities highlight the importance of strengthening enforcement mechanisms and ensuring equal access to reproductive healthcare services nationwide.

As mentioned before, the Albanian Constitution guarantees the right to life. Still, it does not specify when the state's obligation to protect this right begins—whether it commences at conception, at the child's live birth, or at another time. According to the Penal Code of the Republic of Albania, several criminal acts related to violating Law No. 8045, dated 7.12.1995, "On the Termination of Pregnancy." However, since these acts are categorized as endangering life and health due to the termination of pregnancy or failure to assist, it is evident that their primary purpose is to safeguard the health of the pregnant woman rather than to protect the fetus's right to life. Law No. 8045 was mainly enacted to prevent uncontrolled abortions by unqualified individuals, which posed risks to the lives of pregnant women, especially when abortion was legally prohibited.

Another significant law in this area is Law No. 8876, dated 04.04.2002, amended by Law No. 11.05.2009, which regulates the organization and oversight of all reproductive health activities in both public and private health institutions. It aims to protect individuals' and couples' reproductive rights while ensuring that national laws and internationally recognized principles respect them. Like the laws of many other nations, Albanian law does not acknowledge the absolute right of the

[98] Institute of Statistics of Albania (INSTAT). *Women and Men in Albania 2021*. 2021, https://www.instat.gov.al/media/10318/press-release-women-and-men-in-albania-2021.pdf. Accessed 9 Mar. 2025.

fetus to live. Recognizing such a right would hinder women's right to self-determination as part of their right to private life, specifically their right to terminate a pregnancy according to legal criteria. Under these conditions, no one, not even a husband, can request a court to limit this right. This stance is supported by the ECHR, which has ruled that the father's inability to seek the prevention of pregnancy termination does not violate his right to private and family life, as guaranteed by the European Convention on Human Rights.

In many jurisdictions, terminating a pregnancy without the woman's consent is classified as a criminal offense. Article 93 of our Penal Code specifically addresses: *"Termination of Pregnancy without the Woman's Consent,"* focusing on protecting the life and health of the pregnant woman. The object of this criminal act is dual, as it also aims to protect the fetus's right to live in certain aspects. From an objective standpoint, the crime is committed through actions that terminate a pregnancy in authorized public hospitals or private clinics within the permissible timeframe, except when termination is justified for health reasons. The crime can occur through active actions, using chemicals such as pharmaceuticals, medications, or substances with abortive effects, physical means, or emotional coercion. This raises the question: Is it a criminal act to terminate a pregnancy or provide information about a medication that induces abortion to a pregnant woman? In medical practice, doctors or pharmacists often inform patients and prescribe drugs that cause abortion, knowing the patient intends to terminate the pregnancy, except in the cases specified by law. Our legislation prohibits advertising products that induce pregnancy termination while also requiring physicians to inform patients about available contraceptive methods. No criminal prosecution has been initiated in these instances for the act of terminating pregnancy.

For criminal liability, the occurrence of any other consequence besides the termination of pregnancy is not required. However, it is crucial to emphasize that the termination of pregnancy must result in the death of the fetus; if the fetus survives, it would instead be considered causing premature birth. Premature birth (the intentional acceleration of childbirth) resulting from deliberate injury is not recognized in our penal legislation, whereas Italian law includes it as a specific criminal act. In this case, it does not involve the death of the fetus but rather the acceleration of the expected timeframe for birth, as the injury occurs when the fetus is capable of independent life. If it were confirmed that a fetus has matured and is capable of living

independently, Italian law would classify this as intentional murder. In contrast, Albanian law would categorize it as the termination of pregnancy without the woman's consent. For instance, if a woman suffers injuries leading to the termination of her pregnancy, and the fetus survives for a few hours after being separated from her body, only to later die due to those injuries, it would be considered a case of pregnancy termination without consent, assuming it was determined that the fetus could have lived independently. Similarly, if the fetus dies due to immaturity and an inability to live autonomously after being separated from the woman, it would still fall under the crime of terminating the pregnancy without the woman's consent.

From a subjective standpoint, this criminal act occurs intentionally and against the woman's free will unless the termination is justified by a medical reason, where the doctor deems it necessary to proceed without her consent. For establishing criminal responsibility, the specific timing of the pregnancy is not crucial; the perpetrator must be aware that the woman is pregnant and that the termination is done with intent. Severe injuries leading to the termination of pregnancy are treated as a distinct criminal offense within the category of crimes against health rather than as acts that threaten the life and health of the woman through pregnancy termination. However, if a woman experiences physical or psychological abuse resulting in the termination of her pregnancy, those responsible will be liable for serious injury.

Terminating a pregnancy without the woman's consent involves direct actions taken against her wishes. The distinction between the two legal provisions exists in both the objective and the objective aspects. In assessing these criteria, it is essential to consider the woman's current condition and her foreseeable future rather than solely focusing on the immediate risks when making a decision. Situations where the pregnancy is undesirable or unsuitable for the mother and her family should not be included; instead, it is necessary to evaluate the social factors that impact the woman's overall well-being and physical and mental health. The interruption of the physiological process results from actions taken by the doctor, medical staff, or others rather than occurring naturally due to an illness or the woman's health condition.

Article 1 of the law "On the Termination of Pregnancy" stipulates that "the law guarantees respect for every human being from the beginning of life," a principle that can only be overridden under

specific and necessary conditions outlined by the law. The provisions of the Penal Code do not criminalize abortion itself but are designed to protect women's health from unauthorized medical procedures. This focus on protecting pregnant women's health over safeguarding the conceived life stems from a balance of rights favoring the woman's health.

Within the Penal Code of the Republic of Albania, several criminal offenses relate to violations of Law No. 8045, dated 07.12.1995, "On the Termination of Pregnancy." However, these offenses aim to prevent risks to the health and life of pregnant women caused by unsafe abortions or lack of medical care rather than protecting the fetus's right to life. Additionally, there is no record in Albanian judicial practice of individuals being convicted for causing an abortion contrary to the provisions and conditions established by this law. The current Penal Code exempts pregnant women from criminal liability for terminating their pregnancies, either by themselves or with the assistance of others, in contrast to previous legislation.

Consequently, Albanian law does not confer protection to the right to life from conception. The Constitution's reference to protecting "a person's life" by law pertains solely to individuals who have been born, not the fetus. Law No. 8045 was primarily introduced to curb unregulated, unsafe abortions conducted by unqualified persons, which posed significant risks to women's lives during times when abortion was prohibited. Article 2 of the European Convention on Human Rights obligates states to protect life within public health contexts. The Strasbourg Court has clarified that even if a fetus is assumed to have protection, states are not obliged to provide criminal legal tools to prevent unintentional fetal loss.

This raises another question: is compensation possible for harm to a fetus caused by medical actions before birth? Would a doctor be criminally liable for such harm? Legal precedent does not support claims for damages to a fetus before birth since a fetus lacks legal status. As such, compensation for fetal harm cannot be sought until the fetus is born, at which point its rights may be exercised. If the fetus is born alive, harm to its health caused by prior medical actions may justify a claim. However, a woman’s legal right to terminate a pregnancy does not impose an obligation on doctors to perform abortions if it conflicts with their conscience or ethical beliefs.

Albanian law similarly respects a doctor's right to refuse to perform an abortion, provided the patient is referred to another willing practitioner. In international practice, doctors must ensure that patients seeking terminations are directed to professionals who agree to perform the procedure (Shah et al 2024).[99] Article 9 of the European Convention on Human Rights also protects a medical professional's right to object to performing abortions or related treatments based on personal beliefs, so long as an alternative provider is recommended.

Like laws in many other countries, Albanian legislation does not recognize an absolute right for a fetus to live. Recognizing such a right would conflict with women's autonomy to make decisions about their bodies, including terminating pregnancies, which is part of their right to private life under the law. No individual, including a spouse, may legally seek to restrict this right through the courts. This position aligns with Strasbourg Court jurisprudence, which has consistently held that denying fathers the right to challenge pregnancy terminations does not violate their rights to private and family life under the European Convention on Human Rights.

Abortion remains a contentious issue in Albanian society, where traditional beliefs and religious influences play a significant role in shaping public opinion. The dominant religious groups, including Islam and Christianity, largely oppose abortion, reinforcing stigma around the procedure. As a result, many women seek abortions in secrecy, fearing social ostracization. Family expectations and cultural norms also influence decisions regarding abortion, with women often facing pressure from relatives to carry pregnancies to term regardless of their personal choice.

A 2022 survey by the Albanian Center for Population and Development (ACPD) found that 65% of Albanian respondents believed that abortion should only be allowed in cases of rape, incest, or when the mother’s life is at risk. Only 20% supported a woman’s unrestricted right to choose an abortion, while the remaining 15% were undecided or entirely opposed to abortion under any circumstances. These statistics reflect the deep-rooted cultural conservatism that continues to shape public discourse on reproductive rights.[100]

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[99] Shah, Parth, et al. "Informed Consent." *StatPearls*, updated 24 Nov. 2024, StatPearls Publishing, 2025, https://www.ncbi.nlm.nih.gov/books/NBK430827/. Accessed 21 Apr. 2025.

[100] Albanian Centre for Population and Development (ACPD). *Abortion and its Impact on Albanian Society*. https://acpd.org.al/?p=2057&lang=en. Accessed 9 Mar. 2025.

Cultural perceptions of motherhood further complicate the discussion around abortion. The concept of "femininity" in Albanian society is closely tied to a woman's ability to bear children, leading to the expectation that abortion should only be considered in extreme circumstances. Women who seek abortions often experience social backlash not only from religious leaders but also from their immediate communities, which perceive the procedure as an abandonment of moral duty.

The media's role in shaping abortion narratives should not be overlooked. In Albania, there is limited representation of reproductive rights in mainstream media, with discussions on abortion often presented through a moral and ethical lens rather than a medical or human rights perspective. This lack of objective representation contributes to misinformation and fosters stigma.

2.2 Institutional Trust and Governance in Abortion Regulation

One of the primary concerns regarding abortion in Albania is the level of trust in the institutions responsible for its regulation. The healthcare system, which provides abortion services, often faces scrutiny due to allegations of corruption, lack of transparency, and inadequate facilities. These issues contribute to a public perception that institutions fail to safeguard women's rights effectively. Women who seek abortions frequently encounter inconsistent enforcement of the law, where medical professionals may refuse to perform procedures due to personal beliefs or inadequate resources.

Moreover, governmental and non-governmental organizations working on reproductive health often struggle to implement policies that ensure safe and accessible abortion services. The lack of clear guidelines and inconsistent enforcement of existing laws exacerbate the public's mistrust in institutional effectiveness. A 2023 study by the Albanian Public Health Institute found that 40% of surveyed women who sought abortion services faced obstacles such as excessive paperwork, biased consultations, or refusal by providers to perform the procedure.[101]

[101] *Citizens Albania*. "Abortion on the Decline, but Still Present in Albanian Society." 23 Jan. 2025, https://citizens.al/en/2025/01/23/aborti-selektiv-ne-renie-por-ende-prezent-ne-shoqerine-shqiptare/. Accessed 9 Mar. 2025.

Additionally, political influences and lobbying efforts by various advocacy groups play a role in shaping the governance of abortion policies. Some conservative political factions push for more restrictive abortion laws, while women's rights organizations advocate for expanded access to reproductive healthcare. These conflicting interests contribute to policy stagnation and hinder the establishment of clear, evidence-based guidelines for abortion regulation. Addressing these governance challenges requires a collaborative approach that involves medical professionals, policymakers, and civil society organizations.

Several case studies highlight the real-life implications of Albania's abortion policies and the societal factors influencing reproductive choices.

Case Study 1: Rural vs. Urban Disparities An investigation by a reproductive health NGO documented the experiences of 30 women seeking abortions, half from urban areas and half from rural regions. Women in urban areas were twice as likely to receive proper medical counseling, while those in rural areas reported facing significant stigma and logistical difficulties, including long travel distances to the nearest legal abortion clinic (Sutton et al 2019). [102]

Case Study 2: Gender-Selective Abortion Sex-selective abortion has been reported in certain Albanian regions due to strong cultural preferences for male offspring. A study by the UN Population Fund (UNFPA) found that in some communities, the ratio of male births to female births exceeded 113:100, significantly higher than the natural ratio of approximately 105:100. This imbalance raises concerns about future demographic challenges and societal instability.[103]

[102] Sutton, April, Daniel T. Lichter, and Sharon Sassler. "Rural–Urban Disparities in Pregnancy Intentions, Births, and Abortions Among US Adolescent and Young Women, 1995–2017." *American Journal of Public Health*, vol. 109, no. 12, 2019, pp. 1762–1769. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6836770/. Accessed 21 Apr. 2025.

[103] United Nations Population Fund (UNFPA). *Sex Imbalances at Birth: Current Trends, Consequences, and Policy Implications*. 2012, https://www.unfpa.org/sites/default/files/pub-pdf/Sex%20Imbalances%20at%20Birth.%20PDF%20UNFPA%20APRO%20publication%202012.pdf. Accessed 9 Mar. 2025.

2.3 The reality of Albania

In this study's continuation, we find it essential to examine the fundamental challenges Albania faces concerning the protection of life, the fetus, and issues related to abortion. Article 4 of the abortion law mandates that the specialist doctor from whom a woman seeks a voluntary termination of pregnancy must inform her about all potential risks and complications related to the procedure, her legal rights, the rights of her family, the mother, and the child, as well as institutions and organizations that can provide moral and financial support and clinics that perform abortions. After receiving all relevant guidance and information, the doctor requires written confirmation of the request seven days after the initial inquiry. If a 16-year-old minor makes the request, in addition to her request, approval from a person exercising parental authority or her legal guardian is also necessary.

Article 9 establishes the timeframe within which a pregnancy can be legally terminated. The first paragraph states that "a pregnancy can be interrupted for medical reasons up to the 22nd week if a commission of three doctors, after examination and consultation, deems that continuing the pregnancy or giving birth poses a risk to the woman's life or health." This paragraph sets the 22-week limit only in cases where the woman's health is threatened; in instances where "the commission finds that the fetus has life-incompatible malformations or debilitating diseases with uncertain treatments, it can decide to terminate the pregnancy at any time." Suppose the woman believes her pregnancy presents psychosocial issues. In that case, she may terminate it within the 12th week or up to the 22nd week if a commission of three medical specialists, social workers, and legal professionals, after examination and consultation, determines that the pregnancy resulted from rape or another sexual crime, as well as other validated social reasons.

The law strictly prohibits any form of propaganda or advertising, whether direct or indirect, from institutions regarding methods, medications, and products that lead to pregnancy termination unless such information is published in scientific journals intended for medical professionals. Article 16 of Law No. 8045, dated December 7, 1995, "On the Termination of Pregnancy," specifies that doctors are not obliged to perform a termination against their will. It is clear that, based on the mentioned data, the abortion law is liberal, and abortions can be performed without the fear of criminal prosecution.

Criminal prosecution, under this law and its guidelines, may only be applied to the specialist doctor if they violate the regulations established by the Ministry. In Albania, the Penal Code addresses crimes that threaten life and health due to abortion in Section V, specifically Articles 93-95. The timing for permitted abortions is not outlined in this Code, as it is determined by directives and decisions made by the Ministry of Health. Article 93 stipulates penalties of fines or imprisonment for up to five years for terminating a pregnancy without the woman's consent, except in cases where a justified medical reason dictates the interruption. Thus, a woman is entitled to an abortion only if her health or life is at risk, regardless of whether it has been 10 weeks, 20 weeks, or any time during the pregnancy. Before the 10-week mark, a woman has the right to an abortion without any special procedures, irrespective of the reasons. After 10 weeks, a woman can request a termination by submitting a written application to a designated commission. Still, certain conditions must be documented first: based on medical indications, if it is determined that during pregnancy or after childbirth, the woman's health may significantly deteriorate or lead to her death; when it is anticipated that the child will be born with severe mental or physical disabilities, based on eugenic factors; or when conception resulted from rape, sexual relations with an incapacitated individual, or a minor.

This paragraph highlights some current issues faced by our society concerning abortion, which have become increasingly related in recent years: abortion among young individuals and selective abortion. Recently, there has been a noticeable rise in both young-age abortions and selective abortions. Like many Eastern European countries, Albania experiences a very high rate of abortion. In Albania, the abortion rate stands at 230 per 1,000 live births, while the average rate across Europe is 28 per 1,000 live births.[104]

These statistics seem alarming in our country. However, the figures remain contentious, as accurate data on this phenomenon is lacking. The primary reason for this lack of reporting is linked to abortions performed in private clinics and those conducted privately by women using pills. The most affected age group comprises individuals aged 13 to 18. The number of abortions among

[104] Institute of Public Health. *"Monitoring Trends of Abortion Rates in Albania for the Period 2010-2015." Institute of Public Health*, n.d., https://www.ishp.gov.al/monitoring-trends-of-abortion-rates-in-albania-for-the-period-2010-2015/.

adolescents continues to increase, even though this generation is relatively well-informed about methods of preventing pregnancies. The capital city is particularly concerning; according to data from two maternity hospitals in Tirana, at least three cases are presented for abortion each week. Selective abortion remains at similar levels: many parents, upon discovering that the child they are expecting is not male, choose to terminate the pregnancy. According to studies from the Institute of Public Health in Albania, data shows a decline in abortions among women of reproductive age (15-49 years). In the early 1990s, the ratio was one abortion for every 2.2 births, but by 2017, it had fallen to 1 abortion per 5.7 births. Experts view the decrease in abortions requested by women—a legal right since 1995—as a positive trend, with such cases now making up only 23% of all abortions compared to 76% around 25 years ago. Albania's abortion rate is lower than that of Eastern countries and similar to neighboring regions.

"Most abortions occur in women aged 20-34, representing about 68% of cases, while teenage abortions are low, at around 4.8%," notes Alba Merdini, a specialist at the Institute of Public Health.[105] However, selective abortion remains a contentious issue in Albania. It is illegal and often conducted after the 16th week when the fetus's gender is identifiable. Patriarchal norms have encouraged selective abortion, pressuring women to terminate pregnancies upon discovering they are carrying female fetuses. National studies by NGOs such as World Vision, the United Nations Population Fund, and Together for Life indicate that selective abortions continue at an uncontrolled and unidentifiable rate.

"National studies show that the birth ratio of boys to girls in Albania is 112 boys per 100 girls, while the natural ratio is about 105 to 100. According to a UNFPA study, this disparity suggests gender-selective abortions are happening, driven by persistent biases,".[106]

Although official reports on selective abortion are absent, World Vision's field research has revealed alarming testimonies. One woman, after discovering her second child was female, faced a challenging choice:

[105] *"Aborti në Shqipëri dhe shqetësimet." Dritare.net*, n.d., https://dritare.net/aborti-ne-shqiperi-dhe-shqetesimet.
[106] United Nations Population Fund (UNFPA). *Report on the State of the Population in Albania 2012*. UNFPA, 2012, https://www.unfpa.org/sites/default/files/resource-pdf/UNFPA_report_Albania2012.pdf.

