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# THE ETHICAL AND LEGAL ASPECTS OF THE BEGINNING AND END OF LIFE

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**Francisco Valderclerton Lopes Ferreira[1] and Ana Paula Alonso Reis[2]**

## SUMMARY

This research addresses the legal view of the beginning and end of life. It is a narrative review of the literature. The selection of materials occurred in the Scielo and Capes Journal databases, with the definition of inclusion and exclusion criteria, the use of descriptors with a combination of them and a guiding question. In addition to these, the literature on the legal legal perspective that deals with the subject also composed the literary scope of the study. The analysis was based on the organization and synthesis of the publications, and a flowchart and table were elaborated, with the description of the searches and materials included in the research. The results, grouped into similar themes, were presented in the sections: Legal Theory on Early Life; Legal Theory on the End of Life; The Principle of the Dignity of the Human Person; On Bioethics and the Right to Death. Knowing how to determine the moment of the beginning and end of life is important for several aspects, especially for legislation on criminal and succession issues, and for the health area, as it involves conducts related to professional ethics.

**Keywords:** Life. Death. Bioethics. Legal Perspective.

[1] Student of the Graduate Program in Bioethics at IFSULDEMINAS campus Muzambinho.
Member of the study group Bioethics, Spirituality and Women's Health (BESM) at IFSULDEMINAS Muzambinho campus.
[2] Professor and Advisor of Course Completion Papers of the Postgraduate Program in Bioethics at IFSULDEMINAS Muzambinho campus.
Member of the study group Bioethics, Spirituality and Women's Health (BESM) at IFSULDEMINAS Muzambinho campus.

## INTRODUCTION

Much is discussed about when life begins and when it ends, and this discussion can be held from the religious, legal, medical and biological perspectives:

> "According to the points of view reported in the biological, psychological, religious and legal aspects, it is noted that the beginning of life is considered in various stages of embryonic and fetal development. The most discussed theory, both in the scientific and popular spheres, is the origin of life after conception, nidation and birth" (Leal et al., 2008, p, 08).

In the present research we will discuss the legal perspective, based on the legislation in force in Brazil and the current decisions of the Superior Courts, on the subject under discussion.

The moment agreed upon in relation to the beginning and end of life ends up varying, depending on the theory that is used to support the answer, so the need arose for our courts to establish a theory that could be addressed by everyone and based on morals, ethics and current laws. The definition of these moments is used to talk about palliative care, which aims to improve the quality of life of patients and their families in the face of diseases that may end human life. This care offers pain treatment, relief from suffering and other symptoms, such as psychosocial and spiritual.

With the deepening of the theme, we can see that there is no consensus in the scientific community about when these time frames would be about the beginning and end of human life, and the answers varied according to the argumentation used to support opinions and research, as stated by Vicente de Paulo Barretto:

> "When inquiring about ethical and legal issues regarding the initial milestone of human life, it is found that there are many scientific criteria to define the beginning of life that point to different phases of human development. In the same way, there are numerous religious, cultural, philosophical and legal denominations, which use different foundations and manifest divergent positions in relation to the subject. Despite the large number of criteria and theories, there is no consensus on the subject, that is, there is no exact answer about the initial milestone of human life" (Barreto, p. 08, 2017).

Thus, in this discussion, we must address some theoretical situations understood by the principle of human dignity, where morals and ethics are the guides to reach a conclusion that satisfies the research.

We will also address theoretical situations in which the possibility of people to dispose of their own lives is discussed, seeking answers through the principles that govern bioethics: autonomy (freedom of people to decide about their lives), beneficence (doing good), non-maleficence (not doing evil) and justice (equal treatment and fair distribution of

funds for health); Thus, we will seek to describe, explain, classify and clarify the problem presented, focusing on a solution and objective conduct of the problem in the light of the existing bibliography.

The deepening of knowledge related to Medicine, Biology, Bioethics and Religion helps our legislation and our courts so that they can come up with solutions to the established problem or present innovations on a vision that does not yet exist.

The discussion on the subject has lasted throughout the history of humanity and with the advancement of technologies and the improvement of life, such as access to food and health treatment, we have a longer life expectancy, and in this sense, there is a legal need to define when life arises and when it ends, for the various purposes that are necessary, such as hereditary succession, organ donation, abortion, among others.

Bioethics serves to show how we should act in certain situations based on the principles of Patient Autonomy, Beneficence, Non-maleficence and Justice, and in this scenario, the questions related to the beginning and end of life are answered based on the principles to reach a more socially accepted answer.

Thus, this work aims to present an answer, with legal basis and through bioethics, about when human life begins and ends.

## METHODOLOGY

It is a narrative review of the literature, which according to Edna Terezinha Rother, can be understood as being;

> "Narrative review articles are broad publications, appropriate to describe and discuss the development or the "state of the art" of a given subject, from a theoretical or contextual point of view. The narrative reviews do not inform the sources of information used, the methodology for searching for references, or the criteria used in the evaluation and selection of the works. They basically consist of an analysis of the literature published in books, printed and/or electronic magazine articles in the author's personal interpretation and critical analysis." (Rother, p. 01, 2007)

Since the narrative review does not require explicit and systematic criteria for searching and analyzing evidence, and the data sources may or may not be specific and predetermined, we chose to outline the methodological path described below.

