

ABSTRACT

In this thesis I explore the issue of voluntary assisted suicide in a South African constitutional context through the tri-coloured normative prism of autonomy, dignity and human well-being. I will focus on the way South Africa, as a secular society, ought to engage with this highly emotive issue in light of the socio-legal framework in which we are embedded and which framework carries with it profound normative implications.

I divide the discussion into two broad sections. In the first section I articulate, from an **ethical standpoint**, what I take to be the strongest positive case for South African society to permit voluntary assisted suicide. I argue that by permitting voluntary assisted suicide South African society would be giving *proper expression* to (i) **individual autonomy** (ii) **human dignity**, and (iii) **human well-being**.

In articulating the positive case I also analyse the triumvirate concepts of individual autonomy, dignity and human well-being as well as their relationship to each other. I argue that individual autonomy is an essential component of a good human life, that is to say, a worthwhile life and that to speak of a dignified life is, in turn, to speak of the sort of life that is worthy of respect, reverence and honour.

I then turn to an examination of two of the principal ethical arguments against the moral permissibility of voluntary assisted suicide in the literature, namely (i) **the Sanctity of Life Argument**, and (ii) **the Social Harm Argument**.

I argue that neither argument is sufficiently persuasive to rebut the positive case in favour of voluntary assisted suicide. However, certain critical considerations are raised that do speak to the need for effective *oversight* and *regulation* of such a practice in South African society.

Accordingly, I advance the view that, in light of the failure of these two principal arguments (and in the absence of any stronger arguments) voluntary assisted suicide ought to be permitted in South Africa subject to uniform, public and specifiable oversight criteria applicable to each individual who wishes to end his life with the assistance of another.

In the second section, I describe the South African **legal standpoint** on voluntary assisted suicide in light of (i) the normative underpinnings of the Constitution of the Republic of South Africa, 1996 (and in particular the Bill of Rights) and (ii) the present legal status of voluntary assisted suicide, taking into account both the common law and the *South African Law Commission Report on Euthanasia and Artificial Preservation of Life, 1998*.

This analysis involves an examination of (i) the recent decision of *Stransham-Ford v Minister of Justice and Correctional Services & Others*¹ handed down on 4 May 2015 in which the North Gauteng High Court granted, for the first time in South African legal history, an application allowing a terminally ill man the right to die and to be actively

¹ 2015 (4) SA (GP) 50.

assisted to do so by a consenting physician; as well as (ii) the subsequent Supreme Court of Appeal decision in *The Minister of Justice and Correctional Services & Others v Estate Late Stransham Ford*² that overturned the original decision.

I argue that the best way to understand the socio-legal framework in which we find ourselves is as a social contract that ‘instantiates’ or ‘gives expression to’ a rights-based ethic, which in turn protects vital human interests. I argue further that this constitutional legal framework is capable of tracking and incorporating the positive ethical case for voluntary assisted suicide admirably.

Finally, I posit that the quickest and most effective way to implement a permissive policy for voluntary assisted suicide is through the development of the common law. In the process, I tentatively suggest what appropriate safeguards and oversight of voluntary assisted suicide might look like, the practical implementation of which would allow South African society – specifically through the judicial branch of government - to more sagaciously and compassionately judge lives.

² 2016 ZASCA 197 (6 December 2016).