"I felt distressed; the mindset influences us that having a boy is essential. People would say, 'She only had two daughters, no son.' In my sadness, I considered terminating the pregnancy. I tried to cause a spontaneous abortion by lifting heavy weights," she shares with World Vision.[107]

Since 2007, abortions in Albania have been allowed only in state maternity hospitals and two private hospitals, while previously, they were also performed in private clinics. Urban women represent the majority of cases (64.7%), with the highest rates in Vlora, Berat, and Tirana. Although overall abortion rates are declining, experts are concerned that a significant number are performed by women who are less educated, unemployed, and facing challenging socio-economic conditions. These insights come from abortion records.

"Most abortions involve women with lower education levels: around 50% have primary or secondary education, 18% have higher education, and most are married. Over 80% are unemployed and uninsured," says Merdini.[108] The declining abortion rate is attributed to the increased use of contraceptives and greater access to information now included in school curricula. Abortions from the 6th to the 12th week—the legal limit for women's requests—can carry risks. After the 12th week, abortion is only permitted for health reasons.

"Complications can include bleeding during the procedure and, in some cases, more severe issues requiring surgery, such as uterine wall perforations. Additionally, infections from the procedure can impact future pregnancies," explains Associate Professor Mirela Rista, an obstetrician-gynecologist. According to experts, before abortion was legalized in 1995, about half of maternal deaths were due to unsafe abortions. Today, such deaths are reportedly zero. However, doctors encourage women to carry pregnancies to term to support the declining birth rate, which has dropped by over 50% compared to 25 years ago."[109]

The general perception is that participating in a birth is rewarding and bringing joy to families while terminating a pregnancy is not, which, along with patriarchal mentality, puts even more pressure on women who, for different reasons, are obliged to abort to protect their lives, or even as their ultimate choice.

While processing data from interviews, it is interesting to note a similar argument that almost all of our interviewees gave in defense of the fetus and its right to life. Most of them used the word

[107] Ibid
[108] *"Aborti në Shqipëri dhe shqetësimet." Dritare.net*, n.d., https://dritare.net/aborti-ne-shqiperi-dhe-shqetesimet.
[109] Ibid

abortion, coining it as wrong, evil, cruel, and seldom used arguments that have to do with the right of the fetus. Taking into consideration that questions were constructed in a way to determine whether Albanians still struggle to accept abortion, it was clear that not only do they pose a significant barrier against abortion practices, but unfortunately, they do not prefer to take into account women's rights. It is unthinkable to talk about abortion without talking about the rights of a woman, and while most of them agree to the fact that selective and uncontrolled abortions are present, they neglect to talk about the causes and potential benefits that they might have.

Attention is widely put on the institutions that fail to promote and strengthen family values, hence giving rise to a more fundamental approach of anti-abortion narrative, which not surprisingly often finds refugees in the religious sphere. However, trying to understand Albania's societal resistance and religious history is insufficient. It is a contributing factor, but it is not the glue that holds the resistance together. Albanians have historically treated religious belief as personal, emphasizing respect for others and avoiding the imposition of faith. The leaders who declared independence, including priests, imams, and wise dervishes, decisively separated state affairs from religion and religious morality. What was surprising in more than one instance was family education and background, especially the influence of the communist regime.

2.4 From communism to democracy? No, ABORT, MISSION ABORT.

Protecting life as an absolute right has deep historical roots, even in Albanian customary law. For instance, the famous Code (Kanun) of Lek Dukagjini, safeguards the lives of pregnant women, categorizing their murder as a crime against life. According to this legal code, anyone who killed a pregnant woman, even unintentionally, was obliged to pay a "blood price" for both the woman and her unborn child. The price for a woman's life was three bags of gold, with the same amount paid for the fetus; if the fetus was male, the price doubled. In the Kanun of Labëria, it was forbidden to kill a pregnant woman or girl, even if the pregnancy resulted from an extramarital relationship until she gave birth; after childbirth, her parents had the right to act. During the Republic and Monarchy periods, criminal law imposed severe penalties for murdering a pregnant woman. The socialist-era Penal Code fully protected human life, categorizing different forms of murder, including that of a pregnant woman, under crimes against life. The 1952 Penal Code explicitly

listed murder under aggravated circumstances, including killing a pregnant woman, and this was further emphasized in the 1977 Penal Code.

In Albania, abortion is regulated by law and specific health ministry directives. Law No. 8045, dated 07.12.1995, "On the Termination of Pregnancy," and Law No. 8876, dated 04.04.2002, "On Reproductive Health," provide a framework for reproductive rights. The termination law emphasizes a woman's right to accurate information and counseling before undergoing an abortion. Counseling services are widely available, offering necessary advice. The law also requires a woman's consent before proceeding with an abortion, though spouses or parents may participate in counseling when possible.

The "Reproductive Health" law affirms that every woman has the right to make decisions regarding her sexuality and reproductive health, free from discrimination, coercion, or violence. This includes choosing when and if to become pregnant, with all medical interventions requiring her explicit consent (Anastasi and Agustela 2024).[110] Law No. 8045 specifies that abortions can only be performed by specialized obstetrician-gynecologists in licensed health facilities, barring unauthorized procedures to protect maternal health. Some of the medically justified reasons for terminating a pregnancy include situations where:

- Continuing the pregnancy endangers the woman's life or health.
- The fetus has life-incompatible deformities or incurable disabling conditions.
- The pregnancy creates significant psychosocial problems for the woman.
- The pregnancy results from rape or another sexual crime.
- Medical and legal experts verify other social reasons.

To evaluate these criteria, consideration must be given to both the current condition and foreseeable future of the woman without focusing solely on immediate risks when deciding on the termination of pregnancy. Cases where the pregnancy is inconvenient or undesired for the mother

[110] Anastasi, Aurela, and Agustela Nini-Pavli. "Critical Analysis of Albanian Criminal Legislation on Protection from Sexual Abuse." *Krytyka Prawa. Niezależne Studia nad Prawem*, vol. 16, no. 2, 2024, pp. 174–191. https://doi.org/10.7206/kp.2080-1084.684. Accessed 21 Apr. 2025.

and her family should not be included; instead, it is essential to assess the social reasons that impact the woman's well-being and physical and mental health. The termination process occurs through the actions of medical staff or other authorized individuals, not due to natural causes such as illness or health conditions of the woman.

Article 4 of the law stipulates that the specialist physician responsible for the voluntary termination of pregnancy must inform the woman of all potential risks and complications, her legal rights concerning family, motherhood, and child welfare, and about organizations that can offer moral and financial support. After receiving this information, the woman must submit a written confirmation of her request seven days following the initial request. For 16-year-old minors, approval from a legal guardian or parent is also required.

Article 9 defines the time limits within which pregnancy termination is permitted, allowing termination for medical reasons up to the 22nd week if a commission of three doctors determines that continuation of the pregnancy endangers the life or health of the woman. In cases of fetal malformations or other serious health issues, termination can occur at any time. For psychosocial reasons, termination is allowed up to the 12th week or up to the 22nd week under exceptional circumstances such as rape or other criminal acts.

According to this law, termination of pregnancy is legal up to the 22nd week under certain conditions. Also, it includes provisions prohibiting the promotion of methods or products that cause abortion, except for scientific publications intended for doctors and pharmacists. Physicians are not obliged to perform termination of pregnancy against their will. Thus, the law on abortion is relatively liberal and ensures that women are not prosecuted for terminating their pregnancies, while specific penalties are in place for specialist doctors who violate the provisions set forth by the Ministry of Health.

Selective abortion is prevalent in Albania: many parents, upon discovering that their unborn child is not male, choose to abort. A study on gender ratios in births in Albania has confirmed this troubling trend. The study notes that the Albanian population has been historically male-dominated, but this trend has grown stronger in recent years. More males are being born than

females, with the current female-to-male birth ratio being 100 females to 111 males. This preference for male children is most pronounced in areas like Dibra, Durrës, Lezhë, and Fier and less so in the southeastern cities (Gjoncaj 2010).[111]

Law No. 8045, dated December 7, 1995, "On the Interruption of Pregnancy," ensures the protection of human life from conception. It allows pregnancy termination up to 22 weeks for various health-related reasons, including psychosocial factors, as defined by the Ministry of Health. However, it does not permit abortion for gender selection.

Another law addressing this issue is Law No. 10 339, dated October 28, 2010, "On Albania's Accession to the Convention on Human Rights and Biomedicine." This law includes a chapter that protects individuals from discrimination and regulates genetic testing, which is only allowed to prevent genetic diseases. For the first time, it contains provisions that safeguard embryos and ban the use of techniques to modify the human genome or select the sex of a child. The approval of this Convention emphasizes that advances in biology and medicine should benefit current and future generations while highlighting the potential risks to human dignity from misuse and the need for international cooperation to ensure that all Albanians benefit from these advancements. Article 14 of the law explicitly prohibits sex selection, stating: "Reproductive techniques involving medical assistance are not permitted to choose the child's sex, except when necessary to avoid a serious, gender-related hereditary disease." Based on this, the Ministry of Health deems abortion for gender selection as morally and legally unacceptable and punishable.

3. Global Trends and Comparative Perspectives on Abortion

A comparative analysis of abortion laws and practices worldwide highlights Albania's unique position in the global landscape. While some countries, such as Poland and the United States, have witnessed increasing restrictions on abortion rights, others, including Canada and Sweden, have reinforced legal protections for reproductive autonomy.

[111] Gjoncaj, A. "Raport i paekuilibruar midis sekseve në lindje në Shqipëri." *Jus & Justicia*, no. 13, 2016, pp. 196–197. https://uet.edu.al/jus-justicia/wp-content/uploads/2023/01/Analize-e-Draft-protokollit-Nr.16-te-KEDNJ-se-risite-dhe-roli-i-ketij-protokolli.pdf. Accessed 21 Apr. 2025.

Albania's abortion laws remain relatively liberal within the European context. However, challenges in access, social stigma, and selective abortion issues suggest that the country must refine its policies to align with international best practices. Learning from countries with effective reproductive health frameworks could provide valuable insights for improving abortion services in Albania.

Key Insights from Global Policies:

- The Netherlands: Strong emphasis on contraceptive access and sexual education has led to one of the lowest abortion rates in the world.
- Sweden: Government-funded abortion services are widely available, and abortion rates have remained stable due to preventative health measures.
- United States (Post-Roe Era): Increasing state restrictions have led to cross-state travel for abortion services and a rise in unsafe procedures in restricted areas.

By integrating these findings into Albanian reproductive policies, the country could enhance healthcare access, reduce unsafe abortion practices, and support women's autonomy.

3.1 Comparative Study of Abortion in Albania, the Region, and the European Union

A comparative analysis of abortion rates, regulations, and public perceptions between Albania, neighboring Balkan countries, and the broader European Union provides insight into the country's standing on reproductive rights. While Albania maintains relatively liberal abortion laws, its implementation challenges, societal resistance, and medical accessibility differentiate it from Western European countries.

Abortion Rates: Albania vs. EU Countries, part of the Council of Europe and the Convention

Abortion rates vary significantly across European countries due to differences in legal frameworks, contraceptive access, and cultural attitudes. According to the World Health Organization (WHO) and the European Institute for Gender Equality, the following statistics illustrate abortion trends in key European regions:

Country	Abortion Rate (per 1,000 women aged 15-44)	Legal Status
Albania	11.2	Legal up to 12 weeks
France	15.0	Legal up to 14 weeks
Germany	5.9	Legal up to 12 weeks
Italy	6.2	Legal up to 12 weeks
Poland	0.1	Only legal for rape/incest/maternal health
Sweden	18.9	Legal up to 18 weeks
Romania	16.0	Legal up to 14 weeks
Serbia	14.7	Legal up to 10 weeks
Bulgaria	21.3	Legal up to 12 weeks

Table 2: Abortion trends[112]

Albania's abortion rate is lower than in Sweden and Romania but comparable to other Balkan nations like Serbia. However, experts estimate that the actual rate in Albania is significantly higher due to underreporting and illegal abortion procedures performed outside regulated clinics.

Albania has a moderate abortion rate of 11.2 per 1,000 women aged 15-44, placing it between European countries with highly restrictive laws (e.g., Poland) and those with more liberal policies (e.g., Sweden). Abortion is legal up to 12 weeks, reflecting a relatively accessible but not overly permissive framework.

Despite abortion being legal, Albania's rate (11.2) is lower than some regional peers with similar gestational limits (e.g., Serbia at 14.7). This suggests that legality alone does not guarantee high abortion rates—other factors like contraceptive use, sex education, and cultural attitudes play a significant role. Germany and Italy (also 12-week limits) have lower rates (5.9 and 6.2), likely due

[112] World Health Organization. *"Abortion." World Health Organization*, 2024, https://www.who.int/news-room/fact-sheets/detail/abortion.

to better family planning resources. Serbia (14.7) and Romania (16.0) have higher rates, possibly due to less contraceptive access or socioeconomic pressures.

Albania's rate is dramatically higher than Poland's (0.1), where abortion is banned except in extreme cases. This highlights how legal restrictions suppress reported abortions but may drive unsafe procedures or cross-border travel. While legal, Albania's rural healthcare gaps might limit abortion services for some women. Moreover, conservative social norms could discourage some women from seeking abortions, even when legal and also low rates of modern contraceptive use in Albania (~30%) may contribute to unintended pregnancies and subsequent abortions.

Albania's balanced legal approach avoids extreme restriction or liberalization, but targeted policies could further align its abortion rate with countries like Germany (5.9) while safeguarding reproductive rights.

3.2 Legal Framework: Albania vs. the European Union

Abortion laws in Europe vary widely, from highly permissive models in Western and Northern Europe to highly restrictive policies in some Eastern European countries. Albania's abortion laws are aligned with most Western European countries, but the practical accessibility of services is a limiting factor.

- **Albania**: Legal up to 12 weeks, no parental consent required, but with mandatory pre-abortion counseling.
- **France**: Legal up to 14 weeks, covered under public healthcare, widespread contraception education.
- **Germany**: Legal up to 12 weeks, mandatory counseling and three-day waiting period.
- **Poland**: Highly restricted, abortion is only allowed in cases of rape, incest, or threats to maternal health.
- **Sweden**: One of the most liberal laws, allowing abortion up to 18 weeks, fully funded by the government.

- **Italy**: Abortion is legal up to 12 weeks but faces implementation challenges due to high rates of doctors refusing to perform the procedure based on moral grounds (70-80%).
- **Bulgary**: Abortion is legal up to 12 weeks of pregnancy.

Although Albania's laws are more aligned with liberal European policies, practical access remains an issue due to hospital refusals, limited rural healthcare services, and high procedural costs.
The societal perception of abortion varies significantly across Europe. While Western Europe exhibits high public support for reproductive rights, Eastern and Southern Europe, including Albania, are more conservative.

A 2023 Eurobarometer poll on abortion rights in the EU found[113]:

- 80% of Swedes, 76% of French citizens, and 73% of Germans support unrestricted access to abortion.
- Only 40% of Albanians, 35% of Romanians, and 25% of Poles believe abortion should be a woman's unrestricted choice.
- In Albania, 60% of respondents stated that religious or traditional values should influence abortion policies.

While legal frameworks in Albania support abortion rights, public opinion is significantly less supportive than in Western Europe. The deep-rooted cultural and religious influences contribute to this disparity, affecting healthcare provider attitudes and women's confidence in seeking reproductive services.

Accessibility is a major factor affecting abortion rates. In countries like Sweden and France, abortion services are widely available and fully covered by public healthcare, ensuring that women face minimal financial and bureaucratic barriers.

In contrast, Albania's healthcare system presents significant barriers:

[113] European Parliament. *Plenary Insights - February 2023*. European Parliament, 2023, https://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2023/en-plenary-insights-february-2023.pdf.

- **Rural areas lack clinics that provide abortion services**, forcing women to travel long distances.
- **Private clinics dominate abortion services**, making access more expensive and restrictive for lower-income women.
- **Hospital-based refusals and stigma deter women from seeking legal abortions**, leading to clandestine procedures.

A study by the Albanian Public Health Institute found that 30% of women who sought an abortion faced difficulties due to cost or lack of local services, compared to only 5% of women in Sweden.[114] Albania can improve its reproductive healthcare system by learning from successful policies in the EU:

1. **Universal Access to Contraception**: Countries like France and Sweden have free or low-cost contraception programs, which contribute to their lower abortion rates. Albania could expand contraceptive access in public healthcare facilities to reduce unwanted pregnancies.
2. **Enhanced Sex Education**: The Netherlands and Germany have comprehensive sex education programs, leading to better reproductive awareness and lower unintended pregnancies. Albania lacks structured sex education in schools, and incorporating such programs could address misinformation and reduce the need for abortion.
3. **Reducing Medical Stigma**: In Italy, doctors can refuse to perform abortions due to moral objections, leading to significant access issues. Albania faces similar issues in state hospitals, and the government should enforce medical neutrality policies to ensure patient rights.
4. **Public Healthcare Coverage**: In Sweden and France, abortion is covered by national health insurance, ensuring equal access regardless of income. Albania's out-of-pocket costs remain high, making abortion a financial burden for many women.
5. **Legislative Clarity**: Unlike highly restricted countries like Poland, Albania's abortion laws are progressive but lack enforcement. Strengthening accountability measures in hospitals and rural clinics can improve compliance.

[114] Institute of Public Health. *Buletini 2-2024*. Institute of Public Health, 2024, https://www.ishp.gov.al/wp-content/uploads/2024/11/buletini-2-2024-full-pdf-FINAL.pdf.

Table 3: Summary of Albania vs. the EU

Aspect	**Albania**	**Western Europe (France, Sweden, Germany)**	**Eastern Europe (Poland, Romania)**
Legality	Legal up to 12 weeks	Legal up to 12-18 weeks	Mostly restricted
Public Support	40% support abortion	70-80% support abortion	20-35% support abortion
Medical Access	Limited in rural areas	High accessibility, public coverage	High restrictions
Sex Education	Weak	Comprehensive, government-backed	Limited or non-existent
Cost Coverage	Mostly private clinics	Fully covered by public healthcare	Private and expensive

Albania's abortion policies are more liberal than many Eastern European countries but face significant implementation challenges and societal resistance compared to Western Europe. While legally aligned with EU standards, practical access barriers, stigma, and high out-of-pocket costs make abortion services difficult to obtain.

To align with progressive EU nations, Albania must:

- Improve contraception access and sex education to reduce unintended pregnancies.
- Ensure affordable and widely available abortion services, particularly in rural areas.
- Address cultural stigma and medical refusals through awareness campaigns and stronger policy enforcement.

3.3 Legal Strategy and Implementation for Albania

To successfully strengthen women's reproductive rights and improve public healthcare efficiency, Albania must adopt a comprehensive legal strategy modeled on successful European practices.

This strategy should include legislative reforms, institutional enforcement, medical policy changes, public awareness campaigns, and judicial oversight.

A. Legislative Reforms: Enhancing Legal Protections and Clarity

1. Codifying Reproductive Rights into the Constitution: Albania should explicitly recognize reproductive healthcare and abortion access as fundamental human rights, ensuring legal stability.
2. Expanding Legal Access: Current abortion laws allow for termination up to 12 weeks, but many EU countries permit abortion up to 14–18 weeks. A revision should be considered to align Albania's policies with EU norms.
3. Removing Bureaucratic Barriers: Amend Article 375 of the Albanian Penal Code to ensure that women do not face administrative hurdles such as mandatory pre-abortion counseling that delays access.
4. Strengthening Protections Against Discrimination in Healthcare: Amend Albania's Law on Health Protection to criminalize medical refusal of services due to personal or religious beliefs, ensuring abortion access remains a neutral healthcare service.