The search for materials was carried out in the Scielo and Capes Journal databases in December 2024. For this, the inclusion criteria were defined: articles that included a dialogue between the beginning and end of human life, bioethics and professional ethics, published in the last five years, those that answered the guiding question of the research and those written in Portuguese; In turn, the exclusion criteria were articles that did not

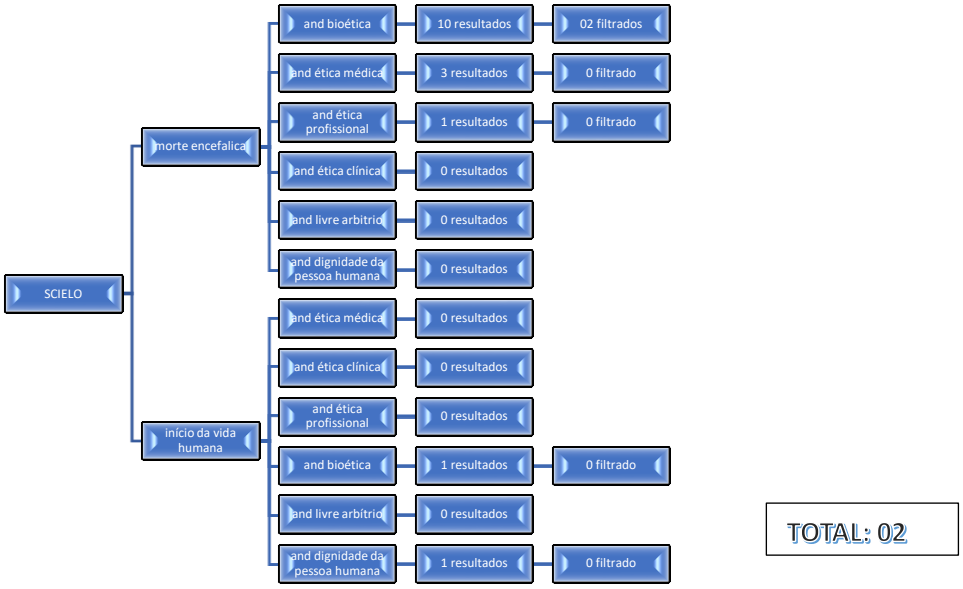
address the topic, that were not freely accessible, duplicates, and those that were not available for reading in full.

The following descriptors were used: beginning of human life, brain death, medical ethics, clinical ethics, professional ethics, bioethics, free will, and dignity of the human person, being the combination of the human being.

The guiding question was "What are the legal frameworks for the beginning and end of human life adopted by the Brazilian Courts?"

The analysis of the results was based on the organization and synthesis of the publications in a synoptic table, according to their characteristics: database, year of publication and abstract of the article. Afterwards, the analysis and interpretation of the data continued, with the reading of these syntheses, application of the inclusion and exclusion criteria, and positive answer to the guiding question. The selected materials were read in full and grouped into similar themes, which will be presented in sections below.

The flowchart and the table below present the summary of the selection of materials included in this research, based on the search in the databases:




**Source:** authors, 2024.


**Source:** authors, 2024.

TOTAL: 02

| AUTHOR | YEAR | TITLE | GOAL |
|---|---|---|---|
| Adriano Torres Antonucci, Izabella Paulino de Souza Candido, Anibal Rodrigues Neto, Marcel Schiavini, Marcio Francisco Lehmann, Anor Sganzerla, José Eduardo Siqueira | 2023 | Death, diagnosis and event | Define in a consensual way which organ and/or bodily function determines whether a person is alive or not, without hurting susceptibilities. |
| Adriano Torres Antonucci, Anor Sganzerla, Marcel Schiavini, Anibal Rodrigues Neto, Marcio Francisco Lehmann, José Eduardo Siqueira | 2022 | Brain death as a bioethical problem in the Medical training | To promote a bioethical reflection on the importance of constant medical training with regard to death. |
| Amanda Cristina Mosini, Jaime Moreira Pires, Maria Alice Susemihl, Michele Longoni Calió, Lécio Figueira Pinto | 2022 | Bioethical aspects of brain death in the face of different religions | To address the various bioethical aspects of brain death in the face of different religions, proving to be a relevant study for contributing with concepts and reflections that can improve the understanding of the process and the way of dealing with BD. |
| Liliana Silva, Francisco Edes da Silva Pinheiro, Nathália Varano, Ana Jullia Felipe de Paula Carrilho, John-Baptist Right-Handed Son | 2022 | Comparison of the clinical profile of two groups of patients who underwent the Brain Death protocol | Promote a review of the protocol, make room to discuss improvements and new approaches, as well as to optimize the availability of time, human resources and to make the diagnosis of BD. |

**Source:** authors, 2024.

Also, as a source of research, the classics of the literature in the legal area that deal with the subject were used: Law No. 11,105/05 known as the Biosafety Law, the Federal Constitution, Civil Code, Penal Code, Law 9,434/97 that deals with organ donation, jurisprudence, especially the direct action of unconstitutionality No. 3.510/2008, Action for Non-Compliance with a Fundamental Precept (ADPF) No. 54/DF of the Federal Supreme

Court, and Special Appeal No. 1.415.727 – SC of the Superior Court of Justice and the Resolution of the Federal Nursing Council (COFEN) No. 564/2017.

The research did not require the opinion of the Research Ethics Committee (CEP), due to its methodological characteristic.

## RESULTS AND DISCUSSIONS

### LEGAL THEORY ABOUT THE BEGINNING OF LIFE

One of the great discussions of humanity is around when life would begin. Advances in technology, the possibility of genetic manipulation, fertilization and the gestation of embryos and fetuses in artificial wombs, foster discussion.

The theory about the beginning of life seeks support in scientific theories that base their studies on views on genetics, neurology, metabolism and embryogenesis, however, what we will address from now on is the theory adopted by our courts and applied in theoretical and practical cases that deal with the subject.

We have to show concern for the value of human life and the valuation of life can be done through ethics, through a careful analysis to know the extent of life. First, we must establish when it begins, since the right to it is the first of any person, being protected in the Federal Constitution and other normative acts as a fundamental right of the first generation.