B. Institutional Enforcement and Medical Policy Changes

1. Strengthening Oversight of Public and Private Healthcare Facilities: Establish a National Reproductive Health Agency (NRHA) tasked with monitoring abortion services and ensuring compliance with national policies.
2. Mandatory Inclusion of Abortion Services in Public Hospitals: Enforce policies that require all public hospitals to offer abortion services and train medical professionals in non-biased reproductive healthcare practices.
3. Ensuring Medical Neutrality: Introduce a Conscientious Objection Regulation, similar to France, where hospitals are obligated to provide abortion services even if individual doctors refuse.
4. Regulating Private Abortion Clinics: Many abortion services are privately operated, leading to high costs and inequitable access. The Ministry of Health should introduce standardized pricing regulations for abortion services to prevent financial exploitation.

5. Implementing Mandatory Post-Abortion Care Standards: Require follow-up healthcare and psychological counseling for patients' post-abortion, ensuring holistic reproductive healthcare services.

C. Public Healthcare Integration and Contraceptive Access

1. Universal Contraceptive Access Initiative: European nations with low abortion rates (e.g., Sweden, Germany) invest in free or subsidized contraception. Albania must increase public funding for contraception distribution at primary healthcare centers.
2. Mandatory Sex Education in Schools: Adopt a curriculum modeled after The Netherlands, where sex education includes contraceptive methods, consent, and reproductive rights.
3. Expanding Telemedicine Abortion Services: The COVID-19 pandemic demonstrated the feasibility of telemedicine consultations for early-stage abortions. This should be introduced in Albania to enhance access for rural women.

D. Public Awareness and Legal Advocacy Campaigns

1. Nationwide Awareness Campaigns on Reproductive Rights: Collaborate with civil society organizations and international NGOs to create educational programs that destigmatize abortion and provide factual information.
2. Training Healthcare Professionals on Ethical Abortion Practices: Require compulsory medical ethics training for healthcare professionals to prevent biased or judgmental practices against women seeking abortion.
3. Judicial and Law Enforcement Training: Conduct specialized training for judges and police to recognize abortion as a healthcare right and to enforce laws protecting women from reproductive discrimination.

E. Judicial Oversight and International Compliance

1. Aligning with the European Court of Human Rights (ECHR) Precedents: Ensure Albania adheres to ECHR rulings on abortion rights, such as the case of A, B, and C v. Ireland, which emphasized a state's duty to provide clear abortion regulations.

2. Legal Aid for Women Facing Barriers to Abortion: Establish government-funded legal assistance programs to help women who experience discrimination or unlawful denial of abortion services.
3. Establishing an Abortion Rights Ombudsman: Create a specialized government office dedicated to handling complaints from women denied abortion services and enforcing legal protections.

4. Conclusion and Roadmap for Implementation

By implementing these reforms, Albania can modernize its reproductive health policies and ensure safe, legal, and accessible abortion services for all women. The strategy should be executed in three phases:

- Short-Term (1-2 years): Implement legal amendments, establish the National Reproductive Health Agency, and enforce medical neutrality policies.
- Mid-Term (3-5 years): Expand contraceptive access, education programs, and public awareness campaigns.
- Long-Term (5-10 years): Integrate Albania's abortion policies into EU public health standards, making it a model for progressive reproductive healthcare in the Balkans.

By following these legal and institutional strategies, Albania can align itself with European reproductive health best practices while ensuring women's autonomy, healthcare efficiency, and human rights protections.

Part 3: Euthanasia: Between Autonomy and State Responsibility

'It is not the death I fear to face but dying.' – Marcus Aurelius

1. Historical and Ethical Background of Euthanasia

The concept of euthanasia originates in ancient Greek thought. The term (meaning "good death") first appeared in Hellenic literature. Initially mentioned sporadically, a similar idea, known as *mors bona* (good death), later emerged in Roman writings, where it represented an honest and happy way of dying. The ideal of dying *felici vel honesta morte* (in a fortunate and honorable manner) was deeply valued in antiquity.[115]

In mythology, sleep was often considered a sibling of death. In Homer's *Odyssey*, the residents of the utopian island Siri, described as healthy and elderly, experienced a painless and swift death delivered by the god Apollo, who peacefully "rescued" them. This association made euthanasia a gift from the gods, viewed as their ultimate blessing (Mystakidou et al., 2005).[116] During the Classical period, some Greek communities allowed individuals to end their lives with the approval of the society. To avoid a life of weakness, illness, or frailty and to uphold the principle of eugiria (aging well), people sometimes chose to drink hemlock in a communal "final celebration," earning admiration as heroes within their communities. In general, ancient Greece exhibited a favorable attitude toward suicide.[117]

Plato, in *Phaedo*, describes Socrates' death by hemlock as an example of a "good death," highlighting Socrates' choice to embrace death over exile. In instances of severe physical or mental deficiencies, individuals were often left to die for the benefit of themselves and the polis (society).[118] In *The Republic*, Plato rationalizes this stance: those with incurable physical ailments should be allowed to perish, while those with irredeemably corrupted souls should be eliminated. Philosophers such as Socrates and the Stoics supported voluntary death as a rational choice under

[115] Van Hooff, Anton JL. "Ancient euthanasia:'good death'and the doctor in the graeco-Roman world." *Social science & medicine* 58.5 (2004): 975-985.
[116] Mystakidou, Kyriaki, et al. "The Evolution of Euthanasia and Its Perceptions in Greek Culture and Civilization." *Perspectives in Biology and Medicine*, vol. 48, no. 1, 2005, pp. 95–104.
[117] Ibid
[118] Plato. *Phaedo*. Edited and translated by Reginald Hackforth, vol. 120, Cambridge University Press, 1972.

certain circumstances.[119] However, opposition arose from the Hippocratic School, which emphasized the preservation of life, exemplified in the Hippocratic Oath forbidding physicians from administering lethal drugs.

With the rise of Christianity, the sanctity of life doctrine gained prominence. Life was viewed as a divine gift, making euthanasia and suicide morally unacceptable. Similar prohibitions exist in Islamic and Jewish traditions, where life is considered sacred and beyond human authority to terminate. These views significantly influenced medieval and early modern legal frameworks, reinforcing the prohibition of euthanasia.

The 19th century marked a shift in euthanasia debates, driven by advancements in medicine, such as anesthesia, which made painless death achievable. Public discourse expanded to include legal and ethical considerations. Notably, Samuel Williams proposed using morphine to intentionally end suffering, igniting debates within the medical and legal communities. Efforts to legalize euthanasia emerged in the United States and Britain, such as the 1906 Ohio Bill and subsequent parliamentary bills in Britain during the 20th century. These initiatives faced defeat due to concerns over inadequate safeguards (Rakshit 2015).[120]

The historical evolution of euthanasia reflects a complex interplay of cultural, religious, and medical paradigms. While ancient practices varied, the rise of sanctity-of-life doctrines shaped widespread opposition. Contemporary discussions highlight the tension between preserving life and respecting individual autonomy, emphasizing the need for rigorous legal frameworks where euthanasia is considered.

In the modern understanding of human rights, the individual human being is put in the center as the goal and the end. The concept of human dignity is closely connected with this respect for every person's life. Many declarations of human rights refer to every person's inherent dignity, which is regarded as the foundation of human rights. The right to life is an expression of human dignity

[119] Plato. *Republic*. Translated by Charles D. C. Reeve, Hackett Publishing Company, 2004.
[120] Rakshit, Souradeep. "The Historical Evolution of the Concept of 'Euthanasia'." *Indian Journal of Law and Justice*, vol. 6, no. 1, 2015, pp. 254–263.

because of being human. That makes both concepts, the right to life and inherent human dignity, essentially two sides of the same coin.

Is it morally acceptable to perform an action that produces both positive and negative outcomes if the negative outcome is foreseeable? The Doctrine of Double Effect (DDE) asserts that such actions can be justified under specific conditions. Thomas Aquinas is often credited with outlining the core principles of this doctrine. In his *Summa Theologiae*, Aquinas discusses the permissibility of self-defense under certain circumstances, even when it results in the death of the aggressor. He explains that self-defense has two outcomes: preserving one's own life and killing the attacker (Sharifzadeh, 2022).[121] As long as the primary intent is to preserve one's life, the act is not unlawful because it aligns with the natural instinct of self-preservation. However, Aquinas also warns that even actions stemming from good intentions can become morally wrong if they are excessive in relation to their intended goal (in Pasnau 2002). [122]

Furthermore, Aquinas emphasizes that it is generally unlawful to take a human life unless authorized by public authority acting for the common good. He argues that individuals cannot lawfully intend to kill, even in self-defense, unless they hold public authority, such as a soldier combating an enemy or a law enforcement officer dealing with criminals. However, even in such cases, actions driven by personal hostility rather than the common good are considered sinful.[123]

If we examine historical studies, it becomes evident that the concept of euthanasia has not always remained the same but has evolved based on the relationship between human rights and state protection. In the mid-20th century, scientific research and interest in this complex and necessary phenomenon increased significantly. During this period, individual dignity became the central focus of human relations and societal development.

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[121] Sharifzadeh, Rahman. "The Doctrine of Double Effect and Medical Ethics: A New Formulation." *Ethics in Progress*, vol. 13, no. 2, 2022, pp. 42–56. https://doi.org/10.14746/eip.2022.2.4.
[122] Pasnau, Robert. *Thomas Aquinas on Human Nature: A Philosophical Study of Summa Theologiae, 1a 75–89*. Cambridge University Press, 2002.
[123] Ibid

Modern studies discuss the motivations for suicide, emphasizing social, psychiatric, and family factors that contribute to this phenomenon. Many legal systems prohibit euthanasia and suicide, criminalizing those who assist individuals in carrying out such acts. This highlights the fundamental value placed on an individual's right to life in our society.

In Britain, suicide was considered a criminal offense until 1961, when the Suicide Act was passed. Under the law of Joseph II, individuals who committed suicide were buried outside cemeteries, signifying society's condemnation of suicide, influenced strongly by religious beliefs (Emanuel 1994). [124] The perception of suicide across different countries has been shaped by cultural aspects such as religion, honor, and views on life. In Western thought, suicide has historically been regarded as a serious crime. However, in pre-Christian Greek and Roman cultures, it was not automatically deemed immoral and, in some cases, was considered acceptable.

In the 20th and 21st centuries, suicide has been used as a form of protest. During this period, euthanasia has been primarily associated with individuals suffering from incurable illnesses, extreme pain, or those with minimal quality of life due to injury or disease (Flemming 2005). [125] Euthanasia represents a patient's voluntary choice to end suffering permanently through medical assistance. It is the acceleration of death based on humanitarian considerations, carried out with the help of others. Unlike death caused by hatred or malice, euthanasia is considered an act of compassion and love, intended to relieve suffering.

A similar definition of euthanasia includes the deliberate termination of life when an individual experiences extreme pain, an incurable disease, or severe physical or mental conditions. This intervention aims to prevent further suffering. In many countries, euthanasia is considered a criminal offense as it violates the fundamental right to life. Legally, it is classified as an act of homicide, subject to legal penalties. The law must uphold morality, and if it fails to protect life, it compromises the dignity and equality of all individuals. The debate on euthanasia remains a global issue, as discussions on death parallel those on life.

[124] Emanuel, Ezekiel J. "The History of Euthanasia Debates in the United States and Britain." *Annals of Internal Medicine*, vol. 121, no. 10, 1994, pp. 793–802.
[125] Flemming, Rebecca. "Suicide, Euthanasia and Medicine: Reflections Ancient and Modern." *Economy and Society*, vol. 34, no. 2, 2005, pp. 295–321.

While the right to life constitutes the foundation of the protection and functioning of the most essential life aspects, various scientific fields advocate and strive to apply and implement the same principles that serve this fundamental right. It must be acknowledged that as science evolves, the right to life is increasingly at risk, as new technological methods create diverse possibilities for its violation. A crucial role in the protection of human life is also played by Bioethics, which is considered the application of ethical studies regarding new issues arising from advancements in medical sciences. It represents an interdisciplinary study of the conditions required for the best possible management of human life, particularly in light of the rapid and complex advancements in biomedical technologies (Horodovenko et al 2020). [126]

Initially, discussions on bioethics involved physicians, followed by philosophers and legal experts, and later expanded to sociologists, economists, and the general public due to its increasing significance, especially given today's technological developments. Regarding the right to life and euthanasia, bioethics provides broad coverage of both rights, addressing the most critical aspects concerning their implementation and protection, particularly in an era where technology has advanced significantly, making human rights increasingly vulnerable. According to Bioethics, the principle of the inviolability of the human person is a fundamental tenet, regardless of its various interpretations. This principle is based on personal dignity and freedom, which form the foundation of democracy, where all individuals are equal and the exploitation of one person by another is strictly prohibited.

According to the Nuremberg Code, the consciousness of a patient undergoing medical trials must be at a level that ensures a full understanding of their awareness and decision-making capacity.[127] Recent advancements in Genetics and Molecular Biology have enabled humans to comprehend the intricate mechanisms of life, granting them the ability to manipulate the development of all living species, including the human species itself. In this regard, individuals, through their actions, knowledge, and unique methods, may influence the fate of another person in specific cases.

[126] Horodovenko, Viktor V., Vitalii M. Pashkov, and Larysa G. Udovyka. "International Legal Instruments in the Field of Bioethics and Their Impact on Protection of Human Rights." *Wiadomości Lekarskie*, vol. 73, no. 7, 2020, pp. 1554–1560.
[127] University of North Carolina at Chapel Hill. "Nuremberg Code." *UNC Research*, https://research.unc.edu/human-research-ethics/resources/ccm3_019064/. Accessed 6 Mar. 2025.

Additionally, every person has the right to determine their own fate at particular moments and with full awareness.

Undoubtedly, these scientific advancements give ethical and bioethical considerations a unique importance, particularly concerning society's responsibility to uphold universal human rights and freedoms, even in cases where individuals choose death over life. Such is the case with euthanasia, where certain individuals opt for death rather than continuing to live under unbearable conditions. In these situations, society faces a moral obligation to balance these individuals' interests and well-being with the fundamental right to life.

1.1 Legal and Bioethical Frameworks: Albania and Beyond

In Albania, Law No. 10 339, dated 28.10.2010, "On the Accession of the Republic of Albania to the Convention on Human Rights and Biomedicine," is in force, along with the Convention on the Protection of Human Rights and the Dignity of Human Beings concerning the Application of Biology and Medicine. The purpose of this Convention is clearly defined in its articles, outlining its objectives, necessary measures, and the category of individuals it applies to. Article 1 states that the parties to this Convention commit to protecting the dignity and identity of all human beings and ensuring respect for their integrity, as well as their fundamental rights and freedoms, concerning the application of biology and medicine, without discrimination.

Article 2 establishes the supremacy of the human being, emphasizing that the interests and well-being of human beings take precedence over the sole interests of society or science. Moving to Article 5, it stipulates that a medical intervention can only be carried out after the concerned person has given free and informed consent regarding the procedure. The individual must receive necessary prior information on the purpose and nature of the intervention, its consequences, and risks before making a final decision. Article 11 of the Convention enshrines the principle of non-discrimination, prohibiting any form of discrimination against a person based on their genetic heritage.

Scientific research in the fields of biology and medicine is conducted freely, based on the provisions of this Convention and other legal frameworks that guarantee the protection of human beings. Progress in biology and medicine must be used for the benefit of society, while the misuse of these sciences can lead to actions that endanger human dignity. The ratification of this Convention represents a significant step in aligning Albanian legislation with rapid developments in medical science, developments that directly impact the protection of human rights.

In a democratic society, the protection of fundamental human rights and freedoms, especially the right to life, is a primary concern. Life is an incomparable and irreplaceable right, standing above all others. The protection and respect for an individual's right to life, recognized as one of the most fundamental human rights, form the foundation of the legal framework in every democratic state, including Albania's constitutional, criminal, and procedural laws.

For this reason, the Penal Code ensures the legal and criminal protection of the right to life, defining various criminal offenses related to homicide and establishing appropriate penalties for each. Historically, Albania's legal system lagged behind international legal standards, necessitating the adoption of new laws to align with global human rights protections.

The new legal framework introduced significant political and legal changes, incorporating fundamental international human rights principles and bringing positive reforms to the existing human rights regime. This legal expansion strengthened basic rights and freedoms, establishing mechanisms for their effective implementation.

In Albania, the Penal Code and the Code of Criminal Procedure regulate issues related to medical ethics and deontology, reinforcing the right to life. These laws outline circumstances in which medical professionals may be called upon as forensic experts in legal proceedings to clarify medical cases. Additionally, there have been instances where doctors faced criminal charges for serious violations of the Penal Code, particularly for failure to provide medical assistance or for negligent medical treatment. When legal authorities establish the guilt of an individual, penalties may include fines, revocation of medical licenses, or imprisonment for up to five years. These

legal provisions highlight the significance of the right to life within Albanian criminal law and its direct connection to medical ethics.

To ensure the protection of patients' rights, Albania has enacted several important laws, including:
- *The Constitution of Albania*
- *The European Convention on Human Rights*
- *The Penal Code*
- *Law No. 10107, dated 30.3.2009, "On Healthcare in the Republic of Albania"*
- *Law No. 10138, dated 11.5.2009, "On Public Health"*

Article 21 of the Constitution of Albania states: *"The life of a person is protected by law."* This provision explicitly affirms the legal protection of human life, recognizing it as an undisputed constitutional value. The concepts of life and human dignity are deeply embedded in constitutional provisions, serving as the basis for all other fundamental rights. The highest value for the state is human life, and its protection is the foundation of all other human rights. The denial of life leads to the loss of all other fundamental rights, underscoring the Constitution's objective, as outlined in its Preamble and various legal provisions. Although life is a constitutionally protected value, this does not imply that its protection should be absolute and uniform under all circumstances. The extent of protection depends on various factors, which lawmakers address through legislation. The Albanian Constitution, particularly in its chapter on fundamental rights and freedoms, is closely aligned with the European Convention on Human Rights.

The European Convention upholds fundamental rights and freedoms, emphasizing that the right to life and human dignity are inalienable. According to international law, states are obligated to fulfill their commitments to protect human rights. If a state fails to meet its obligations, it cannot avoid responsibility, which may manifest in political, legal, economic, or social consequences. As a member of various international organizations, Albania adheres to global human rights standards. The Constitution of Albania aligns with the principles set forth by the Statute of the Council of Europe, particularly Article 3, which states:

"Every member of the Council of Europe must accept the principle of the rule of law and ensure that every individual under its jurisdiction enjoys human rights and fundamental freedoms."

This principle serves as the legal basis for protecting the right to life under Article 21 of the Albanian Constitution. In special cases related to death, Article 2(2) of the European Convention provides limited exceptions where the state may lawfully take life, such as in the execution of a lawful sentence. Article 17 of the Albanian Constitution states:

"Limitations on the rights and freedoms provided by this Constitution may only be established by law for a public interest or to protect the rights of others. These limitations may not infringe upon the core essence of rights and freedoms and cannot exceed the restrictions outlined in the European Convention on Human Rights."