Therefore, the right to life is essential, and any flexibility that casts doubt on the guarantees related to life is not allowed. It is so important and broad that all other fundamental rights are a result of the right to life.

To answer the question about when life begins, we must keep in mind that several questions have arisen. Is it from birth? From the fertilization of the egg? When does the already fertilized egg adhere to the wall of the uterus? Or when nerve endings appear in the brain?

Thus, a question arises about the moment in which it is considered a life and that generates legal consequences depending on the theory addressed, which may be based on science, religion, philosophy, bioethics and law, with a divergence between them; here the approach will be from the point of view of law. Life is the result of the will of others and each individual does not have the freedom to choose when his life would begin.

The legal environment seeks to provide rules and norms socially accepted by the social group, seeking answers for the best human coexistence; Thus, in the human cycle, where life and death are part, their relations must be supported by legislation through guaranteeing norms, belonging to the legal system.

It is important that our legislation stipulates the moment of the beginning of life, as it is related to the capacity of the legal personality, thus, for individuals, the stipulation of the beginning of the personality is necessary so that the Law can determine when a person's life begins, this being the starting point for the beginning of the postulatory capacity in the form of article 2 of the Civil Code (Brasil, 2002).

Starting from the conception that death occurs with the end of brain activity, reversing the order, we could conclude that life would begin with the emergence of brain activity, as decided in the direct action of unconstitutionality n°. 3.510/2008 (STF, 2008), however, deserves to be better discussed with society.

I understand that the concept of life for Law should be discussed, because a human embryo can already be considered a life from the point of life of science, but for Law, that embryo cannot yet be considered as a subject with legal personality, as will be better explained below.

Thus, for the Law, the concept of life, protected in article 5 of the Federal Constitution (Brasil, 1988), is not to be confused with the concept of legal personality, provided for in article 2 of the Civil Code (Brasil, 2002), where the subject has rights and obligations, so we need to differentiate them.

Regarding civil personality, in Brazil, article 2 of the Civil Code in force, when dealing with the beginning of personality, provides that it begins at the moment of birth with life, however, the rights of the unborn child from conception are safeguarded, as highlighted below: Art. 2 The civil personality of the person begins from birth with life; but the law safeguards, from conception, the rights of the unborn child. (Brazil. 2002)

In turn, the right to life is provided for in article 5 of the Federal Constitution and must be understood in a generic and comprehensive way to include the principle of human dignity, as well as the guarantee of not being killed (Lenza, 2009).

The Brazilian Constitution, which is the highest law, does not determine the moment when life begins[3], and consequently, the legal protection of human beings preferred that this subject be addressed by infra-constitutional legislation due to its complexity and the need for studies to deepen the subject and reach the necessary conclusions before bringing any definition about the time frame.

To answer the question about the moment of the beginning of life, we must cling to the decisions of our highest courts. Thus, in the judgment of Special Appeal No. 1,415,727 – SC, the Superior Court of Justice, when analyzing a lawsuit for indemnification by life

[3] According to the Direct Action of Unconstitutionality No. 3510 of the Federal District. Date of Judgment: 05/27/2010" (STF, 2010)

insurance, where the death of a fetus occurred in a traffic accident, ended up conferring the condition of living person to the fetus, as transcribed below:

> "SUMMARY. CIVIL LAW. CAR ACCIDENT. ABORTION. COLLECTION ACTION. MANDATORY INSURANCE. DPVAT. MERIT OF THE REQUEST. LEGAL FRAMEWORK OF THE UNBORN CHILD. ARTICLE 2 OF THE CIVIL CODE OF 2002. SYSTEMATIC EXEGESIS. LEGAL SYSTEM THAT ACCENTUATES THE CONDITION OF PERSON OF THE UNBORN CHILD. INTRAUTERINE LIFE. PEREACH. INDEMNIFICATION DUE. ARTICLE 3, ITEM I, OF LAW NO. 6,194/1974. INCIDENCE. 1. Despite the literalness of article 2 of the Civil Code – which conditions the acquisition of legal personality to birth – the Brazilian legal system points to signs that there is no such indissoluble link between live birth and the concept of person, legal personality and entitlement of rights, as a more simplified reading of the law may appear. 2. Among others, the following are recorded as indications that Brazilian law confers on the unborn child the condition of person, holder of rights: systematic exegesis of arts. 1, 2, 6 and 45, caput, of the Civil Code; the right of the unborn child to receive a donation, inheritance and to be curator (articles 542, 1,779 and 1,798 of the Civil Code); (...) 3. The most restrictive theories of the rights of the unborn child – natalist and conditional personality – are rooted in the legal order superseded by the Federal Constitution of 1988 and the Civil Code of 2002. (...) 4. Furthermore, today, even if one adopts either of the other two restrictive theories, the entitlement of personality rights to the unborn child must be recognized, of which the right to life is the most important. Guaranteeing the unborn child expectations of rights, or even rights conditioned to birth, only makes sense if it is also guaranteed the right to be born, the right to life, which is a right presupposed to all others. (...). Brasilia, September 4, 2014. SPECIAL APPEAL No. 1.415.727 - SC (2013/0360491-3). STJ. RAPPORTEUR: JUSTICE LUIS FELIPE SALOMÃO" (STJ, 2014).

So, they came to the conclusion that if death occurs with the end of brain activity, and life begins with the beginning of brain activity, then another problem arose, which is to define when brain activity begins.

For Barroso (2006, p.18) "The beginning of human life happens when the nervous system is formed. This occurs around the 14th day after fertilization, with the formation of the "neural plate", that is, this theory of the beginning of life with brain activity is adopted.

Even if the legal personality begins with the live birth in the form of article 2 - A of the Civil Code (Brasil, 2002), where the subject becomes a subject of rights, the unborn children have their rights preserved, such as the right to receive food as determined by article 2 of Law 11.804/08 (Brasil, 2008).