This provision suggests that while certain rights may be restricted, any limitation on the right to life must be balanced against state interests and individual autonomy. The legal framework also examines cases where patients voluntarily choose to end their lives and the state's role in preserving life. The Institute of Forensic Medicine is responsible for ensuring compliance with the Constitution, legal codes, and regulatory acts. Its mission includes protecting human dignity, fundamental rights, and freedoms, as well as preventing legal violations. Despite these legal provisions, Albania has seen few cases of medical malpractice complaints compared to Western countries. Legal action against medical errors is rare, and when it does occur, it is primarily handled through criminal proceedings rather than civil lawsuits. The Albanian Penal Code, particularly Articles 96 and 97, criminalizes negligent medical treatment and failure to provide assistance, but enforcement has often been insufficient.

Following the fall of communism in the 1990s, Albania underwent major reforms in the healthcare system, aiming to eliminate past inefficiencies and align with Western models. This reform movement led to the introduction of numerous healthcare laws focused on: Protecting patients' rights, ensuring doctors' independence in medical decision-making and improving the overall healthcare infrastructure. Having discussed the right to life, it is crucial to examine whether it is inherently connected to the right to die. Both life and death are fundamental aspects of individual rights. Does the right to die naturally stem from the right to live? Can an individual choose to end their own life? Should euthanasia be legalized?

The right to die can be understood from two perspectives:

1. Negative Right to Die – This entails the obligation to not intervene in an individual's decision to end their life. In other words, the state or medical professionals have a duty not to interfere in the decision-making process.
2. Positive Right to Die – This refers to the justified request for assistance in ending life. It includes not only the duty not to intervene but also the duty to assist in facilitating death under certain conditions.

Suicide laws typically recognize the negative right to die, meaning individuals are not penalized for taking their own lives, nor are they prohibited from attempting suicide. However, in most countries, there is no positive right to assistance in dying. Those who encourage or assist in suicide face criminal penalties. For an individual to exercise the right to die, they must be:
- Mentally competent to make such a decision.
- Physically capable of carrying out the act without external help.

Any form of assistance before, during, or after a suicide attempt criminalizes the assistant, making them liable for prosecution. Terminally ill patients or those who lack the physical ability to end their own lives often rely on doctors or family members for help. While some may choose active means (such as lethal medication), others may opt for passive methods, such as refusing medical treatment, food, or water. However, even in such cases, external involvement remains a legal gray area. Physicians providing pain-relief medication that indirectly hastens death could be accused of assisting in euthanasia. Some argue that medical professionals should be prosecuted for such actions, while others believe that doctors must fulfill patient wishes in cases of unbearable suffering. Governments have a vested interest in protecting life, which sometimes conflicts with an individual's desire to die. The state has four main interests that counterbalance an individual's right to die:

1. Protecting all patients' lives – Ensuring that vulnerable individuals are not pressured into premature death.

2. Preventing suicide as a social phenomenon – Suicide prevention is a major public health concern.
3. Safeguarding third parties – Protecting individuals suffering from depression, chronic pain, disabilities, or socio-economic disadvantages from potential coercion or neglect.
4. Maintaining the integrity of the medical profession – Doctors are trained to preserve life, and assisting in death could erode trust in the profession.

Among these, the protection of life is considered the most significant interest. The state is responsible for preserving the lives of individuals who contribute to society and ensuring that all individuals have the opportunity to enjoy life. However, the state's interest in preserving life should always be balanced with an individual's right to autonomy, especially when a person is experiencing unbearable pain or terminal illness. State policies generally aim to promote health, safety, and well-being for all individuals. The primary responsibility of governments is to protect citizens' lives, yet legal cases concerning the refusal of medical treatment highlight the ongoing debate between state authority and individual autonomy.
Courts often struggle to weigh:
- The individual's right to self-determination
- The state’s interest in preserving life
The challenge is not in recognizing the state’s role in life protection but in evaluating how far this duty extends when individuals wish to refuse treatment or end their own lives. While governments prioritize public welfare, their role weakens as natural death approaches. When a patient is close to dying, the state's interest in preventing death becomes less compelling. Governments have a legitimate interest in preventing suicide, but defining when a patient’s actions constitute suicide is complex. Courts often examine whether a patient has a clear intent to die. In certain cases, refusing medical treatment may be regarded as a rational decision rather than an act of suicide. When courts assess cases of treatment refusal, they must balance:
- The individual's right to autonomy
- The state's responsibility to protect life
These cases are legally complex, with some judges favoring individual rights, while others uphold the state’s duty to prevent death.

For proponents of the right to die, courts should recognize it as a fundamental human right, ensuring that it is protected from state interference. However, this approach could weaken the state's role in preserving life, especially if policies favor life over autonomy. The challenge lies in balancing the right to die with the duty to protect life, allowing both to coexist as much as possible. Historically, governments exist to protect life, yet political interventions have occasionally restricted individual rights to refuse medical treatment. The state's duty to protect third parties focuses on how an individual's decision to die impacts others—especially family members, dependents, and vulnerable groups.

Additionally, the ethical responsibilities of medical professionals play a crucial role. Doctors are sworn to preserve life, and any involvement in assisted death could jeopardize public trust in the medical profession. If physicians were permitted to aid in death, the perception of doctors as healers and protectors of life might be undermined. The right to die remains one of the most controversial ethical and legal issues. The debate continues over whether individual autonomy should outweigh state interests in protecting life. The challenge lies in striking a balance between personal choice and legal responsibility, ensuring that human dignity is respected while safeguarding ethical medical practices and societal values.

2. Euthanasia under Article 2 of the ECHR

Article 2 of the European Convention on Human Rights outlines the right to life. Based on this article, a key question arises: can individuals, under certain circumstances, bypass the prohibition on ending life, particularly in cases of assisted suicide, euthanasia, or discontinuing medical treatment? Should the state "protect" the life of a person who no longer wishes to live, thereby going against that person's wishes? According to the Convention, do individuals not only have the right to life but also the right to choose death when and how they decide? Additionally, can the state permit the end of a person's life to alleviate suffering, even if the individual cannot express their wishes in such a situation? Despite various interpretations of Article 2, it does not allow euthanasia.

In some cases, the question has been raised under Article 8 of the ECHR, which guarantees the right to privacy and family life. In practice, this concerns whether life-support machines can be turned off before a person is officially declared "clinically dead" (whenever that occurs) to avoid unnecessarily prolonging the dying process.

The issue raised in the Convention is whether a law allowing the turning off of life support still properly protects the individual's right to life. However, this question has not yet been addressed in the Court's decisions. In light of the precedents related to requests for assisted suicide, it is likely that, when faced with such an issue, the Court will allow states significant discretion. This question is closely linked to another: whether it is permissible to administer pain-relief treatment to a terminally ill person, even if it has the side effect of hastening the patient's death. On this matter, the Parliamentary Assembly of the Council of Europe recommends that Member States: Ensure that, unless the patient chooses otherwise, individuals who are terminally ill or dying receive appropriate care for pain relief, even if such treatment may shorten their life as a side effect (Recommendation 1418 (1999), paragraph 9, in (a)(vii)).[128]

The ongoing debate over the definition of euthanasia is fraught with confusion due to its diverse interpretations and applications. These discussions often highlight a lack of shared understanding among stakeholders about "who is making what request" and "for what purpose." The Church upholds life as an inviolable value, legal systems frequently frame death in terms of criminal acts, and pro-euthanasia advocates argue for its recognition as a fundamental human right.

The right to life, universally acknowledged and enshrined in the Universal Declaration of Human Rights, is supported by numerous international agreements. It primarily protects individuals from arbitrary deprivation of life. However, this interpretation appears narrow, as it does not encompass the full scope of human rights. There remains a gap between the strict preservation of life and considerations surrounding death, leaving certain aspects of protection unaddressed.

[128] Council of Europe. Convention on Preventing and Combating Violence Against Women and Domestic Violence. Council of Europe, 2011, https://rm.coe.int/168050329d. Accessed 6 Mar. 2025.

The concept of the right to life has evolved, reflecting its dynamic nature within the broader framework of human rights. Initially focused on physical safety in Article 3 of the Universal Declaration, it has progressively developed into a more integrated and holistic human right, as demonstrated in Article 6 of the International Covenant on Civil and Political Rights.

International legal frameworks today focus more on a "right to live" rather than the traditionally narrow "right to life." This broader interpretation emphasizes survival and highlights the importance of creating conditions that improve the quality of life. Issues such as abortion, capital punishment, and euthanasia, which were scarcely considered in the 1948 Declaration, now fall within the scope of the right to life, marking its evolution into a more comprehensive human rights concept.

The "right to die" is closely related to euthanasia and encompasses ideas like "death with dignity," "assisted suicide," and "voluntary euthanasia." Fundamentally, it suggests that individuals should have the right to end their lives with assistance from others. This idea is viewed from various perspectives: as a personal freedom (individualism), a rational and equal choice (equality), a painless option (humanism), or a free and supported act (assistentialism), all framed within the context of legal recognition as a liberal right (liberalism). Article 2 generally prohibits the intentional taking of a life but allows for exceptions under certain circumstances, as outlined in its second paragraph.

The adoption of Additional Protocol No. 6 to the European Convention on Human Rights (ECHR) in 1992, which abolished the death penalty and was ratified by seventeen states, reflects ongoing efforts to protect the right to life within European societies. This progress has largely resulted from legislative changes rather than judicial decisions. Article 7 of the ECHR explicitly bans active euthanasia. Recommendations to member states encourage the establishment of national commissions to investigate complaints against healthcare professionals and report findings to the Council of Europe. These recommendations specify three conditions under which life-prolonging treatments may be withdrawn:

- In cases of terminal illnesses at the pre-agonic stage;
- Due to "invasive" pain-relief procedures;

- Based on a patient's written directive (similar to a "Living Will") refusing life-prolonging treatment.

Although euthanasia remains illegal, it is acknowledged that in cases where it is motivated by genuine compassion, it may be treated more leniently than other forms of homicide. Decisions in such cases are at the discretion of judges, who often categorize these actions as voluntary manslaughter committed out of compassion.

2.1 ECtHR Jurisprudence on Euthanasia and Assisted Suicide

1. Mortier v. Belgium (2022)

This case centered on Tom Mortier's mother, who sought euthanasia due to long-standing depression, despite being physically healthy. Tom was not informed about the procedure until after her death. The European Court of Human Rights evaluated whether Belgium's euthanasia law violated the right to life (Article 2) and the right to family life (Article 8). While the Court did not invalidate Belgium's euthanasia law, it criticized the lack of independent oversight in the process. The Court found that the commission overseeing euthanasia lacked independence, and that the criminal investigation into the case was too slow. The ruling highlights the potential risks of insufficient procedural safeguards, particularly when mental health is involved, and emphasizes the need for careful regulation.

2. Pretty v. United Kingdom (2002)

Diane Pretty, suffering from a terminal illness, challenged the UK's ban on assisted suicide, claiming it violated her right to respect for private life under Article 8. The Court ruled that the European Convention does not recognize a "right to die" or allow assisted suicide. It affirmed that the right to life (Article 2) does not encompass a right to self-determined death, noting that the prohibition was justified by the need to protect life. While the ban interfered with Pretty's personal autonomy, it was deemed necessary to prevent potential abuses, protecting vulnerable individuals from coercion.

3. Haas v. Switzerland (2011)

In this case, the applicant, suffering from a terminal illness, argued that Switzerland's ban on assisted suicide violated his rights under Article 8. The Court acknowledged that individuals should have some autonomy in end-of-life decisions but upheld Switzerland's ban, arguing that states have the discretion to regulate assisted suicide. It recognized that states may have an obligation to facilitate assisted suicide in certain cases but emphasized the need for safeguards to prevent coercion, especially among vulnerable individuals.

4.Gross v. Switzerland (2014): The case concerned an individual's request to obtain a substance for assisted suicide without a prescription, aiming for a pain-free and risk-free death. The Court recognized the individual's right to decide the timing and manner of their death under Article 8 (right to private life). However, it upheld Switzerland's requirement for a medical prescription, viewing it as a necessary safeguard to prevent abuse and ensure proper decision-making in assisted suicide. The Court emphasized that member states have considerable discretion in regulating assisted suicide to protect public safety.

5.Lambert and Others v. France (2015): This case involved the decision to withdraw life-sustaining treatment from Vincent Lambert, who was in a persistent vegetative state. The Court ruled there was no violation of the right to life (Article 2), as the decision followed a clear legal framework. It also recognized the margin of appreciation, giving states the discretion to make decisions on end-of-life care according to national laws.

6.Nicklinson and Lamb v. the United Kingdom (2015): This case challenged the UK's ban on assisted suicide and euthanasia in the context of locked-in syndrome. The applicants argued that the ban violated their right to respect for private and family life. The Court did not uphold their request, but the case highlighted ongoing discussions about whether there should be a right to assisted suicide under the European Convention.

These cases reflect the Court's nuanced approach, balancing individual autonomy with the state's duty to protect life. While the Court affirms states' discretion in regulating euthanasia, it stresses the need for robust safeguards to protect vulnerable individuals and prevent abuse.

The ECtHR consistently uses the margin of appreciation principle, which allows states flexibility in regulating euthanasia, as they are closer to the specific cultural and legal context. However, the Court has also reiterated that the right to life (Article 2) does not include a right to die, distinguishing the protection of life from the right to end it. Meanwhile, individual autonomy under Article 8 has been interpreted to allow for assisted suicide or euthanasia in certain circumstances, provided there are adequate safeguards to protect individuals from coercion.

The Court's rulings reflect a careful balance between individual autonomy and state responsibility to protect vulnerable people. While it recognizes personal freedoms, the Court consistently underscores the necessity for strong safeguards in euthanasia laws to prevent abuse and ensure that decisions are made freely and without external pressure.

2.2 Euthanasia in the world

1. Netherlands

Euthanasia has been legally permitted in the Netherlands since 2002 under strict conditions. To be eligible, patients must be suffering from unbearable, incurable conditions, and their request for euthanasia must be voluntary. The law requires independent medical evaluations, and the decision must be reviewed by a euthanasia committee. Euthanasia is also allowed for minors aged 12 to 16 with parental consent and in some cases for those as young as 12.

2. Belgium

Belgium legalized euthanasia in 2002, allowing it not only for patients with physical conditions but also those suffering from mental illnesses. For euthanasia to be approved, the patient must make a clear and repeated request, and two independent doctors must confirm that the patient's condition is irreversible. However, Belgium's laws have faced criticism for their broad interpretation of "unbearable suffering," particularly in mental health cases.

3. Switzerland

Switzerland has a distinctive legal framework where assisted suicide is permitted, but euthanasia is not. Individuals can be provided with the means to end their life, as long as there is no selfish

motivation behind the assistance. Organizations like Dignitas assist with this process under strict regulations, but doctors are not permitted to administer lethal doses directly.

4. Luxembourg

In Luxembourg, euthanasia and assisted suicide were legalized in 2009, allowing individuals who are suffering from terminal illnesses or severe physical pain to request euthanasia. The law requires a formal and repeated request from the patient and two medical opinions. Unlike some other countries, Luxembourg's law does not permit euthanasia based solely on mental illness.

5. Spain

Spain legalized euthanasia in 2021, becoming one of the latest European nations to do so. The law applies to individuals with serious, incurable conditions causing unbearable suffering. To qualify, the patient must request euthanasia, which will be reviewed by a medical team. Spain's law covers both euthanasia and assisted suicide.

6. France

France does not permit active euthanasia but allows for passive euthanasia—the withdrawal of life-sustaining treatments under certain conditions. The Claeys-Leonetti Law (2016) permits doctors to stop treatments for patients in a deep coma or those with no hope of recovery, but active euthanasia and assisted suicide remain illegal.

7. United States

Euthanasia is illegal in the United States, but assisted suicide is permitted in some states like Oregon, California, and Washington. These states have laws that allow terminally ill patients to request medications that will end their lives. To qualify, patients must be mentally competent, terminally ill, and have a prognosis of six months or less to live. However, no states allow euthanasia, where a physician directly administers a lethal dose.

8. Canada

Canada legalized both euthanasia and assisted suicide in 2016 under the Medical Assistance in Dying (MAID) law. This law allows individuals with terminal or grievous conditions causing

unbearable suffering to request euthanasia. Patients must make a voluntary request, and the law includes strict safeguards such as multiple doctor assessments to ensure the request is genuine.

9. Australia

In Australia, euthanasia is legal only in Victoria, under the Voluntary Assisted Dying Act, passed in 2017 and implemented in 2019. The law allows patients with terminal conditions to request euthanasia.

10. New Zealand

New Zealand passed the End-of-Life Choice Act in 2021, legalizing euthanasia and assisted suicide for individuals with terminal illnesses. The law requires patients to make a voluntary request and to meet strict criteria, including being diagnosed with a terminal illness with less than six months to live.

11. Colombia

In Colombia, euthanasia has been legal since 1997 under a ruling by the Constitutional Court. The law applies to terminally ill patients and those in severe pain, allowing them to request euthanasia. Both euthanasia and assisted suicide are permissible, but there are clear requirements for medical validation of the patient's condition.

12. Japan

Euthanasia is illegal in Japan, though there is some allowance for assisted suicide under certain circumstances, particularly when patients cannot access proper palliative care. The topic is under ongoing discussion, and while euthanasia remains prohibited, the government is considering its legal implications.

These countries illustrate varying degrees of legal permissiveness toward euthanasia, with strict regulations in some and more lenient frameworks in others. While Belgium, the Netherlands, and Luxembourg allow both euthanasia and assisted suicide, countries like France and Switzerland

maintain limitations, emphasizing safeguards to prevent abuse and protect vulnerable individuals.[129]

Following the above cases, it is worth mentioning the case of Slovenia. In July 2025, Slovenia became the first Eastern European country to approve a law legalizing assisted dying. The legislation allows adults suffering from severe, incurable illnesses or serious permanent impairments that cause unbearable suffering—and for whom all treatment options have been exhausted—to request medical assistance to end their lives.

The law authorizes assisted suicide (self-administration of the lethal substance) but not active euthanasia by a physician, and it excludes cases of mental illness as the sole basis for eligibility.

However, after its approval by Parliament, the National Council (upper chamber) issued a veto, arguing ethical and legal concerns, which sent the law back for reconsideration. The final implementation therefore remains pending.

This legislative process followed a national referendum in June 2024, where a majority of citizens expressed support for the right to voluntary end of life, marking a historic shift in Slovenia's approach to end-of-life rights.

3. Euthanasia and its practice

3.1 Types of Euthanasia

Although euthanasia fundamentally aims to achieve the same outcome, it manifests in different forms. Understanding these types is crucial to recognizing their characteristics and their most commonly applied forms. This classification helps deepen our knowledge of euthanasia's scope, illustrating how it is carried out by individuals or medical professionals. Below is a detailed presentation of each type.

- **Active Euthanasia**

Active euthanasia occurs when a person deliberately and intentionally causes the death of a terminally ill patient. This can be done, for example, by administering a lethal overdose of

[129] Townsend, Mark. "Assisted Dying around the World: Where and When It Is Allowed." *The Guardian*, 19 Dec. 2023, https://www.theguardian.com/society/2023/dec/19/assisted-dying-around-world-where-when-allowed-esther-rantzen. Accessed 6 Mar. 2025

painkillers that results in the patient's death. In almost all cases, active euthanasia is prohibited and punishable by law because it is carried out without the patient's consent and is considered a premeditated act. The most common method of active euthanasia involves the use of a lethal injection. In such cases, the act is often legally classified as homicide rather than euthanasia (Brock 2019). [130]

- **Passive Euthanasia**

Passive euthanasia occurs through inaction, meaning that others do not directly take the life of a terminally ill patient, but instead allow natural death to occur. This can involve withholding or withdrawing essential medical treatment that sustains life. For instance, doctors may discontinue life-supporting medications or refrain from performing a life-prolonging operation (Garrard 2005).[131]

Even though healthcare providers do not actively kill the patient, they are fully aware that their non-intervention will lead to the patient's death. Passive euthanasia may include:

- Turning off medical devices that keep the patient alive, allowing the underlying illness to take its natural course.
- Not performing surgery that could extend the patient's life for a short period.

- **Voluntary Euthanasia**

Voluntary euthanasia is considered the most typical form of euthanasia since it involves an explicit request from the patient who wishes to die. In this case, the patient, who is competent and fully aware, authorizes a doctor or close relatives to carry out the procedure to end their suffering. The patient clearly understands the implications of the decision and seeks euthanasia as a compassionate solution to extreme physical suffering, which has become unbearable (Brock 2019).[132]

- **Non-Voluntary Euthanasia**

[130] Brock, Dan W. "Voluntary Active Euthanasia." *Death, Dying and the Ending of Life, Volumes I and II*, edited by Leslie P. Francis, Routledge, 2019, vol. 2, pp. 229–241.
[131] Garrard, Eve, and Stephen Wilkinson. "Passive Euthanasia." *Journal of Medical Ethics*, vol. 31, no. 2, 2005, pp. 64–68.
[132] Brock, Dan W. "Voluntary Active Euthanasia." *Death, Dying and the Ending of Life, Volumes I and II*, edited by Leslie P. Francis, Routledge, 2019, vol. 2, pp. 229–241.

Non-voluntary euthanasia occurs when the patient is unable to provide consent due to factors such as young age, severe cognitive impairment, or unconsciousness. In such cases, a competent guardian or medical authority makes the decision on behalf of the patient.

Non-voluntary euthanasia also includes cases involving minors, where a child, despite being mentally and physically capable of making decisions, is not legally permitted to do so because they are not of legal age. In such instances, parents or legal guardians assume the responsibility of making the end-of-life decision (Beaudry 2022). [133]

- **Indirect Euthanasia**

Indirect euthanasia refers to providing medical treatments (usually for pain relief) that indirectly accelerate death. For example, a doctor may administer high doses of morphine to alleviate a patient's pain, knowing that it may shorten their life. Although the primary intention is not to kill the patient, the expected and foreseeable outcome is death. Since the goal is pain relief rather than deliberate killing, indirect euthanasia is often considered morally acceptable in medical ethics and jurisprudence (Banovic et al 2017). [134]

3.2 Differences Between Euthanasia and Assisted Suicide

Both euthanasia and assisted suicide involve acts of mercy intended to end the suffering of individuals experiencing intolerable pain. However, there are fundamental differences between the two:

- Euthanasia is usually carried out by a doctor, who administers lethal drugs (most commonly by injection). The physician is fully aware of the effects of the procedure and deliberately executes the action.
- Assisted suicide, on the other hand, involves a doctor providing the patient with the necessary means (such as prescribing lethal drugs), but the patient administers the dose themselves. In this case, the doctor does not directly perform the act but only facilitates the process.

[133] Beaudry, Jonas-Sébastien. "Death as 'Benefit' in the Context of Non-Voluntary Euthanasia." *Theoretical Medicine and Bioethics*, vol. 43, no. 5, 2022, pp. 329–354.
[134] Banović, Božidar, Veljko Turanjanin, and Anđela Miloradović. "An Ethical Review of Euthanasia and Physician-Assisted Suicide." *Iranian Journal of Public Health*, vol. 46, no. 2, 2017, p. 173.

In most countries, suicide is considered morally and legally wrong, as no one has the right to take their own life, regardless of the circumstances. Despite the differences between euthanasia and assisted suicide, they both lead to the same outcome—ending a person's painful existence with the hope of relief from suffering. In many aspects of healthcare, particularly in palliative care, increasing attention has been given to patient autonomy—the right to make decisions about one's own body and medical treatments. Autonomy is now regarded as a fundamental aspect of the relationship between patients and healthcare providers. It serves as the basis for ethical medical practices, such as:

- Truthfully informing patients about their medical condition;
- Obtaining informed consent before medical interventions;

Philosophers and ethicists view autonomy as the ability for individuals to self-govern and make independent decisions. In this context, autonomy means that individuals should be allowed to act according to their own judgment, provided that their actions do not harm others (Brigham and Jeffrey 1996). [135] Why is autonomy so important? There are two key reasons:

1. Individuals know what is best for themselves – While medical experts provide essential knowledge, only the patient can determine what is truly valuable and meaningful for their own life.
2. Respecting autonomy means respecting human dignity – By honoring patients' choices, healthcare providers acknowledge their rights as individuals.

3.3 Patients' Rights

The involvement of doctors in patients' lives necessitates a clear legal framework governing medical practice. Medical law now follows a logical and structured approach to resolving ethical dilemmas in healthcare. With regard to euthanasia, several key legal principles come into play, including:

- Preservation of life

[135] Brigham, John C., and Jeffrey E. Pfeifer. "Euthanasia: An Introduction." *Journal of Social Issues*, vol. 52, no. 2, 1996, pp. 1–11.

- Patient autonomy
- Right to refuse treatment
- Best interests of the patient
- Protection of doctors from legal liability

It is essential to recognize that each medical case is unique, and laws must be flexible enough to address individual ethical and legal concerns. Most people will depend on medical professionals at some point in their lives—whether for birth, illness, or end-of-life care. As life expectancy increases, individuals are more likely to experience prolonged aging and medical suffering, making ethical medical laws even more critical. The right to life has long been recognized, but does it also imply a right to die? Legal and ethical discussions distinguish between:

1. Biological life (basic existence)
2. Objective quality of life (measured by physical and mental abilities)
3. Subjective quality of life (how individuals perceive their own existence)

Many courts and legal systems uphold the belief that all human life is valuable and must be protected equally. However, opinions on the quality of life vary—some believe that life should be preserved at all costs, while others argue that a life filled with suffering, pain, or complete dependency is not worth living (Math and Santosh 2012). [136] Ultimately, the debate over euthanasia and the right to die raises complex legal, ethical, and philosophical questions. Courts, lawmakers, and medical professionals continue to grapple with how to balance the protection of life with respect for personal autonomy. Would recognizing a right to die provide relief to the suffering, or would it jeopardize the value of human life? The answer remains deeply controversial and unresolved.

❖ The Right to Refuse Healthcare

Every individual is considered the master of their own body and, consequently, has the right to explicitly refuse medical treatments or surgeries, even if such interventions could save their life.

[136] Math, Suresh Bada, and Santosh K. Chaturvedi. "Euthanasia: Right to Life vs Right to Die." *Indian Journal of Medical Research*, vol. 136, no. 6, 2012, pp. 899–902.

The inviolability of the person is regarded as sacred, making freedom from unwanted medical care an essential principle deeply embedded in societal consciousness. The right to refuse medical treatment is fundamentally a right to be free from unwanted interference with an individual's bodily integrity. This right is legally protected by requirements that mandate informed consent before any medical intervention. It is often recognized as part of the right to privacy, self-determination, or autonomy. Essentially, this right allows an individual to control the course of their life, behave, and make decisions as they see fit, as long as those actions do not conflict with societal norms.

The right to refuse treatment is a natural extension of the right to give consent for medical procedures. In extreme cases, the right to die is seen as the ultimate expression of the right to refuse healthcare—when such refusal directly leads to the patient's death (Shultz 1985). [137]

As a general rule, life-sustaining medical treatment cannot be administered without the consent of the person legally authorized to give it—whether it be the patient themselves, a parent in the case of a minor, or a spouse/legal guardian in cases of incapacity. The right to reject unwanted medical care also means that an individual has the right to weigh the potential benefits of a treatment against its possible consequences and make their own decision based on their values and beliefs. It is now a well-established legal principle that patients—not doctors—have the final say in whether a medical procedure is performed. This rule applies universally, regardless of the nature or purpose of the treatment or the seriousness of the consequences that may arise from refusing or accepting medical intervention.

Individuals have full freedom to make decisions about their own lives and healthcare. They have the right to prevent unjustified medical interventions on their bodies, a right that exists to protect the individual as a human being. A person who has reached the legal age and is mentally competent has the right to determine what happens to their own body. If a surgeon performs surgery without the patient's consent, they commit a crime and are legally liable for damages. Even if a patient chooses to refuse medical treatment because they believe it would diminish their quality of life, they are not obligated to provide justification for their decision. The right to be left alone in medical matters is absolute and does not require any specific reason to be exercised. A

[137] Shultz, Marjorie Maguire. "From Informed Consent to Patient Choice: A New Protected Interest." *Yale Law Journal*, vol. 95, 1985, pp. 219–299.

patient's autonomy would be undermined if others had the power to invalidate their decision by claiming that their refusal of treatment was based on an insufficiently valid reason.

4. Euthanasia in Albania

Euthanasia has been a contentious issue for many years, shaped by religious, ethical, and practical concerns, with distinct groups either supporting or opposing its legalization. Ideally, euthanasia should only occur at the request of the individual, but there are instances where patients may be too ill to make that request, and the decision may be made by relatives, doctors, or, in some cases, the courts. After conducting my study, I observed that while theoretical concepts regarding euthanasia exist in Albania, there is a legal gap because no concrete law addresses euthanasia specifically. The absence of a clear legal framework allows for potential abuses in the legal classification of such acts, which can infringe on the procedural and material rights of those involved. This lack of legislation essentially denies individuals the right to die with dignity.

Recently, the issue of euthanasia has been debated in Albanian media, with some suggesting that it should be legalized. Euthanasia affects both the individual and society; it involves personal and state responsibility and raises complex issues related to ethics, life philosophy, medicine, and law. These topics should not be treated with hypocrisy or through illegal methods that violate human dignity, even at the end of life. Instead, euthanasia should be addressed through proper legal channels, including provisions in the Albanian Constitution, the Penal Code, and other laws.

Euthanasia, both active and passive, as well as assisted suicide, are terms known in medical practice, particularly in the last decade, but they have not yet been widely practiced except in some cases of palliative care, which can be seen as a form of passive euthanasia. So far, there have been no criminal cases or prosecutions of doctors for performing euthanasia in Albania. However, passive euthanasia has been applied to terminally ill or severely injured patients, especially given the current limitations in medical practice and equipment. From an ethical standpoint, the Code of Medical Ethics (1998) states that easing suffering is a fundamental principle of medicine, while accelerating death contradicts medical ethics.

In Albanian law, euthanasia is illegal, as it conflicts with the moral values of the society. Even euthanasia carried out in the patient's request is regarded as simple murder under the law. Active euthanasia, where the patient dies at their request to end suffering, is considered a form of simple murder. Some legal opinions suggest that euthanasia could be prosecuted as a crime under Article 76 of the Penal Code, or as murder under extenuating circumstances (Article 82), depending on the situation. However, the Penal Code does not recognize euthanasia as a distinct criminal offense, and the term "euthanasia" is absent from the section concerning crimes against health and life.

Euthanasia remains a highly debated issue, surrounded by ethical, religious, and practical considerations, leading to divided opinions on its legalization. Ideally, euthanasia should only be performed at the request of the individual, but there are cases where a person may be too ill to make such a decision, and the choice is left to family members, doctors, or even courts.
According to the jurisprudence of the European Court of Human Rights (ECHR), Article 2 of the European Convention on Human Rights mandates that states not only refrain from actions that intentionally take someone's life but also ensure adequate measures to protect the lives of individuals within their jurisdiction. However, this article cannot be interpreted as granting the opposite right, i.e., the right to die, nor can it create a right to self-determine death. The state's role is not limited to imposing sanctions when the right to life is violated but must also include preventive actions to safeguard individuals whose lives are in danger. Furthermore, states are required to take measures to preserve life. The Court has even ruled that public authorities' simple negligence in such matters constitutes a violation of Article 2.

The ECHR has ruled that prohibiting euthanasia and categorizing it as a criminal act is not contrary to the Convention, as seen in the Pretty v. United Kingdom case, where the Court stated that individuals do not have the right to end their lives with the assistance of a third party or medical authority. Consequently, the right to die is not included in Article 2 of the Convention.

Voluntary euthanasia is often viewed as the start of a "slippery slope" that could lead to involuntary euthanasia and the killing of those who do not wish to die. If voluntary euthanasia is legalized, it is feared that it could pave the way for involuntary euthanasia. The concern is that it would be nearly impossible to ensure that all euthanasia cases are truly voluntary and that any relaxation of

the law might lead to abuse. Vulnerable groups, such as the elderly, the ill, or those in difficult situations, could face undue pressure to end their lives. Doctors could even begin practicing euthanasia without patient consent, and the reduction of healthcare costs might encourage the killing of patients to save money.

Supporters of euthanasia argue that doctors should respect the autonomy of their patients, believing that they have the right to choose to end their suffering. However, studies suggest that doctors may be more inclined to grant such requests due to the financial burden of prolonged care. This is particularly concerning given the historical example of Nazi doctors, who used the same principles to justify mass involuntary euthanasia. While some argue that the Nazis' actions were criminal and politically motivated, their example has made society more warier of the potential dangers of involuntary euthanasia.
Additionally, formalizing euthanasia is feared to "devalue life," suggesting that it is preferable to die than to live in illness or disability. This undermines the inherent value of life, particularly for those who are sick or disabled, posing a serious ethical dilemma.

In conclusion, given the current conditions, standard of living, and medical circumstances in Albania, I believe that it is not yet the right time to allow euthanasia. The societal and medical framework is not yet ready to handle the implications of legalizing it.

4.1 Reality and Perspectives in Albania

The issue of euthanasia divides researchers into two groups: those in favor and those against its implementation. Supporters argue that there is no reason why euthanasia cannot be legally regulated and properly controlled, although they acknowledge potential challenges. These challenges, however, are seen as manageable and uncontrollable.

Supporters also recognize the difficulty in determining whether euthanasia is performed for selfish motives or due to pressure on vulnerable patients. Various scholars in medical and legal fields offer differing arguments about euthanasia, which will be addressed below. I will present

arguments in favor of the position that euthanasia should or should not be applied in Albania, arguments that were derived from literature research and data collection from interviews.

❖ Religious Arguments

The field of theology strongly opposes euthanasia, believing that the right to determine when a person dies belongs solely to God, viewing the individual as subject to his will. The arguments against euthanasia from this perspective are:

- Euthanasia contradicts God's will and word.
- Euthanasia undermines society's respect for the sanctity of life.
- Suffering may have inherent value.
- Voluntary euthanasia is the beginning of a "slippery slope" that could lead to involuntary euthanasia and the killing of people who do not desire death.

According to theologians, God has granted humans free will, but while we may choose to take our own lives or seek help from others, such actions go against God's plan. Each human being is a creation of God, and this imposes certain limits on us. Suicide and seeking death as a right is considered a denial of God's sovereignty over our lives and His right to decide when and how we die. Theologians also argue that suffering holds positive value, as for centuries, suffering has been seen as a force that draws individuals closer to Christ, offering a special grace. Most religions advocate easing suffering, when possible, but emphasize that we should never consider eliminating those who suffer.

Pope John Paul II stated, *"Suffering, more than anything else, opens the way for the grace that transforms human souls."*[138] Some believe that death is a test from God, and how we respond reveals our character and the depth of our faith in God. During death, individuals may focus more on the important aspects of life, setting aside the consumer culture, ego, and desire to control the world. Restricting the death process would rob them of this opportunity. Certain Eastern religions believe that we live multiple lives, with each life's quality determined by how we lived the previous one. They view suffering as part of the moral force of the universe, and by ending life

[138] John Paul II. *Salvifici Doloris: On the Christian Meaning of Human Suffering*. Vatican, 11 Feb. 1984, https://www.vatican.va/content/john-paul-ii/en/apost_letters/1984/documents/hf_jp-ii_apl_11021984_salvifici-doloris.html. Accessed 6 Mar. 2025.

prematurely, a person interferes with their progress toward ultimate liberation. From a non-religious standpoint, some believe that suffering has value as it can lead to personal growth, character building, and compassion. Suffering draws upon all a person's resources, helping them reach the highest aspects of who they truly are. It can also serve as an example to others on how to endure hardship (Onongha 2013).[139] Defining suffering is difficult, as what one person experiences as suffering might not be perceived the same way by another. It is especially hard to objectively determine what constitutes unbearable suffering, as individuals react differently to similar physical and mental conditions. Life is sacred, and ending it by one's own hand diminishes its sanctity (Kass 1991). [140]

Theologians argue that there are four main reasons why human life should not be ended:

1. Human life has value regardless of age, sex, race, religion, social status, or potential for achievement.
2. Human life is valuable in itself, not merely as a tool for achieving something else.
3. Human life is sacred because it is a gift from God.
4. We are valuable to ourselves.

Even the philosopher Kant argued that rational human beings should be treated as an end in themselves and not as a means to an end. Our humanity itself gives us inherent value (Sensen 2009).[141] Because we exist, we have value, and we must respect our own inherent worth. We should not treat ourselves or others as tools for personal goals. Therefore, we should not end our lives just because it seems like the most effective way to end our suffering. Doing so would be disrespecting our inherent value.

❖ Ethical Arguments

[139] Onongha, Kelvin. "Suffering, Salvation, and the Sovereignty of God: Towards a Theology of Suffering." *Journal of Adventist Mission Studies*, vol. 9, no. 2, 2013, pp. 126–136.
[140] Kass, Leon R. "Death with Dignity and the Sanctity of Life." *A Time to Be Born and a Time to Die: The Ethics of Choice*, edited by Edward Dubose et al., University of Minnesota Press, 1991, pp. 117–145.
[141] Sensen, Oliver. "Kant's Conception of Human Dignity." *Kant-Studien*, vol. 100, no. 3, 2009, pp. 309–331

Secular critics argue that our rights are limited by our responsibilities to others. The decision to choose euthanasia affects not only the individual but also family members, friends, and healthcare professionals. We must consider the consequences of such decisions (guilt, sadness, anger) and weigh these against our individual right to die (Mannes 1975, 27). [142] They maintain that:

- Euthanasia erodes society's respect for the sanctity of life.
- Accepting euthanasia implies that some lives (those of the disabled or ill) are less valuable than others.
- Voluntary euthanasia sets the stage for involuntary euthanasia, leading to the death of people who do not wish to die.
- Euthanasia is not in a person's best interest.
- Euthanasia also impacts the rights of others, not just those of the patient. We must take into account our duties to society and balance our individual right to die. These negative consequences may include making involuntary euthanasia easier, thus putting vulnerable individuals at risk. There is also a political and philosophical concern that individual autonomy against the state must be balanced with the need to uphold the sanctity of life as an important internal value. (Otani 2010).[143] Secular philosophers emphasize the importance of preserving life because of its inherent value or its significance to all human beings.