Therefore, although life in the legal personality begins only with live birth, the unborn child has rights from conception, that is, from fertilization, as a way of protecting the dignity of the human person and the life that is developing within the uterus.

According to the perspective of Law, the focus of discussion of this research, life begins with birth with life (according to legal personality); However, even in the womb, the fetus (from the 14th gestational week, with the beginning of the functioning of the nervous

system and consequent brain activity) already has the ownership of some rights, such as receiving food and prenatal care.

## LEGAL THEORY ON THE END OF LIFE

Having overcome the discussion about the moment when life begins, we will move on to the moment when it ends, that is, the moment of death and its social consequences.

As will be explained later, there is no right to die, but the autonomy of people to decide how they want to live and how they want to die, and whether they want to artificially prolong their life, which can cause unnecessary pain and suffering, is recognized.

Even with technological advances, we realize that it is not possible to recover brain tissues, as explained by Antonucci et al. (2023, p.06);

> "However, regardless of the technological advances of the last century, the brain and its functions remain irreplaceable by artificial means. In this way, death does not inevitably affect the organism as a whole, and may be restricted to the central nervous system. This unique characteristic drives discussions about what death is by the medical and legal community around the world.
> In this sense, scientists and thinkers from different areas of knowledge, and even bureaucrats and administrators, began to participate in debates about what characterizes death. The motivation of these spheres regarding the subject may be related to the costs of advanced life-prolonging therapies, the possibility of organ and tissue donation, and prolonged family suffering due to the extension of the period of evolution to death.
> In this context, the concept and diagnosis of death have evolved, so that the exclusive understanding of this event due to cardiac or respiratory arrest is replaced by the idea of death of the brain, cerebral or cortical, which means the end of the life of the relationship, that is, of the individual's existence."

Brain death is defined by Liliana Silva et al (2022, p. 02) as being the irreversible cessation of the functions of all intracranial neurological structures, both in the cerebral hemispheres and in the brainstem. This situation appears when the intracranial pressure exceeds the individual's systolic blood pressure, which leads to cerebral circulatory arrest.

Currently, the theory adopted about the moment of death is that of brain death provided for by Law 9.434/97 in its article 3, as highlighted below:

> "Art. 3 The post-mortem removal of tissues, organs or parts of the human body intended for transplantation or treatment must be preceded by a diagnosis of brain death, verified and recorded by two physicians who are not part of the removal and transplantation teams, through the use of clinical and technological criteria defined by resolution of the Federal Council of Medicine." (Brazil, 1997).

For Mosini et al. (2022, p.02), the diagnosis of brain death brings important discussions, as highlighted:

> "The issue of the diagnosis of BD has ethical, legal and practical importance for the medical team, especially the non-performance of unnecessary interventions, such as prolonging the suffering and anguish of the family. On the other hand, diagnosed brain deaths end up promoting the possibility of organ donation, which can save dozens of other lives from a donor."

With brain death, the individual is considered a dead person, even if the rest of his body is still functioning (Antonucci et al., 2022, p.02).

To bring more in-depth clarifications, in the direct action of unconstitutionality n°. 3.510/2008, on the validity of stem cell research, it was decided that human life ends with brain death, according to the following summary:

> "SUMMARY. CONSTITUTIONAL. DIRECT ACTION OF UNCONSTITUTIONALITY. BIOSAFETY LAW. BLOCK CHALLENGE OF ARTICLE 5 OF LAW NO. 11,105 OF MARCH 24, 2005 (BIOSAFETY LAW). (...) III – THE CONSTITUTIONAL PROTECTION OF THE RIGHT TO LIFE AND THE INFRA-CONSTITUTIONAL RIGHTS OF THE PRE-IMPLANTATION EMBRYO. The Federal Great Text does not provide for the beginning of human life or the precise moment at which it begins. It does not make each and every stage of human life an automized juridical good, but of the life that is already proper to a concrete person, because it is born ("natalist" theory, as opposed to "conceptionist" or conditional personality theories). (...) But the three realities are not to be confused: the embryo is the embryo, the fetus is the fetus, and the human person is the human person. Hence there is no embryonic human person, but an embryo of a human person. The embryo referred to in the Biosafety Law ("in vitro" only) is not a life on the way to another virginally new life, since it lacks the possibility of gaining the first nerve endings, without which the human being has no feasibility as an autonomous and unrepeatable life project. Infra-constitutional law protects each stage of the biological development of the human being in a variety of ways. The moments of human life prior to birth must be protected by common law. The embryo-implant is an asset to be protected, but not a person in the biographical sense referred to in the Constitution. (...) ADO 3.510 DF. Rapporteur: Justice Ayres Britto. Date of Judgment: 05/27/2010" (STF, 2010).

In the Action for Non-Compliance with a Fundamental Precept (ADPF) No. 54/DF, the Federal Supreme Court (STF) dealt with the interruption of pregnancy for cases of anencephalic fetuses, deciding that, as there is no prospect of life after birth, the maintenance of pregnancy could cause unnecessary problems to the mother's health, which can be both physical and psychological,  Because she is having a child that she is already aware will not survive after childbirth, then it was decided that in these cases, abortion by the mother's will would be possible, as highlighted below:

> "ANENCEPHALIC FETUS – INTERRUPTION OF PREGNANCY – WOMAN – SEXUAL AND REPRODUCTIVE FREEDOM – HEALTH – DIGNITY – SELF-DETERMINATION – FUNDAMENTAL RIGHTS – CRIME – NON-EXISTENCE. It is unconstitutional to interpret that the interruption of pregnancy of an anencephalic fetus is a conduct typified in articles 124, 126 and 128, items I and II, of the Penal Code. Decision: The Court, by majority and in accordance with the vote of the Rapporteur, upheld the action to declare the unconstitutionality of the interpretation according to which the interruption of pregnancy of an anencephalic fetus is a conduct typified in articles 124, 126, 128, items I and II, all of the Penal Code, (...), deeming it valid, added conditions for the diagnosis of anencephaly specified by

> Justice Celso de Mello; and against the votes of Justices Ricardo Lewandowski and Cezar Peluso (President), who dismissed it. Justices Joaquim Barbosa and Dias Toffoli were justifiably absent. Plenary, 12.04.2012. ADPF- ARGUMENT OF NON-COMPLIANCE WITH A FUNDAMENTAL PRECEPT 54 DISTRITO FEDERAL. RAPPORTEUR: MIN. MARCO AURÉLIO. Judgment date: 04/12/2012" (STF, 2012).