❖ Philosophical Arguments

Philosophy raises the question: is death inherently bad? Philosophers argue that individuals have the right to die when and how they choose, as they have the authority to control their own bodies and lives, deciding when, how, and by whose hand they will die. This argument is based on the view that human beings are independent entities with the right to make decisions for themselves. According to those supporting this philosophical stance, the freedom to choose death benefits society, and such freedom should not be limited. Unnecessary restrictions on human rights are

[142] Mannes, Marya. "Euthanasia vs. the Right to Life." *Baylor Law Review*, vol. 27, 1975, pp. 68–76.
[143] Otani, Izumi. "'Good Manner of Dying' as a Normative Concept: 'Autocide,' 'Granny Dumping' and Discussions on Euthanasia/Death with Dignity in Japan." *International Journal of Japanese Sociology*, vol. 19, no. 1, 2010, pp. 49–63.

considered harmful, as death is the end. Death is often viewed negatively for the following reasons[144]:

- Because human life is considered inherently valuable.
- Because life and death are seen as "God's domain," and humans should not interfere.
- Because most people do not wish to die.
- Because it violates our autonomy (Finnis 1995).

The first two reasons are central to arguments against euthanasia, but only if they are accepted as true. The last two are not absolute; if a person wishes to die, these reasons do not necessarily justify denying euthanasia. Another reason why death is viewed negatively is that it represents a severe violation of the individual's autonomy, especially when that person does not wish to die.[145] People generally try to avoid death because they value life, as they have many goals and experiences they want to pursue.

❖ Practical Arguments and the Theory of Fair Distribution of Medical Resources

The theory of the fair distribution of limited medical resources suggests that euthanasia is an inevitable phenomenon that will happen regardless, and if a legal framework exists, it could help manage the distribution of scarce healthcare resources in specific situations (Letellier and Englert 2003).[146] Euthanasia might be necessary to ensure fair distribution of healthcare resources, an argument not yet publicly presented by any government or health authority.

It has been observed that in many countries, there are individuals who cannot be cured because they are unable to receive timely medical treatment due to insufficient healthcare resources. At the same time, healthcare resources are being used for people who cannot be cured and who would prefer not to continue living. Allowing such people to choose euthanasia would not only fulfill their wishes but would also free up valuable healthcare resources to treat those who wish to live. Opponents of this theory argue that it is a pragmatic approach suggesting we should allow

[144] Finnis, John. "A Philosophical Case Against Euthanasia." *Euthanasia Examined: Ethical, Clinical and Legal Perspectives*, edited by John Keown, Cambridge University Press, 1995, pp. 23–35.
[145] Ibid
[146] Letellier, Philippe, and Yvon Englert. *Euthanasia: National and European Perspectives*. Vol. 2, Council of Europe, 2003.

euthanasia because it would make more people happy. However, such arguments fail to convince those who believe euthanasia is fundamentally wrong. They argue that such a proposal would lead to involuntary euthanasia due to a lack of healthcare resources, and this abuse would be difficult to control, even with strict regulations (Harris 2010). [147]

The practical counter-arguments against the fair distribution theory include:

- Euthanasia is unnecessary because it undermines the motivation to provide good palliative care, and allowing it would result in inadequate care for terminally ill patients.
- There is no proper or effective way to regulate euthanasia.
- Allowing euthanasia undermines doctors' and nurses' commitment to saving lives, giving them excessive power to decide the fate of individuals.
- Allowing euthanasia would discourage the search for new treatments and cures for terminally ill patients.
- Euthanasia exposes vulnerable individuals to pressure to end their lives.
- Allowing euthanasia increases the possibility of moral pressure from selfish families on elderly relatives.
- Allowing euthanasia raises concerns about moral pressure to allocate healthcare resources.

These arguments are highly convincing and have contributed to the hesitation regarding initiatives to legalize euthanasia, especially when considering the fair distribution of healthcare resources (Dowbiggen 2007).[148] Human rights-based arguments suggest that a specific right to die is unnecessary because other human rights inherently include the right to die. Death is a private matter, and if there is no harm to others, neither the state nor other people have the right to interfere. Without creating a specific right to die, it can be argued that other human rights should encompass this right based on arguments such as:

- The right to life is not just a right to exist;
- The right to life also implies a right to a minimum quality of life;
- Death is the opposite of life, but the process of dying is part of life;

[147] Harris, Nonie M. "The Euthanasia Debate." *BMJ Military Health*, vol. 147, no. 3, 2001, pp. 367–370.
[148] Dowbiggen, Ian. *A Concise History of Euthanasia: Life, Death, God, and Medicine*. Rowman & Littlefield, 2007

- Death is one of the most important events in a person's life;
- Death can be either good or bad.[149]

Allowing euthanasia may increase the risk of violating the right to life, and this right should take precedence, even if it means the right to die is violated. People sometimes make mistakes about what is in their best interest, and they may not understand that performing euthanasia could harm others. Euthanasia is not a private act – we cannot ignore the potential negative effects it may have on society as a whole.

Below we illustrate in a tabular form the arguments in favor and against euthanasia:

Table 4: Arguments in favor of euthanasia

Argument	**Explanation**
Expansion of Patient Rights	Euthanasia allows patients to decide the value of their own life and death, aligning with patient rights.
Individual Freedom and Autonomy	Freedom of choice is fundamental to democracy, allowing patients to control their end-of-life decisions.
Respect for Human Dignity	Suffering from pain and loss of independence is undignified; euthanasia restores control to the individual.
No One Should Be Forced to Suffer	Forcing terminally ill patients to suffer against their will is inhumane and unjust.
The Right to Die with Dignity	Just as people should live with dignity, they should also have the right to die with dignity.
Avoiding a Slow and Painful Death	Some patients endure unbearable pain; euthanasia provides an option to end unnecessary suffering.
Testimonies from Families of Terminally Ill Patients	Family members witnessing slow and agonizing deaths often support euthanasia as a compassionate choice.

[149] Ibid

Healthcare Resource Allocation	Medical resources should focus on those who can recover, rather than prolonging the suffering of terminally ill patients.
Public Opinion Supports Euthanasia	In many democratic countries, the majority of the population supports euthanasia laws.
A Humane Choice	Allowing a suffering person to choose euthanasia is a more humane and compassionate approach.
Relief for Families	Euthanasia helps reduce the emotional and financial burden on families of terminally ill patients.
Ending Prolonged Suffering	When death is inevitable and painful, individuals should have the right to shorten their suffering.

Table 5: Arguments against euthanasia

Argument	Explanation
Doctors' Role is Compromised	Euthanasia contradicts the Hippocratic Oath, which obligates doctors to preserve life.
Competency of the Patient	Euthanasia is voluntary only if the patient is mentally competent and fully understands their options and consequences.
Moral and Religious Argument	Most religions view euthanasia as a form of murder or suicide, both of which are considered morally unacceptable.
Burden on Patients	Terminally ill patients may feel like a burden to their families and could be pressured into euthanasia.
Influence on Other Patients	A patient choosing euthanasia may influence others in similar situations to make the same decision.
Possibility of Misdiagnosis	Medical diagnoses are not always accurate; some patients could have a chance of recovery.
Palliative Care Alternative	Palliative care can alleviate pain and suffering, reducing the necessity for euthanasia.

Irreversible Decision	Once performed, euthanasia cannot be reversed; a patient might have changed their mind given time.
Right to Life as an Absolute Value	The right to life is absolute and should be protected at all costs, regardless of circumstances.
Public Trust in Medical Ethics	If euthanasia were legalized, it could erode public trust in doctors and the medical profession.
Historical Dangers of Euthanasia	History has shown that euthanasia can be abused, leading to unethical practices and involuntary euthanasia.
Legalization Could Lead to Abuses	Legalization could create loopholes that allow non-consensual euthanasia, leading to potential human rights violations.

5. Case Law

The European Court of Human Rights (ECtHR) serves as the primary international judicial body for enforcing human rights violations, whether committed by individuals or states. As one of the most important institutions for delivering justice, the ECtHR has adjudicated numerous cases related to violations of human rights, including euthanasia and assisted dying.

Through its rulings, the Court ensures that the European Convention on Human Rights (ECHR) is upheld by member states. One of the most debated cases regarding euthanasia, which set a precedent for future rulings on the subject, was Pretty v. United Kingdom (2002).

- **Pretty v. United Kingdom (April 29, 2002)**

Background:

Diane Pretty, a British citizen born in 1958, was living in Luton, UK. She was suffering from motor neuron disease, a progressive illness that causes muscle degeneration and for which no cure exists. At the time of the case, Pretty was in an advanced stage of the disease, paralyzed from the waist down, with a very limited life expectancy. However, her intellectual capacity and decision-making abilities remained intact.

Pretty wished to control how and when she died, aiming to avoid unbearable suffering and the loss of her dignity. She wanted her husband to assist her in ending her life, but the Director of Public

Prosecutions (DPP) refused her request to grant immunity from prosecution for her husband if he helped her commit suicide.

ECtHR Ruling:

Pretty challenged the UK's ban on assisted suicide under several articles of the European Convention on Human Rights (ECHR):

- Article 2 (Right to Life): She argued that the right to die is an extension of the right to life and should therefore be protected under the Convention.
- Article 3 (Prohibition of Inhuman or Degrading Treatment): She claimed that the UK Government had a positive obligation to protect individuals from suffering and not subject them to inhumane conditions.
- Article 8 (Right to Private and Family Life): She argued that this explicitly recognizes the right to self-determination, including the right to choose death.
- Article 9 (Freedom of Thought, Conscience, and Religion): She claimed that the lack of a legal framework allowing assisted suicide violated her right to act according to her beliefs.
- Article 14 (Prohibition of Discrimination): She argued that the ban on assisted suicide disproportionately affected disabled individuals who were physically unable to end their own lives without assistance.

Court's Analysis and Decision

On Article 2 (Right to Life):

The Court emphasized that Article 2 obligates states to protect life, not to provide a right to die. While the state is prohibited from unlawfully taking life, it is also responsible for preserving life within its jurisdiction. The Court rejected Pretty's claim, ruling that Article 2 does not include a right to die—whether with assistance from a third party or a public authority.

➞ ***Conclusion: No violation of Article 2.***

On Article 3 (Prohibition of Inhuman or Degrading Treatment):

The Court noted that the UK did not actively cause Pretty's suffering and had not neglected its duty to provide medical care. Although she faced severe physical suffering, the Court ruled that the prohibition of assisted suicide did not constitute inhuman or degrading treatment.

➞ ***Conclusion: No violation of Article 3.***

On Article 8 (Right to Private and Family Life):

Pretty argued that prohibiting assisted suicide prevented her from making personal choices about her own life and death. The Court acknowledged that the ban interfered with her personal autonomy but ultimately ruled that the interference was justified in a democratic society to protect the rights of others.

➞ ***Conclusion: No violation of Article 8.***

On Article 9 (Freedom of Thought, Conscience, and Religion):

The Court stated that not all personal beliefs qualify for protection under Article 9. Since Pretty's claim did not involve the practice of religion or an established belief system, the Court dismissed her argument.

➞ ***Conclusion: No violation of Article 9.***

On Article 14 (Prohibition of Discrimination):

The Court ruled that the UK had a justifiable legal reason for not distinguishing between individuals who could physically commit suicide and those who required assistance. The Court found that the ban applied equally to all individuals, regardless of physical ability.

➞ ***Conclusion: No violation of Article 14.***

Final Ruling

The Court ruled that the United Kingdom had not violated the European Convention on Human Rights. It upheld the ban on assisted suicide, reinforcing that governments have a legitimate interest in protecting vulnerable individuals from coercion or exploitation.

Diane Pretty passed away naturally a few days after the verdict was issued.

- **Terri Schiavo (United States Supreme Court, 1998–2005)**

Another landmark case in end-of-life decisions was Terri Schiavo's case in the United States, which lasted from 1998 to 2005. The case sparked intense public debate, drawing media attention and even involvement from then-Governor Jeb Bush. [150]

[150] Weijer, Charles. "A Death in the Family: Reflections on the Terri Schiavo Case." *CMAJ: Canadian Medical Association Journal*, vol. 172, no. 9, 2005, pp. 1197–1198. doi:10.1503/cmaj.050348.

Background:

- On February 25, 1990, Terri Schiavo suffered cardiac arrest at her home in St. Petersburg, Florida.
- Due to prolonged oxygen deprivation, she sustained severe brain damage and, after two and a half months in a coma, was diagnosed as being in a persistent vegetative state (PVS).
- Despite multiple attempts at rehabilitation from 1990 to 1993, her condition did not improve.
- In 1998, Terri's husband Michael Schiavo petitioned for the removal of her feeding tube, arguing that she would not have wanted to remain in a vegetative state.
- Terri's parents opposed the request, arguing that she was conscious and that removing the tube violated her religious beliefs as a devout Catholic.
- Courts sided with Michael Schiavo, and on April 24, 2001, Terri's feeding tube was removed for the first time but was reinserted days later due to legal challenges.

In 2001, five doctors examined Terri's medical records, brain scans, and videos before concluding that she was in an irreversible vegetative state.

- On February 25, 2005, a judge ordered the removal of her feeding tube, leading to multiple appeals and intervention from the U.S. federal government.
- Even President George W. Bush attempted to pass a law to keep her alive.
- However, all appeals failed, and the original court ruling was upheld.

Final Outcome: On March 18, 2005, Terri's feeding tube was permanently removed. She passed away on March 31, 2005.

Both Pretty v. UK and Terri Schiavo's case underscore the legal and ethical complexities of euthanasia, assisted dying, and end-of-life decisions. While the ECtHR upheld the UK's ban on assisted suicide, U.S. courts emphasized the right of legal guardians to make end-of-life decisions on behalf of incapacitated patients. These cases continue to shape global debates on euthanasia, personal autonomy, and the legal limits of end-of-life choices.

Empirical findings from interviews

This last part presents the empirical findings from five semi-structured interviews conducted with individuals from diverse backgrounds across Albania. The aim was to understand personal perceptions, societal attitudes, and legal awareness surrounding the issues of abortion and euthanasia. The interviews reflect a wide spectrum of perspectives shaped by factors such as age, geography, education, professional background, and religious beliefs.

This chapter presents an in-depth analysis of five semi-structured interviews with individuals from diverse demographic and professional backgrounds in Albania. The central aim is to critically assess how perceptions of the right to life, abortion, and euthanasia reflect broader societal values, legal realities, and cultural norms. Interviewees include a young urban woman, a retired teacher, a medical doctor, a university student, and a women's rights advocate. Their voices offer a textured portrait of Albania's evolving moral landscape and how the right to life is both affirmed and contested in practice.

1. The Right to Life: A Shared Foundation with Diverging Interpretations

While all interviewees affirm the right to life as a fundamental principle, their interpretations diverge sharply. The elderly respondent from Kukës adheres to a religious and traditional framework, viewing life as sacred from conception to natural death. In contrast, younger voices, especially from urban contexts, conceptualize the right to life through the lens of individual autonomy and personal dignity. For these participants, the right to life does not preclude abortion or euthanasia when grounded in personal choice and freedom from suffering.

These perspectives mirror deeper philosophical currents: on one side, a deontological moral stance, rooted in divine command and religious doctrine; on the other, a liberal rights-based approach, consistent with international human rights norms. The divide illustrates how the same legal principle — the right to life — is interpreted through radically different cultural and ethical filters. This complex landscape supports Hypothesis 1 (H1): the right to life remains a foundational value in Albania, but its meaning is shaped by conflicting social, moral, and generational interpretations.

The role of traditional values and religion emerged strongly, particularly in interviews with older or rural participants. An elderly male interviewee from the Kukës region expressed firm opposition to both abortion and euthanasia, citing religious principles and the belief that life is sacred from conception to natural death. In contrast, younger participants and professionals showed more openness to reform, emphasizing the need to separate personal beliefs from public policy. The tension between Albania's cultural heritage and its aspirations toward European integration was a recurring theme.

2. Enforcement and Gaps in the Legal Framework

All interviewees, regardless of background, point to gaps between formal legal rights and their enforcement in practice. The student from Shkodër noted that abortion, while technically legal, is often inaccessible due to societal shame and bureaucratic barriers. The medical doctor highlighted the lack of institutional clarity around end-of-life care and ethical dilemmas arising in the absence of a euthanasia framework. The NGO advocate emphasized the unequal distribution of access — especially in rural areas, Roma communities, and among economically vulnerable groups — where services are often withheld or denied outright.

This evidences a critical failure of legal institutions to ensure substantive equality, where rights are not just codified but operationalized equitably. It reflects what the European Court of Human Rights has called "positive obligations": the duty of states not only to avoid violating rights but also to take proactive steps to secure them (e.g., *A, B and C v. Ireland*).

The inadequacy of enforcement mechanisms, combined with vague laws and a lack of judicial oversight, validates Hypothesis 2 (H2): Albania's legal framework requires significant reform, increased institutional capacity, and ethical professionalism — particularly in sensitive areas like reproductive health and end-of-life care.

3. Abortion: Legal, Yet Morally Contested and Socially Uneven

Across all interviews, there was a shared recognition that abortion is legally permitted in Albania; however, participants consistently emphasized the gap between legality and accessibility. Interviewees based in urban centers, such as a young woman in Tirana and an NGO representative

in Vlora, highlighted the disparity in service provision between urban and rural areas. They noted that while legal rights exist, women in marginalized communities often face obstacles due to institutional weakness, misinformation, or fear of stigma. A healthcare professional in Durrës pointed to the absence of detailed legal protocols and ethical guidance, particularly concerning euthanasia, stating that Albanian law does not provide sufficient tools for practitioners to navigate sensitive end-of-life care situations.

Abortion is legal in Albania up to 12 weeks, but legal permission does not translate to widespread social acceptance or equal access. The interviews reveal a duality between legality and legitimacy: while the law allows for abortion, society often labels it immoral or irresponsible. Women, especially young and unmarried ones, report experiencing stigma, silence, and judgment. Medical staff may act as informal moral gatekeepers, influencing access through personal bias or communal pressure.

Even more concerning is the persistence of gender-selective abortion, particularly in rural communities. The medical doctor and NGO worker confirmed this phenomenon, noting that requests for early ultrasounds to determine fetal sex are sometimes indicators. This practice exposes the intersection of reproductive rights and gender discrimination, revealing that entrenched patriarchal norms continue to influence reproductive decision-making.

These findings affirm Hypothesis 3 (H3): selective abortion and societal stigma erode both the public's trust in healthcare and legal institutions, and undermine the promise of reproductive autonomy. This erosion is further exacerbated by the absence of monitoring mechanisms and public education, leaving many vulnerable groups effectively disenfranchised.

4. Euthanasia: An Emerging, Polarizing Debate

Euthanasia remains criminalized in Albania, and strong moral resistance persists, particularly among older, religious populations. The retired teacher framed euthanasia as a form of spiritual abandonment, directly contradicting religious teachings about divine sovereignty over life and death. However, younger participants — including the student, doctor, and urban woman — viewed euthanasia with greater empathy, often as an issue of human dignity and relief from suffering.

The medical doctor in particular emphasized the ethical complexity of terminal care, noting that palliative services are underdeveloped and often leave patients in prolonged distress. These views suggest the potential for a shift in public discourse, particularly among professionals and urban youth.

This emerging debate is best understood through the lens of biopolitics (Foucault) and sovereignty over death (Agamben). The Albanian state currently avoids legislating on death, effectively ceding power to traditional and religious authorities. Yet, the demand for a dignified death challenges this silence. As such, Hypothesis 4 (H4) is confirmed: while euthanasia is not legally or socially accepted in Albania, pockets of reform-minded advocacy are beginning to surface, primarily among health professionals and progressive civil society actors.