Thus, it is clear that the Penal Code provides for only two hypotheses in which abortion can occur without the conduct being classified as a crime, under the terms of its article 128, ~~which is~~ necessary abortion and ~~abortion in cases of pregnancy resulting from rape:~~

> "Art. 128 - Abortion performed by a doctor is not punished:
> I - If there is no other way to save the life of the pregnant woman;
> II - If the pregnancy results from rape and the abortion is preceded by the consent of the pregnant woman or, when incapable, of her legal representative. (Brazil, 1940)".

The advancement of technology and scientific research has provided a greater possibility of detailing the phases of man's biological development, thus, it has become capable of determining the moment in which each phase of human formation takes place. With this ability, we are able to distinguish the moment when brain death occurs and brain activity ceases, being able to declare death, even if the other vital functions are in operation, even allowing organ donation.

Therefore, according to the perspective of law, the end of life occurs with the end of brain activity, as decided in the direct action of unconstitutionality n°. 3.510/2008.

## THE PRINCIPLE OF THE DIGNITY OF THE HUMAN PERSON

The principle of the dignity of the human person is provided for in the Federal Constitution as one of the foundations of the Republic in its article 1, item III;

> "Art. 1 The Federative Republic of Brazil, formed by the indissoluble union of the States and Municipalities and the Federal District, is constituted as a Democratic State of Law and has as its foundations:
> III - the dignity of the human person;" (BRAZIL, 1988).

It serves as a reference, both for life and death, to legitimize state actions and the best interpretation of the norms in force for the benefit of the human person, being derived from the right to freedom and equality.

The principle of the dignity of the human person, provided for in article 1, item III of the Federal Constitution, is important because it values the individual, his guarantees, freedoms and fundamental rights before the State and before other individuals (Brasil, 1988).

We realize that it is not only about the right to survival, but it is about a dignified life with respect for the human being and social coexistence. In addition, also considering existential interests, we must also provide assistance at the time of death so that the patient can leave without suffering and has his dignity maintained, being respected in his passage, (Felix et al., 2013, p. 02) mentions:

> "Based on this understanding, the concept of dignified death or good death has been built. However, this definition is not always the same for patients, caregivers, family members, and health professionals. The shortening of death, the application of disproportionate therapeutic efforts, such as obstinacy, futility and therapeutic incarceration, or the institution of palliative care, which alleviates suffering, constitute the extremes of treatments that can be offered to the individual in the terminal stage. What should really be done for the patient is an ethical dilemma that is difficult to decide, but which will ultimately determine the entire process of death of a being. Thus, it is essential to discuss the impasse between artificial methods to prolong life and the attitude of letting the disease follow its natural history, with emphasis on euthanasia, dysthanasia and orthothanasia."

In this scenario of respect for the patient, there is an ethical obligation to provide his treatment in the way he considers best as long as he can express his will, and at the times he cannot, it will be up to the family members to decide on palliative care or its suppression, in obedience to the bioethical principles of autonomy, beneficence, non-maleficence, which will be better addressed below.

We know that death is something inevitable in our lives and that it will come to everyone, so we understand that the right to a death without suffering is based on the idea of humanizing the moment of death and understanding that it is one of the phases of life, and in the same way that we seek a quality life with respect for the principles of the human person, At the time of death, we must also respect the principles and provide a farewell without suffering for the patient, and understand that each one must go through this phase being respected at the time of death, in the same way that they were respected in life. Regarding this respect and the patient's autonomy, Felix et al., (2013, p. 07) state that:

> "In view of this, it becomes legitimate to inquire about the scope of the principle of autonomy of the person in moral controversies in relation to euthanasia. It should be noted that the principle of respect for autonomy has supported cogent bioethical arguments in defense of euthanasia. In this context, it is necessary that the freedom of choice of the man who suffers be respected, that is, his competence to decide, autonomously, what he considers important to live his life. In this experience, it encompasses the process of dying, based on one's values, legitimate interests and compassion for human beings."

The issue of palliative treatment comes up against moral issues such as the doctor's obligation to treat and cure and not to prolong life unnecessarily. We are not talking about

the issue of killing, but about the issue of letting die with quality of life, in some situations, where suffering and pain are unnecessary in the prolongation of a situation that will end in the inevitable death of the terminally ill patient and disillusioned by Medicine.

We must also know how to distinguish the difference between dignity and autonomy, because dignity cannot be used so that people have the autonomy to decide about their lives, thus, dignity is an attribute that protects life from any threat, including the individual himself based on morals and ethical principles, individual freedom being limited in the face of the public interest. In turn, in autonomy, individual wills, interests and consents prevail, and for this reason, it must be limited when we talk about the right to life.

In the junction of bioethics and Law, we can see that the principle of human dignity is founded on the patient's free will, where we must follow his will. However, we disagree with such a position, since life is very important so that only the patient can decide about it, thus, the patient's free will must be mitigated in favor of the public interest in the unrestricted maintenance of life with quality, with the patient's will being the general rule, not applicable in cases of risk to life, For example, in pregnancies in which the life of the pregnant woman is in danger due to a pregnancy of an anencephalic person and she wants to continue the pregnancy motivated by her philosophical and religious beliefs.

## BIOETHICS AND THE RIGHT TO DEATH

One of the consequences of the evolution of Medicine is the fact that, with research and technological development, it has become possible for health professionals to intervene more in the maintenance of life, that is, a prolongation of the functioning of the body's functions even if the patient is in a vegetative and/or unconscious state or brain dead. This situation ends up being the object of study in bioethics. In this sense, Costa (2019), when dealing with ethics and health, states that:

> "In this way, bioethics proposes reflections to health professionals to promote true care for patients, and not just the maintenance of life at all costs. Thinking about ethics in scientific development implies recognizing borders, because if the purpose of science is to improve people's lives and social life, some ethical limits and the infinite horizon of appetite for scientific knowledge must be equated".

In this sense, more and more families want to decide on the procedures to be adopted in their loved ones and to be able to give their opinion in the face of the prognoses and clinical cases faced.

We can see that death then began to be treated by families as a broader view, where relatives could give their opinion in some situations, having the right to information and to choose the best procedure to try to bring about a quality of life, being able to give their

opinion on the possibility of not prolonging palliative treatments and allowing the patient to die without suffering and pain, for example, in cases where the patient with terminal illness and without quality of life chooses to die to ease his pain and put an end to his suffering. Ribeiro (2006, p. 04) states that:

> "It should be emphasized, like life, that dignified death is also a human right. And by dignified death is understood death without pain, without anguish and in accordance with the will of the holder of the right to live and to die. And in this sense, the social posture is paradoxical, often emanating from a religiosity that religion does not know, which understands, accepts and considers "human" to interrupt the incurable suffering of an animal, but which does not allow, with the same argument obviously without the metaphor and under the same conditions, to remove the suffering of a capable and autonomous man. It is also interesting to note that, while the acceptance of euthanasia as an act of care is discussed without consensus, other movements develop and build solutions based on principles that are also invoked in that discussion: autonomy and dignity at the end of life."

Death is a consequence of life and is the natural cycle, and not a choice, for this reason there is no right to choose when and how we will die, however, there is the right to a dignified death without suffering and pain, understanding that there is the moment of departure.

It is a consequence of the human person the inevitability of death that equals all human beings, but this does not give us the ability to anticipate it or the legitimacy to decide for philosophical or religious reasons whether we want to continue living or not.

Each religion approaches death in some way, and religious belief interferes in the ethical decision about brain death (BD), and according to Mosini et al. (2022, p.09);

> "Despite the variability of the criteria between countries, there are well-accepted and well-founded medical and legal definitions for the concept of BD. Even so, several dilemmas occur in daily practice. Considering that the religious belief of the patient and his family directly interferes in the ethical decision of how to deal with the BD situation and how to proceed after its diagnosis, understanding individual, cultural and religious values, associated with the application of bioethical principles is fundamental for better understanding and decision-making. It is also suggested that new studies be carried out involving reflections on religious and psychosocial aspects of patients and their families, on the application of bioethical principles in the context of BD, as well as their verification and communication by health professionals."

I understand that the fundamental principle of life is that we must do everything in our power to prolong it, but in some countries there is this possibility of euthanasia and assisted suicide, however, in Brazil, these conducts are typified as crimes, as we will discuss later.

In addition to the fundamental principle of life, we must highlight the principle of autonomy, corresponding to the patient's right to choose or not a treatment offered, as well as his power to decide about himself. This principle refers to the respect of the health

professional for the patient, or his representative, taking into account his moral values and religious beliefs (Koerich et al., 2005).

The principle of non-maleficence corresponds to the act of not causing harm to the patient, one can take as an example the situation that many times, resulting from the mistrust and difficulty of diagnosing brain death, doctors and other health professionals can cause concerns and anguish to family members, which can cause harm to the patient who receives an early diagnosis. At the same time, non-maleficence can also be raised in relation to prolonging the suffering of comatose patients and their families after BD diagnosis. This is particularly complex in families who have difficulty accepting the diagnosis (Mosini et al., 2022).

The principle of beneficence, on the other hand, is characterized by the practice of good, consequently avoiding the patient's additional suffering (Mosini et al., 2022).

In situations where death is certain and patient care is only palliative, this discussion arises "to what extent should we prolong life"? The answer to this question is much more complex than we can imagine, but I understand that there is no ready-made answer that can be used in all cases, and it is necessary to make this decision individually for each case, taking into account its peculiarities and the guiding principles of bioethics. Regarding the care of terminally ill patients, Hermes (2013, p. 06) comments that:

> "Palliative care presupposes the action of a multiprofessional team, since the proposal consists of taking care of the individual in all aspects: physical, mental, spiritual and social. The terminally ill patient must be fully assisted, and this requires complementation of knowledge, sharing of responsibilities, where differentiated demands are resolved together.
> The multidetermined understanding of illness provides the team with a broad and diversified performance that takes place through observation, analysis, guidance, aiming to identify the positive and negative aspects, relevant to the evolution of each case. In addition, knowledge is unfinished, limited, and always needs to be complemented. The patient is not only biological or social, he is also spiritual, psychological, and must be cared for in all spheres, and when one malfunctions, all the others are affected.
> It is of fundamental importance for the patient without therapeutic possibilities of cure that the team is very familiar with his problem, thus being able to help him and contribute to an improvement."

As a way of respecting the patient, we must avoid procedures that prolong life without quality and allow the patient to face death in a natural way. Treating the terminally ill patient with empathy, understanding his moment and giving total warmth in his last moments of life is necessary so that he can close the cycle with the feeling of accomplishment, honoring his legacy.