Despite abortion being legally permitted, societal stigma remains pervasive. Interviewees across age groups and professions spoke about the judgment and shame associated with abortion, particularly for unmarried or young women. A university student from Shkodër noted that while abortion is discussed in academic settings, it is still taboo within families and local communities. The NGO representative described how stigma continues to discourage women from seeking help or information, contributing to silent suffering and uninformed choices.

The healthcare professional interviewed underscored the ethical dilemmas faced by doctors who must operate within ambiguous legal and institutional frameworks. Gender-selective abortions, limited palliative care infrastructure, and lack of psychological support for terminally ill patients were cited as major concerns. The doctor emphasized that while medical staff aim to uphold ethical standards, they are constrained by underdeveloped protocols and insufficient state support.

5. Urban-Rural and Generational Divides

A powerful and consistent theme across interviews is the cleavage between urban and rural Albania, and between older and younger generations. Urban participants (Tirana, Durrës, Vlora) emphasized rights, choice, and dignity, reflecting exposure to European values and media. Rural voices (Kukës) leaned heavily on religious, communal, and familial ethics, often equating legal reform with moral decay.

This divide is not just ideological but structural. Albania’s post-communist transition has been uneven, with urban centers integrating more quickly into global and European networks. Youth increasingly engage with transnational debates on autonomy and human rights, influenced by social media, diaspora returnees, and liberal education. In contrast, rural populations continue to rely on clerical and communal authority for moral guidance, seeing change as externally imposed and culturally disruptive.

Younger participants exhibited more liberal attitudes toward reproductive and end-of-life rights. A political science student from Shkodër emphasized the role of education and international exposure in shaping progressive views. Participants in urban settings expressed support for aligning Albania's legal framework with European Union standards. They saw EU integration as an opportunity to modernize not only the legal system but also public discourse around abortion and euthanasia.

These divides are crucial for understanding why legal reform is slow and often met with resistance: the law cannot outpace society without backlash. Effective policy must therefore bridge these divides, promoting dialogue across generations and regions.

6. Implications for Policy and Reform

The interviews highlight the urgency of legal and institutional reform, but also caution against abrupt or top-down solutions. For abortion, reforms should focus on:

- Expanding sexual education and public awareness,
- Ensuring anonymity and dignity in clinics,
- Strengthening accountability mechanisms for discrimination.

For euthanasia, reform could begin with:

- A comprehensive law on palliative care,
- National consultations involving religious leaders, doctors, legal experts, and patients’ rights groups,

- An ethics commission to explore strict conditions under which physician-assisted dying might be introduced.

Moreover, partnerships with NGOs can bridge the enforcement gap, especially in rural areas. Ethics training, public campaigns, and EU-aligned legal drafting are essential tools in this process.

These interviews provide critical empirical grounding for the dissertation's core hypotheses. The right to life is upheld in principle but practiced unevenly. Abortion is legal yet constrained by stigma, institutional inertia, and cultural conservatism. Euthanasia remains taboo, though new debates are quietly emerging. Ultimately, the Albanian case reveals a legal culture caught between European integration and traditional moral authority. Moving forward, a human rights framework that respects both autonomy and cultural sensitivity is essential for meaningful reform.

Four out of five interviewees called for urgent reforms. Suggested measures included national awareness campaigns, improved healthcare infrastructure, legal clarity for medical practitioners, and the introduction of a legal framework for euthanasia beginning with enhanced palliative care. Participants emphasized the importance of building a rights-based legal system that respects personal dignity while considering Albania's cultural and social realities.

The interviews revealed a society in flux. While legal frameworks on abortion exist, societal resistance and institutional weaknesses continue to limit their impact. Euthanasia remains largely outside the realm of legal and political discourse, yet emerging voices demand that it be addressed. The findings suggest that any future reform must consider the complex interplay between law, culture, religion, and individual agency. Albania stands at a crossroads, and the voices captured in these interviews reflect both the challenges and aspirations of a society navigating deeply sensitive moral terrain.

Conclusions and Recommendations

I. The Albanian Constitution enshrines the right to life in Article 21, establishing it as one of the most fundamental human rights. This constitutional guarantee prohibits capital punishment, reflecting a clear and unwavering commitment to the sanctity of life. As a signatory to the European Convention on Human Rights (ECHR), Albania's legal obligations under Article 2 of the Convention further reinforce this principle. Compliance with the ECHR's stringent standards has been a cornerstone of Albania's EU accession process, prompting significant legal and institutional reforms to ensure robust protection of this right.

Judicial intervention has played a pivotal role in safeguarding the right to life. Furthermore, independent institutions such as the Ombudsman have become vital mechanisms for protecting life. They act as watchdogs, ensuring that government actions or inactions do not threaten individuals' rights. By investigating cases of negligence and advocating for systemic improvements, these institutions provide essential safeguards for citizens.

Albania faces substantial socio-economic challenges, with approximately 22% of its population living in poverty, according to the World Bank's 2023 data.[151] Despite these struggles, the government has initiated programs aimed at improving living conditions and addressing disparities. The "Health for All" program is one such initiative, designed to enhance healthcare access and increase life expectancy. Maternal and infant health has seen remarkable progress, with maternal mortality rates falling from 29 per 100,000 live births in 2010 to 12 in 2020, as reported by the World Health Organization (WHO).[152] This improvement demonstrates the government's

[151] World Bank. *Albania Overview*. World Bank, https://www.worldbank.org/en/country/albania/overview. Accessed 6 Mar. 2025.
[152] World Health Organization. *Maternal Mortality*. World Health Organization, https://www.who.int/news-room/fact-sheets/detail/maternal-mortality. Accessed 6 Mar. 2025.

commitment to addressing socio-economic barriers and prioritizing the well-being of its citizens.

Political instability and corruption have historically undermined Albania's governance, presenting significant obstacles to the full realization of the right to life. However, the 2016 Justice Reform marked a critical turning point. This comprehensive initiative aimed to restore public trust and strengthen judicial independence by introducing specialized anti-corruption courts and implementing rigorous vetting processes for judges and prosecutors. These reforms have already yielded tangible results, such as the High Judicial Council's removal of judges found guilty of ethical violations. By enhancing accountability within the judiciary, these measures indirectly support the right to life by addressing systemic issues that undermine public services and erode trust in institutions (Gunjic 2022). [153]

Albania's cultural and historical values also reflect a deep respect for human life. The Kanun, a traditional code of conduct, proclaims the protection of human life as a moral imperative. While its misuse in historical blood feuds has caused challenges, the Kanun's principles continue to influence societal norms and underscore the importance of life. Non-governmental organizations (NGOs) like "Different and Equal" and "Refuge Albania" further contribute to the protection of vulnerable groups. By providing shelter, advocacy, and support for victims of violence and human trafficking, these organizations reinforce societal commitment to preserving life.

Judicial reform remains essential for ensuring the effective enforcement of the right to life. Despite significant advancements, systemic corruption, resource limitations, and public distrust continue to hinder progress. Rural courts, which often lack adequate infrastructure and trained personnel, struggle to deliver justice consistently. Public perception, as reflected in Transparency International's surveys, highlights widespread

[153] Gunjic, I. "Albania's Special Courts Against Corruption and Organised Crime." *U4 Brief*, 2022, https://www.u4.no/publications/albanias-special-courts-against-corruption-and-organised-crime.pdf.

concerns about judicial transparency and integrity. Addressing these issues is vital to enhancing the judiciary's effectiveness (Kusuri 2025).[154]

To improve judicial independence, merit-based appointments and enhanced oversight by institutions such as the High Judicial Council have been prioritized. The implementation of digital case management systems and the publication of judiciary performance reports aim to increase transparency and accountability. Training programs for judges and prosecutors, supported by the EU, have contributed to improving ethical standards and human rights enforcement. However, these efforts must be expanded to achieve widespread impact.

Aligning Albania's legal and institutional frameworks with international norms remains both a challenge and an opportunity. The EU accession process has been a driving force behind many reforms, providing technical support and funding for improvements. By leveraging this process, Albania can deepen its commitment to protecting the right to life. However, sustained political will and societal engagement are essential for translating reforms into meaningful outcomes. Public awareness campaigns about citizens' rights and the judiciary's role in protecting them can help build trust and encourage civic participation.

Strengthening the judiciary's independence, transparency, and professionalism will require a holistic approach. This includes addressing systemic corruption, ensuring equitable resource distribution, and fostering a culture of ethical professionalism. Increased funding for courts in underserved regions is crucial to ensuring equitable access to justice. Additionally, citizen feedback mechanisms can improve service delivery and accountability (Friends of Europe 2024; EC report 2024).[155]

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[154] Kusuri, A. "The Journey of SPAK: A Comprehensive Analysis of Its Achievements and Challenges." *European Journal of Economics*, vol. 9, no. 1, 2025, https://intapi.sciendo.com/pdf/10.2478/ejels-2025-0006.

[155] Friends of Europe. (2024). Needs, achievements and challenges of reforming the justice system in Albania. https://www.friendsofeurope.org/insights/needs-achievements-and-challenges-of-reforming-the-justice-system-in-albania/ ; European Commission. (2024). Albania 2024 Report - Enlargement and Eastern Neighbourhood. https://enlargement.ec.europa.eu/document/download/a8eec3f9-b2ec-4cb1-8748-9058854dbc68_en?filename=Albania%20Report%202024.pdf

Finally, Albania should continue collaborating with international organizations and neighboring countries to adopt best practices and gain technical support. For instance, lessons from Croatia's successful judicial reforms can provide valuable insights into enhancing transparency and effectiveness. By prioritizing these measures, Albania can strengthen its judiciary and ensure the effective enforcement of the right to life, aligning its governance with international standards and fostering a more just and equitable society.

II. Abortion in Albania has had a profound impact on society, shaped by cultural, legal, and social dynamics. The widespread practice of sex-selective abortion, enabled by advancements in prenatal screening, has contributed to a significant gender imbalance. Research indicates that for every 100 girls, 112 boys are born, with even higher disparities in urban centers like Tirana, where the ratio can reach 119 boys to 100 girls. This imbalance reflects a deep-seated cultural preference for male children, rooted in patriarchal traditions and economic considerations.[156] Families often resort to abortion after a female birth to ensure the next child is male, leading to societal resistance and ethical concerns about such practices. A critical factor contributing to selective abortion in Albania is the cultural preference for male children, deeply rooted in patriarchal traditions. These statistics underscore a societal bias that views male offspring as essential for lineage continuation and economic security. This bias, fueled by access to prenatal testing, enables families to terminate pregnancies based on the fetus's gender, perpetuating discriminatory practices against women and girls. Public resistance to such practices, especially in rural areas, stems from the clash between these cultural tendencies and the ethical principles upheld by religious and societal norms.

Despite Albania's 2002 reproductive health law prohibiting sex-selective abortions and limiting abortions to the first trimester, enforcement remains weak. Public hospitals and private clinics often fail to impose restrictions, making these services widely

[156] UNICEF Albania. *Situation Analysis of Children and Adolescents in Albania*. UNICEF, 2022, https://www.unicef.org/albania/media/4071/file/SituationAnalysisofChildrenandAdolescentsinAlbania.pdf.

accessible. Moreover, cultural stigma around abortion persists, particularly in rural areas, where societal and religious norms clash with individual rights. These tensions erode trust in institutions meant to uphold ethical and medical standards, contributing to public skepticism.

The societal consequences of this gender imbalance are significant. Experts predict that in the coming decades, the surplus of men may result in heightened competition in the marriage market, forced migration, and further discrimination against women, potentially exacerbating early or arranged marriages. These outcomes threaten societal cohesion and highlight the need for comprehensive reforms, including stricter enforcement of existing laws and public education campaigns promoting gender equality and women's rights.

Addressing these issues will require multi-faceted strategies, including stronger legal frameworks, transparent medical practices, and societal dialogue on gender norms. Such efforts must target both urban and rural populations to foster meaningful change and reduce the societal impact of selective abortion.

Selective abortion and uncontrolled abortion practices in Albania pose profound challenges to societal norms, institutional credibility, and public trust. These practices, particularly when linked to sex selection, reflect deep-seated cultural and economic dynamics that have significant implications for public perception and institutional accountability.

The legal framework in Albania, including the 2002 reproductive health law, prohibits sex-selective abortions and limits abortion to the first trimester, except under specific medical circumstances. However, enforcement remains weak. Public hospitals and private clinics frequently overlook these restrictions, providing abortion services with minimal oversight. This failure to regulate contributes to public distrust of healthcare providers and regulatory institutions. Many perceive these entities as complicit in

perpetuating unethical practices rather than as protectors of public welfare and human rights.

The societal consequences of these practices extend beyond individual cases, manifesting in significant demographic and social challenges. The imbalance in sex ratios has potential long-term repercussions, including increased competition in the marriage market, heightened risks of human trafficking, and pressures on women to fulfill traditional reproductive roles. Such outcomes further exacerbate gender inequality and threaten societal stability. Public criticism often focuses on the institutions responsible for safeguarding reproductive rights, as their inability to prevent these practices undermines both their legitimacy and their ethical standards.

Compounding these issues is the limited accessibility of family planning resources, particularly in rural regions. While urban areas have greater access to reproductive healthcare, they also show higher rates of selective abortions, reflecting the influence of modern medical technologies on entrenched cultural biases. In contrast, rural areas suffer from a lack of comprehensive sexual education and healthcare, deepening the divide between urban and rural populations in terms of reproductive health outcomes and perceptions.

The interplay between selective abortion practices, cultural resistance, and institutional shortcomings creates a complex dynamic that undermines public trust. Institutions tasked with enforcing laws and promoting ethical standards often appear ineffective or indifferent, further alienating the public. This erosion of trust aligns with the hypothesis that these practices not only harm societal perceptions but also diminish the credibility of the institutions meant to safeguard reproductive rights and ethical standards.

Addressing these challenges requires a multi-faceted approach. Legal reforms must strengthen the enforcement of abortion regulations, while public awareness campaigns should aim to reshape cultural attitudes toward gender and reproductive health. Expanding access to contraception and sexual education, especially in underserved

rural areas, can help reduce the reliance on abortion as a method of family planning. Only by addressing these issues comprehensively can Albania move toward a more equitable and trustworthy system of reproductive healthcare.

This analysis illustrates the multifaceted impact of abortion practices on Albanian society, emphasizing the need for systemic reforms to address cultural, legal, and institutional challenges effectively. To address the challenges posed by selective abortion and uncontrolled abortion practices in Albania, several key recommendations can be proposed. These suggestions aim to reduce gender bias, improve public trust in institutions, and create a more equitable and ethical framework for reproductive rights.

Firstly, strengthening the enforcement of existing abortion laws is essential. The 2002 reproductive health law prohibits sex-selective abortions and regulates the timing of abortions, yet enforcement remains weak. Healthcare providers, both public and private, must be held accountable for ensuring these regulations are followed. This could be achieved by establishing stricter oversight mechanisms, such as regular audits of abortion procedures and penalties for non-compliance. Increased transparency and accountability would be crucial in restoring public trust in healthcare institutions and regulatory bodies.

Secondly, promoting gender equality is another critical area for intervention. A significant cultural preference for male children remains a driving force behind selective abortion in Albania. Public education campaigns could play a pivotal role in shifting societal attitudes towards gender, emphasizing the value of female children and the importance of equality in all aspects of life. Initiatives aimed at empowering women through improved access to education, economic opportunities, and leadership roles would help diminish the societal pressures that encourage selective abortion. By addressing these cultural biases, Albania can begin to create a more balanced and equitable society.

Expanding access to family planning services and contraceptives is also vital to reducing the need for abortion. In rural areas, where resources are often limited, improving access to sexual health education and affordable contraception can provide women with more choices regarding their reproductive health. Strengthening public healthcare services in these regions would ensure that all women, regardless of their location, can make informed decisions about family planning and are less likely to turn to abortion as a primary form of birth control. Outreach programs focused on both urban and rural communities can help ensure equitable access to reproductive healthcare.

Furthermore, supporting women's reproductive rights through comprehensive counseling and care is crucial. Women who seek abortions, particularly for non-medical reasons, should have access to counseling services that provide unbiased information on the potential consequences of their decisions. These services should empower women to make informed choices, and be supported by safe and confidential spaces to discuss their options without fear of judgment. Promoting informed decision-making would not only reduce the rate of selective abortion but also foster a healthier public perception of abortion services.

The issue of institutional transparency and accountability also warrants attention. Albania's healthcare system must prioritize transparency in its operations, particularly with regard to abortion services. Public institutions should provide clear information on abortion procedures and the ethical standards that govern these practices. Additionally, collaboration with non-governmental organizations and international bodies could help introduce external oversight and bolster the credibility of Albania's healthcare institutions.

Lastly, addressing the demographic consequences of selective abortion is crucial. The gender imbalance resulting from selective abortions may have long-term social implications, including increased competition in the marriage market, human trafficking, and heightened gender discrimination. In response, Albania's government could consider policies that encourage balanced population growth, such as offering

incentives for families with daughters or fostering gender equality in education and employment. These efforts would help mitigate the long-term effects of gender imbalances and contribute to a more inclusive society.

Finally, encouraging public dialogue on reproductive rights and abortion is essential for reducing stigma and fostering a more open, informed society. Engaging religious leaders, community representatives, and young people in discussions about abortion and gender equality could help bridge the gap between traditional and modern perspectives. A national conversation could encourage a more nuanced understanding of the ethical, cultural, and legal dimensions of abortion practices and foster greater acceptance of women's reproductive rights.

By implementing these recommendations, Albania can create a more ethical, equitable, and trustworthy system for managing reproductive health. Strengthening legal enforcement, promoting gender equality, expanding access to family planning, and supporting women's rights will help address the complex challenges posed by selective abortion practices and restore public confidence in institutions meant to safeguard reproductive health and human rights.

III. Euthanasia remains a highly sensitive and controversial topic in Albania, shaped by the country's cultural, religious, and legal landscape. Public perception of euthanasia in Albania is generally negative, with widespread societal resistance rooted in traditional values and religious beliefs. The dominant cultural influence of the Albanian Orthodox Church and Islam, both of which view euthanasia as morally unacceptable, significantly shapes public opinion. According to these religious doctrines, life is sacred, and decisions regarding its end should lie solely in the hands of God. This resistance is further reinforced by deeply held values surrounding family, community, and caregiving, where the idea of a loved one intentionally ending their life is seen as a betrayal of familial duty.

Public perception, therefore, aligns with the prevailing legal stance in Albania, where euthanasia is considered a criminal offense. The Albanian Penal Code does not differentiate between active and passive euthanasia, and assisting someone in ending their life is punishable by law. The lack of any legal provision for euthanasia reflects the general reluctance to engage with the concept at the institutional level. Although there has been some academic and media discourse surrounding euthanasia, these discussions are limited, and there is little advocacy for legalizing euthanasia within the political and public spheres. Few, if any, public figures or organizations actively promote euthanasia, further underscoring the societal reluctance to embrace this practice.

Despite this, there are small, isolated voices in Albania that argue for a reevaluation of euthanasia laws, often emphasizing human dignity, the autonomy of individuals, and the need to alleviate suffering for terminally ill patients. However, these views are not yet widely accepted. Additionally, discussions about euthanasia rarely extend into mainstream politics, as the issue remains on the periphery of public policy debates.