We must avoid the practice of any treatment or administer medication that may hasten death, even at the request of family members and the patient, as such acts go

against medical ethics, escaping our ambition to dominate death and seek eternal life, in addition, such conduct is considered an ethical infraction in the form of art. 74 of the Resolution of the Federal Nursing Council No. 564/2017 which brings "Art. 74 Promoting or participating in practice intended to hasten the death of the person" (COFEN, 2017).

In the same way. The Code of Medical Ethics (CFM, 2019) states in its article 41 that it is forbidden for the doctor to "shorten the patient's life, even at the request of this or his legal representative, that is, he cannot perform any act that leads to the patient's death.

We realize that palliative care can appear as a disrespect for the patient's will in cases where a cure is no longer possible and their life is prolonged irresponsibly, causing pain to the patient and suffering to their families. The moment of death should also be a moment of respect for their wishes, since they are their last wishes before leaving, thus, on respect for the patient's will Teixeira (2017, p. 6) highlights that:

> "Palliative care often acts on the circumstances of death, when one chooses not to maintain life at any cost, at any suffering, at any price, valuing, much more, the quality of life and death and not the quantity of time of life that one still has, as opposed to dysthanasia. However, what is required is respect for the patients' wishes: both those who intend submission to all the heroic means of maintaining their life and those who, in the face of a terminal illness, intend palliative care, through the prevention and control of symptoms, psychosocial and spiritual intervention, the patient and the family seen as a unit of care, autonomy and independence, dialogic communication and multiprofessional teamwork."

One of the main challenges for ethics is to see the principle of human dignity as a guide for behaviors related to society and legal conducts, thus, they should be used as a measure to reach conclusions about the beginning and end of life.

## CONCLUSION

The present study presented a vision that provides an accepted solution based on ethics and morals to define the initial milestone of life and when it ends, and this milestone, after being stipulated, can be used to solve various situations involving this problem.

We seek to reflect on the initial moment of life and when it ends, based on existing theories taking into account the new technologies that improve medicine in relation to the beginning of life and its prolongation by artificial means.

The main challenge currently in relation to the theme is to establish the limits of life, with the concern of not underestimating the advances in technology, where we must always seek as a fundamental principle that of providing the best quality of life to patients, including at the time of death.

We recognize the right to life and its supremacy, even though it is not an absolute right, being protected by our legislation and by International Treaties.

Although the beginning of legal personality is only with live birth, as mentioned in article 2 - A of the Civil Code, the beginning of legal protection of life occurs at the moment of conception, with the rights of the unborn child being duly safeguarded.

The end of brain activity would mark brain death and can be considered as the end of life and consequently of legal personality, that is, with brain death, the end of life can already be declared, even if the rest of the body is functioning by artificial means.

Therefore, actions must be based on ethical limits along with the new possibilities brought about by the advancement of research and technology, in order to reach a conclusion about when life begins and when it should end.

Bioethics comes to collaborate through its guiding principles as a way of choosing the best choice when defining the milestones of the beginning and end of life, in this sense, the principle of the dignity of the human person guides us to respect the morality that encompasses society and imposing ethical limits for people's actions, in particular, of professionals in the areas that deal with life and death.

## REFERENCES


1. ANTONUCCI, Adriano Torres. CANDIDO, Izabella Paulino de Souza. NETO, Anibal Rodrigues. SCHIAVINI, Marcel. LEHMANN, Marcio Francisco. SGANZERLA, Anor. SIQUEIRA, José Eduardo. Morte, diagnóstico e evento, Pontifícia Universidade Católica do Paraná, Londrina/PR, Brasil. Hospital Universitário Regional do Norte do Paraná, Londrina/PR, Brasil. Universidade Estadual de Londrina, Londrina/PR, Brasil. Rev. Bioét. vol.31. Brasília 2023. Disponivel em: https://doi.org/10.1590/1983-803420233356PT . Acessado em: 29/12/2024.

2. ANTONUCCI, Adriano Torres. NETO, Anibal Rodrigues. SCHIAVINI, Marcel. LEHMANN, Marcio Francisco. SGANZERLA, Anor. SIQUEIRA, José Eduardo. Morte encefálica como problema bioético na formação médica. Pontifícia Universidade Católica do Paraná, Londrina/PR, Brasil. Hospital Universitário Regional do Norte do Paraná, Londrina/PR, Brasil. Universidade Estadual de Londrina, Londrina/PR, Brasil. Rev. Bioét. vol.30 no.2 Brasília Abr./Jun. 2022. Disponível em: https://doi.org/10.1590/1983-80422022302524PT. Acessado em: 29/12/2024.

3. BARRETO, Vicente de Paulo. LAUXEN, Elis Cristina Uhry, O marco inicial da vida humana: perspectivas ético-jurídicas no contexto dos avanços biotecnológicos. Cad. Saúde Pública, 2017. Disponível em: https://www.scielo.br/j/csp/a/wRZ5NSqv9P9QY6KWd8ytJ5m/#. Acessado em: 04/08/2024.

4. BARROSO, Luís Roberto. Gestação de fetos anencefálicos e pesquisas com células-tronco: dois temas acerca da vida e da dignidade na Constituição. In: Direitos fundamentais: estudos em homenagem ao professor Ricardo Lobo Torres. Rio de Janeiro: Renovar, 2006.

5. BRASIL. Código Civil. Lei nº 10.406, de 10 de janeiro de 2002.

6. _____. *Código Penal*. Decreto-Lei nº 2.848, de 7 de dezembro de 1940

7. _____. Constituição da República Federativa do Brasil. 04 de Outubro de 1988.

8. _____. Lei n.° 9.434, de 4 de Fevereiro de 1997. Dispõe sobre a remoção de órgão, tecidos e partes do corpo humano para fins de transplante e tratamento e dá outras providências. Diário Oficial da União. Brasília, DF, 5, Fev. de 1997.

9. _____. Lei n.° **11.105** de 28 de Março de 2005. Dispõe sobre a Lei de Biossegurança. Diário Oficial da União. Brasília, DF, 29, Mar. de 2005

10. _____. Lei n.° 11.804 **de 05 de Novembro de 2008. Disciplina o direito a alimentos gravídicos e a forma como ele será exercido e dá outras providências.**

11. _____. Supremo Tribunal Federal. Ação Direta de Inconstitucionalidade nº 3.510 Distrito Federal. http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=611723 (acessado em 21/Mai/2024).

12. _____. Supremo Tribunal Federal. Ação de Descumprimento de Preceito Fundamental n.° 54/Distrito Federal.

https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=3707334 . (acessado em 21/Mai/2024)

13. _____. Superior Tribunal de Justiça. Ação de cobrança de seguro obrigatório. Recurso Especial nº 1.415.727 - SC (2013/0360491-3). http://ww2.stj.jus.br/processo/revista/documento/media-do/?componente=ATC&sequencial=39138375&num_registro=201303604912&da-ta=20140929&tipo=5&formato=PDF (acessado em 21/Mai/2024).

14. CFM- Conselho Federal de Medicina, Código de ética médica: Resolução CFM nº 2.217/2018. Brasília: CFM; 2019.

*15.* COFEN. Resolução nº 564. *Aprova o novo Código de Ética dos Profissionais de Enfermagem, 2017.*

16. COSTA, Beatriz Priscila. Reflexões bioéticas sobre finitude da vida, cuidados paliativos e fisioterapia. 2019. Disponível em: https://www.scielo.br/j/bioet/a/6FXnv5Vs3Gxn3BdgGb6jZ3R/#. Acessado em: 24/06/2024.

17. FELIX, Zirleide Carlos. COSTA, Solange Fátima Geraldo da. Alves, Adriana Marques Pereira de Melo. ANDRADE, Cristiani Garrido de. DUARTE, Marcella Costa Souto. Brito, Fabiana Medeiros de. Eutanásia, distanásia e ortotanásia: revisão integrativa da literatura. 2013. Disponível em: https://www.scielo.br/j/csc/a/6RQCX8yZXWWfC6gd7Gmg7fx/?lang=pt#**.** Acessado em 08/06/2024.

18. HERMES, Hélida Ribeiro Hermes. LAMARCA, Isabel Cristina Arruda. Cuidados paliativos: uma abordagem a partir das categorias profissionais de saúde. 2013. Disponível em: https://www.scielo.br/j/csc/a/6RByxM8wLfBBVXhYmPY7RRB/?format=pdf&lang=pt. Acessado em: 08/06/204.

19. KOERICH, M. S., Machado, R. R., & Costa, E. (2005). Ética e bioética: para dar início à reflexão. Texto & Contexto-Enfermagem. Disponível em: https://www.scielo.br/j/tce/a/NrCmm4mctRnGGNpf5dMfbCz/?lang=pt. Acessado em 09/01/2025.

20. LEAL, Mirian Martins. OLIVEIRA, Karina Díaz Leyva de. PARENTE, Priscila Batista Corrêa. ARAUJO, Gleiton Lima. SILVA, José Carlos Quinaglia e. Início da vida: uma visão multidisciplinar pautada na bioética Com. Ciências Saúde. 2018; 29(3):191-200. Disponível em: https://bvsms.saude.gov.br/bvs/periodicos/ccs_artigos/inicio_vida_bioetica.pdf. Acessado em 26/05/2024.

21. LENZA, Pedro. Direito Constitucional Esquematizado. Editora Saraiva. 2009

22. MOSINI, Amanda Cristina. PIRES, Jaime Moreira. SUSEMIHL, Maria Alice. CALIÓ, Michele Longoni Calió. PINTO, Lécio Figueira. Aspectos bioéticos da morte encefálica frente à diferentes religiões, Research, Society and Development, v. 11, n. 4, e14611427080, 2022. Disponível em: https://doi.org/10.33448/rsd-v11i4.27080. Acessado em: 29/12/2024.

23. RIBEIRO, Diaulas Costa. Autonomia: viver a própria vida e morrer a própria morte. 2006. Disponível: https://www.scielo.br/j/csp/a/4j7czM9wTQRfP5rBqQn5WVf/?format=pdf&lang=pt. Acessado em 08/06/2024.

24. ROTHER, Edna Terezinha. Revisão sistemática X revisão narrativa. Editorial. Acta paul. enferm. 20. 2007. Disponível em: https://doi.org/10.1590/S0103-21002007000200001. Acessado em: 05/01/2024.

25. SILVA, Liliana. PINHEIRO, Francisco Edes da Silva. VARANO, Nathália. CARRILHO, Ana Jullia Felipe de Paula. DESTRO-FILHO, João-Batista. Comparação do perfil clínico de dois grupos de pacientes que foram submetidos ao protocolo de Morte Encefálica. Research, Society and Development, v. 11, n. 11, e386111133807, 2022. Disponível em: https://doi.org/10.33448/rsd-v11i11.33807. Acessado em: 29/12/2024.

26. TEIXEIRA, Ana Carolina Brochado. DE SÁ, Maria de Fátima Freire. Cuidados Paliativos: Entre Autonomia e Solidariedade. 2017. Disponível em: https://www.google.com.br/url?sa=t&source=web&rct=j&opi=89978449&url=https://periodicos.univali.br/index.php/nej/article/download/13037/7453/35092&ved=2ahUKEwj3jMvU0cuGAxX6q5UCHUP7AZIQFnoECCcQAQ&usg=AOvVaw0gdhc3JJvas6YxZRrjed8a. Acessado em 08/06/2024.