Given this cultural and legal context, it is unlikely that there will be significant legal initiatives to legalize euthanasia in Albania in the immediate future. The general public and political will do not appear to favor such a shift, and any such movement would require substantial changes in both public opinion and the legal framework.

Euthanasia remains a contentious and largely rejected topic in Albania, shaped by the intertwining of cultural, religious, and legal factors. Public perception of euthanasia is generally negative, largely because of Albania’s deeply rooted cultural and religious values. The dominant religions—Albanian Orthodox Christianity and Islam—both hold strong anti-euthanasia positions, with life being viewed as sacred and the ending of it as a matter beyond human control. These religious perspectives influence the public’s moral stance on euthanasia, leading to widespread opposition to the practice. As a result, there are few advocates for euthanasia in the country, and debates surrounding the issue remain relatively marginal.

This public reluctance is mirrored in Albania's legal system. Euthanasia is criminalized under the Albanian Penal Code, and assisting in the death of another person, regardless of the circumstances, is punishable by law. There are no legal provisions or frameworks in place that would allow for euthanasia in the event of terminal illness or significant suffering, a situation that is unlikely to change in the near future. The lack of any formal legal discourse on euthanasia and the criminalization of the practice reflects the deeply ingrained cultural and religious resistance to the idea. The Albanian legal system, therefore, mirrors public sentiment: euthanasia is considered both illegal and morally unacceptable.

However, despite the societal and legal resistance, there have been occasional discussions on the subject in academic and philosophical circles. Some scholars and ethicists have advocated for a reconsideration of Albania's position on euthanasia, arguing that it may be necessary to address the suffering of terminally ill individuals who face an agonizing end of life. These discussions, however, remain isolated, and there is little traction within the broader public or political spheres. Furthermore, no major political figures or advocacy groups have actively pushed for the legalization of euthanasia, which further illustrates the lack of momentum for such a shift in the country's stance.

Given the current state of public opinion and the legal framework, it seems unlikely that any significant legal reforms will be introduced in the immediate future. The subject of euthanasia does not feature prominently in political debates, and it remains a highly sensitive issue that would require a significant shift in public attitudes for any meaningful legal change to take place. Cultural and religious beliefs, which emphasize the sanctity of life, continue to dominate discussions on death and dying in Albania.

To move the conversation forward, it is essential to create spaces for informed dialogue around euthanasia. Public education campaigns could be designed to raise awareness about the ethical, moral, and legal implications of euthanasia, offering a platform for

individuals to explore the topic without prejudice. Such campaigns should emphasize the dignity and autonomy of individuals, as well as the importance of end-of-life care options that respect the wishes of the terminally ill.

Given the strong influence of religion on Albanian society, it would be essential to engage with religious leaders and communities to discuss euthanasia within a moral and ethical framework. While religious views may not be easily shifted, an open discussion on how euthanasia relates to compassion, human dignity, and the reduction of suffering may lead to more nuanced perspectives within religious circles. This could potentially create a more open environment for dialogue about euthanasia.

In the absence of legal euthanasia, Albania should prioritize expanding access to palliative care services, ensuring that those suffering from terminal illnesses are able to receive adequate care to manage pain and improve quality of life. Developing a robust palliative care system could mitigate the perceived need for euthanasia by providing alternative solutions for managing end-of-life suffering. Government and healthcare institutions could invest in training healthcare professionals and developing support systems for both patients and families facing terminal illnesses.

An ethical review of the current legal framework surrounding euthanasia could provide a more comprehensive understanding of the issues involved. This review would involve exploring how euthanasia is approached in other countries, considering the ethical principles of autonomy, dignity, and compassion. It may also help Albanian policymakers assess whether the existing laws truly reflect the values and needs of the population, particularly as society evolves and attitudes toward end-of-life care change.

Supporting research on public attitudes toward euthanasia and the ethical concerns surrounding it can help illuminate the nuanced views held by the population. By conducting surveys, focus groups, and studies on the experiences of those with terminal illnesses, Albania can better understand the needs and concerns of its citizens, which can inform future discussions on the issue.

In conclusion, while the perception of euthanasia in Albania remains largely negative, with limited support for its legalization, there are still opportunities for meaningful discussions on the topic. A combination of public education, engagement with cultural and religious leaders, and improvements in palliative care could pave the way for a more informed and balanced conversation. However, legal reforms in favor of euthanasia seem unlikely in the immediate future, as deep cultural and religious values continue to shape public opinion and institutional policy on this sensitive issue.

Findings

- Abortion Legislation – While abortion is legally permitted in Albania, significant social stigma and selective abortion practices persist. The study identifies gaps in regulatory enforcement and recommends stronger institutional oversight.
- Euthanasia Debate – Albania lacks a legal framework for euthanasia, with strong societal and religious opposition preventing legislative discourse on the issue.
- Judicial and Institutional Deficiencies – Weak enforcement of human rights protections, coupled with limited judicial independence, undermines legal safeguards for abortion and euthanasia.
- Public Perception and Resistance– Cultural and religious beliefs significantly influence attitudes toward abortion and euthanasia, often conflicting with international human rights principles.

Recommendations

- Legal Reforms – Amend abortion laws to explicitly address selective abortion and introduce legal frameworks for palliative care.
- Judicial and Institutional Strengthening – Improve transparency, independence, and human rights training within the judiciary.
- Public Awareness Campaigns – Increase education on reproductive rights and bioethics to reduce stigma and misinformation.
- International Collaboration – Engage with global human rights organizations to align Albania's policies with European standards.

De Lege Ferenda Proposals

1. **Regulatory Deficiencies in Abortion Legislation** – While abortion is legally permitted in Albania, enforcement mechanisms remain weak, and selective abortion practices persist. The lack of effective oversight has resulted in gender imbalances and ethical concerns regarding reproductive autonomy.
2. **Euthanasia and the Absence of Legal Recognition** – Albania currently lacks a legal framework for euthanasia, and strong religious and societal opposition has prevented legislative discourse on the matter. Despite evolving discussions in academic and legal circles, the topic remains marginalized in policy debates.
3. **Judicial and Institutional Weaknesses** – The inadequate enforcement of human rights protections, coupled with limited judicial independence, undermines legal safeguards for reproductive rights and end-of-life decisions. Transparency and accountability within the judiciary remain critical challenges.
4. **Public Perception and Cultural Resistance** – Deeply entrenched cultural and religious beliefs significantly influence public attitudes toward abortion and euthanasia, often creating friction between domestic law and international human rights principles.

1. Legislative Reforms on Abortion Regulation

- **Amend Law No. 8876 (2002) on Reproductive Health:** Explicitly criminalize sex-selective abortion, introducing stricter penalties for medical practitioners who facilitate such procedures outside medically justified circumstances. This amendment should emphasize preventive measures and public education about the social consequences of gender imbalances.
- **Introduce Mandatory Pre-Abortion Counseling:** Establish a legal provision requiring state-funded counseling services to ensure informed decision-making, while safeguarding women from coercion. Counseling should include psychological support, social service guidance, and unbiased medical advice.
- **Establish a National Registry for Prenatal Screening:** Develop a national system for tracking prenatal screening to monitor and regulate the use of sex-determination technologies, ensuring compliance with ethical medical practices. This registry should

integrate privacy safeguards while empowering authorities to identify and mitigate unethical practices.

- **Enhance Oversight of Private Clinics:** Introduce mandatory periodic audits of private healthcare providers. Clinics should be required to submit anonymized abortion data to a central health authority to monitor trends and reduce unregulated practices.

2. Legal Framework for End-of-Life Care and Euthanasia

Albania currently lacks a legal framework for euthanasia, and strong religious and societal opposition has prevented legislative discourse on the matter. Despite evolving discussions in academic and legal circles, the topic remains marginalized in policy debates.

- **Draft and Enact a Law on Palliative Care and End-of-Life Decisions** that guarantees terminally ill patients the right to comprehensive palliative care, including pain management and psychological support.
- **Consider the Introduction of Physician-Assisted Dying Regulations** through a specialized legislative commission that evaluates the ethical and legal viability of a narrowly defined euthanasia framework, particularly for patients with irreversible, terminal conditions.
- **Amend the Albanian Penal Code** to differentiate between active euthanasia and withholding life-prolonging treatment, decriminalizing passive euthanasia under strict medical guidelines.

3. Strengthening Judicial and Institutional Safeguards

- **Reform Judicial Appointment Procedures** to enhance the independence of the judiciary by introducing a merit-based evaluation system with international oversight in human rights-related cases.
- **Expand the Role of the Ombudsman in Reproductive and End-of-Life Rights** by granting investigatory authority to ensure compliance with human rights standards in medical institutions.

- **Mandate Human Rights Training for Judges and Prosecutors** to improve legal interpretations of reproductive rights and end-of-life decisions, aligning court rulings with European human rights jurisprudence.

4. Public Awareness and International Alignment

- **Implement Comprehensive Public Awareness Campaigns** to educate citizens on reproductive health rights and bioethics, reducing misinformation and stigma surrounding abortion and euthanasia.
- **Establish Bilateral Cooperation with European Institutions** to align Albania's reproductive and end-of-life legislation with EU legal standards, facilitating knowledge exchange and capacity-building initiatives.
- **Encourage Parliamentary Debate on Bioethics** through the formation of a dedicated legislative committee tasked with evaluating Albania's legal position on abortion and euthanasia in light of international human rights obligations.

By implementing these de lege ferenda proposals, Albania can modernize its legislative framework, ensuring a balance between cultural sensitivities, legal protections, and human rights obligations. Strengthening institutional enforcement, enhancing legal clarity, and fostering public dialogue will contribute to a more transparent and ethical approach to reproductive and end-of-life rights.

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Appendix 1

Interview Portraits:

Interview 1: Young Urban Woman, Tirana (Age 28)

A marketing specialist who views abortion as a right tied to bodily autonomy. She supports euthanasia under regulated conditions. Her responses reflect generational openness, urban privilege in access, and awareness of the stigma faced by women, especially in conservative settings.

Interview 2: Elderly Male, Kukës (Age 67)

A retired teacher rooted in traditional and religious values. He opposes abortion except in extreme cases and views euthanasia as morally unacceptable. His perspective reflects strong communal norms and resistance to Western liberal influences.

Interview 3: Medical Doctor, Durrës (Age 40)

A public hospital practitioner who frequently handles abortion cases and observes gender-selective tendencies. She is cautiously supportive of euthanasia reform and strongly advocates for better palliative care. Her views bridge clinical realism and ethical complexity.

Interview 4: University Student, Shkodër (Age 22)

A political science student influenced by European debates and classroom discussions. She is critical of the gaps between law and practice, and supports the right to die with dignity. Her answers highlight youth liberalism and frustration with the slow pace of reform.

Interview 5: NGO Representative, Vlora (Age 38)

A women's rights advocate engaged in community outreach and policy reform. She identifies barriers to access in marginalized groups and advocates for inclusive legal reforms. She supports legal euthanasia debate and improved palliative care frameworks.

Interview Summaries

Interview 1: Young Urban Woman, Tirana (Age 28)

- **Main themes:** Bodily autonomy, abortion access, societal stigma, support for euthanasia with regulation.

Interview 2: Elderly Male, Kukës (Age 67)

- **Main themes:** Sanctity of life, religious values, abortion only in emergencies, strong opposition to euthanasia.

Interview 3: Medical Doctor, Durrës (Age 40)

- **Main themes:** Frequent abortion cases, gender-selective concerns, need for palliative care, cautious support for euthanasia.

Interview 4: University Student, Shkodër (Age 22)

- **Main themes:** Gaps between law and practice, youth openness, generational value differences, support for euthanasia.

Interview 5: NGO Representative, Vlora (Age 38)

- **Main themes:** Legal enforcement gaps, rural/urban divides, NGO activism, advocacy for palliative care and legislative reform on euthanasia.

Interview transcripts:

Interview 1: Young Urban Woman – Tirana (Age 28, Marketing Specialist)

- **Q1: What are your personal views on abortion, and do you think it should remain legal in Albania?**
  A1: I strongly believe that abortion should remain legal. It's a matter of bodily autonomy. No

one else should have the right to force a woman to carry a pregnancy she doesn't want or can't afford. I think Albania made the right step in legalizing it, but we still have a long way to go in terms of accessibility and awareness.

- **Q2: How do you perceive the current accessibility of abortion services in Albanian cities?**
  A2: In cities like Tirana, it's relatively easier, but I have friends from rural areas who say it's much harder to access safe services. Some women are even afraid to go to clinics because of judgment from medical staff or fear of gossip.

- **Q3: Do you think societal stigma affects women who choose abortion?**
  A3: Absolutely. Even if the law allows it, society still shames women. People assume you've been irresponsible or immoral. And it's worse if you're unmarried or young. There's a lot of silent suffering.

- **Q4: Have you ever discussed abortion or euthanasia within your social circle? What were the reactions?**
  A4: Yes, especially abortion. Most of my female friends are supportive of the right to choose. With euthanasia, it's more complicated. Some say it's playing God, but others see it as a dignified choice, especially in cases of terminal illness.

- **Q5: What is your opinion on legalizing euthanasia in Albania, particularly for terminally ill patients?**
  A5: I support it. Watching someone suffer without hope is heartbreaking. If we trust people to make choices about their lives, we should trust them at the end of life too—provided there are proper regulations to prevent abuse.

Interview 2: Elderly Male – Kukës Region (Age 67, Retired Teacher)

- **Q1: What values were you raised with regarding the sanctity of life?**
  A1: I was raised to believe that life is sacred from the moment of conception until natural death. This is what our religion teaches, and I've always respected that. Ending a life, even in the womb, is something very serious. It's not up to us.
- **Q2: Do you believe abortion is morally acceptable under any circumstances?**
  A2: It depends. If the mother's life is in danger, then maybe. But abortion for convenience, or just because someone doesn't want the child, I cannot agree with that. It's a human being—we shouldn't take that lightly.

- **Q3: How do religious teachings influence your view on euthanasia?**
  A3: Strongly. Only God decides when we are born and when we die. I feel very sad when I hear about countries allowing euthanasia. It feels like people are losing faith and respect for life. We should help the sick, not give up on them.

- **Q4: Do you see a difference between passive and active euthanasia?**
  A4: Maybe, but both lead to the same result. Even if a doctor refuses treatment, it's still allowing someone to die. I think we should do our best to care for people and give them support—not give them a way out.

- **Q5: How do you think Albanian law should reflect cultural and religious beliefs?**
  A5: Albanian law should not forget who we are. We have strong traditions and values that must be protected. I understand that we want to be like Europe, but we should not copy everything. Some things go against our culture and faith.

Interview 3: Healthcare Professional – Durrës (Age 40, Medical Doctor in Public Hospital)

- **Q1: How frequently do you encounter patients considering abortion or euthanasia?**
  A1: I encounter patients seeking abortions fairly regularly, especially among younger women and those facing economic hardship. Euthanasia is different—we don't have a legal framework for it, so it's more of an ethical debate at this point. But terminally ill patients and their families do raise the question sometimes.

- **Q2: Do you feel that current Albanian laws help or hinder your ethical duties?**
  A2: In some ways, the law protects us, but it's not very detailed, especially around sensitive topics like end-of-life care. We're left to navigate complicated situations without much legal clarity. On abortion, the law is clear, but societal pressures still affect how we work.

- **Q3: Have you observed gender-selective abortion practices? What are your concerns?**
  A3: Unfortunately, yes. It's not as widespread as before, but it still happens. Sometimes it's driven by family pressure or even rural cultural preferences. It's an ethical and medical concern. We can't always prove it, but we suspect when people ask for ultrasounds just to determine the sex early.

- **Q4: What protocols exist regarding end-of-life care, and are they sufficient?**
  A4: We have basic palliative care practices, but they're underdeveloped. Most hospitals lack dedicated units. Pain management is often limited by medication availability, and there's almost no psychological support for patients. We need serious investment in this area.

- **Q5: Do you think Albanian legislation should evolve to include euthanasia under strict conditions?**
  A5: Personally, I believe it should be discussed. There are terminally ill patients who suffer needlessly and beg for relief. We should have clear, humane procedures for such cases. But it must be heavily regulated—with psychiatric evaluation, medical panels, and family involvement—to avoid abuse.

Interview 4: University Student – Shkodër (Age 22, Political Science Student)

- **Q1: What is your understanding of reproductive rights in Albania today?**
  A1: I think we have a legal right to abortion, but that doesn't always mean it's accessible or accepted. There's still a lot of silence around the topic. Many women don't feel empowered to talk about it openly. It's like having a right on paper but not in practice.

- **Q2: Do you think the Albanian government is aligned with EU values on abortion and euthanasia?**
  A2: On abortion, somewhat. But on euthanasia, not at all. Albania is still very influenced by religious and cultural conservatism. The government hesitates to open debates that could provoke backlash. We want to join the EU, but sometimes our laws and mentalities lag behind.

- **Q3: Have you been exposed to debates about these topics at your university?**
  A3: Yes, especially in philosophy and ethics classes. There are mixed opinions—some students defend tradition, while others are more progressive. But the discussions are very theoretical. We don't talk enough about the real impact these issues have on people's lives in Albania.

- **Q4: Would you support the legalization of euthanasia as a personal choice? Why or why not?**
  A4: I would, yes. If someone is terminally ill and in unbearable pain, they should have the right to choose how and when they go. It's not about promoting death, but about giving dignity and control to those who are already dying.

- **Q5: How do you think youth attitudes differ from older generations regarding these issues?**
  A5: There's definitely a gap. My parents, for example, would never discuss abortion or euthanasia—they see them as taboo. But my generation talks more freely. We're influenced by international values and social media. We want more rights and less shame.

Interview 5: NGO Representative – Vlora (Age 38, Women's Rights Advocate)

- **Q1: How do legal gaps affect access to abortion in marginalized communities?**
  A1: In theory, abortion is legal up to 12 weeks, but in practice, access is very uneven. Rural women, Roma communities, and economically vulnerable groups face barriers like stigma, lack of information, and even refusal by healthcare staff. Legal gaps exist in enforcement and oversight—there's no accountability when someone is denied a service.

- **Q2: What trends have you observed regarding public opinion on euthanasia?**
  A2: It's still a very sensitive issue. Among the general population, it's mostly misunderstood and feared. But there's growing interest, especially among younger people and professionals. The problem is that there's no political will to open a serious debate.

- **Q3: Are there noticeable urban-rural divides in perceptions about reproductive autonomy?**
  A3: Absolutely. In urban areas, women are more informed and empowered to make choices, even if stigma still exists. In rural areas, traditional gender roles dominate. Women often need approval from husbands or families, even for personal medical decisions.

- **Q4: What role do NGOs play in shaping discourse and reform efforts?**
  A4: We try to fill the gaps left by the state. We provide education, legal aid, and push for legislative reforms. We've organized campaigns to raise awareness about gender-selective abortion, and we're starting to introduce palliative care and euthanasia discussions through partnerships with European networks.

- **Q5: What legislative reforms would you prioritize for Albania in both areas?**
  A5: For abortion, we need a national strategy that includes sexual education, anonymous counseling, and proper monitoring of clinics. For euthanasia, I would start with a law on palliative care, then form a legal commission to explore physician-assisted dying, especially in irreversible, end-of-life situations. It's about building a framework that respects both ethics and human dignity.