

THE LEGAL, SOCIAL AND RELIGIOUS DIMENSION OF THE CONCEPT OF EUTHANASIA

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Abstract

If the right to life of the human being is consecrated, guaranteed, promoted and unanimously recognized as a subjective right of a general nature, the right to assisted death can be understood by reference to the individual seeking support for the application of certain euthanasia procedures, resulting in his physical disappearance. Considering the legal challenge to the regulation of euthanasia and its social and, above all, religious implications, we consider it relevant to analyze the arguments specific to each direction of approach in order to converge the adopted solutions. Taking into account the definition of euthanasia accepted unanimously and covering the relevant cases, we consider necessary the distinction between euthanasia and the like, in order to determine the limits of the euthanasia cases, a criterion for their identification and the correctness of the use of such criterion. The supporters of euthanasia invoke Cicero's argument that a good death is the ideal way to respect the law of nature, leaving the world in peace and dignity, and the opponents base their argumentation on religious and ethical principles regarding the sacredness of life, and find that the legalization of euthanasia contributes to hurry the deaths of some people, sometimes even against their will.

Keywords: euthanasia, right to life, dignity, the right to assisted death.

1. The historical evolution of the concept of euthanasia

In the ancient Greek language, „eu” means „good, harmonious”, and „thanatos” means „death”, so, as shown by Francis Bacon, the word „euthanasia” signifies „a good, peaceful, happy death”.

In ancient Rome, the Law of the XII Tables¹ regulated the killing of children born with malformations right after their birth, and in Sparta, according to the notes of the Greek historian Plutarch in his work „Parallel Lives”, „children that were not healthy and vigorous, crooked children” were thrown off a cliff of Taiget mountain.

Euthanasia was also used by the Roman emperor Publius Aelius Hadrianus (76-138 A.D.), who asked the physician Hermogenes to end his suffering by quickening his death, but the doctor „found the way to remain true to his professional oath, without refusing him”².

Although determined by the religious influences and by the limited medical knowledge of the time, ancient medicine, by its representatives, tried to defeat the disease, but the ill person in terminal stage was left to die, adopting an attitude of resignation before death and of recognition of the higher force of destiny. Hippocrates himself (460-377 B.C.), believed to be the greatest doctor of the Antiquity, mentioned, in his book called „About Art”, that medicine „means to relieve the pain of the ill person, reduce the violence of his disease

and refuse to care for those enslaved by their disease, understanding that, in such cases, medicine is powerless”, but his oath forbade to terminate a life by the wording „I will not give poison to anyone, even if he asks for it, and I will not encourage him to take such substances”.

The Middle Ages bring a new approach to life, and, implicitly, to the concept of euthanasia. The sacredness of life, claimed by the Christian, Judaic and Islamic religions, which believe that human life has divine origins, condemned euthanasia of any kind, although death received a new symbolic significance, representing the transition to a new world.

Attempts of legal regulation of euthanasia appear in the beginning of the XX century, when the first great controversies related to this subject appear in Germany, England and USA; but euthanasia practiced in the Nazi Germany has been and still is condemned throughout the world and under all aspects, respectively moral, legal, medical, theological and philosophical.

In the Declaration on Euthanasia of the Congregation for the Doctrine of Faith of 1980, there was a firm and categorical insistence on the fact that „nothing and no one may authorize the killing of an innocent human being, be it a fetus, embryo, child or adult, old, suffering from an incurable illness or in agony. Moreover, no one can demand this homicide gesture for himself or for another person that he is responsible for, nor can he consent to this explicitly or implicitly. No authority is able to order it legitimately, nor allow it. As this is a violation of the divine law, an

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¹ Andreea Rîpeanu, *Roman Law*, (Bucharest: Cermaprint Publishing House, 2017), 24-26.

² Almoș Bela Trif, Vasile Astărăstoae, Liviu Cocora, *Euthanasia, Assisted Suicide, Eugenia, Pro Verus Contra, Great Dilemmas of Humanity*, (Bucharest: InfoMedica Publishing House, 2002), 3.

offense against the dignity of the human person, a crime against life, an attack against humanity". However, the declaration contains a sentence that is favorable to the use of painkillers to relieve pain and to the right to refuse the extraordinary measures of life support.

Similar to the position of the Catholic Church, the Orthodox Church was also against euthanasia, claiming both theological arguments, and medical arguments. Thus, euthanasia interrupts the ascending evolution from face to resemblance, symbolizing the effort of the human being, who receives the face of God by the act of creation, to achieve the resemblance to God, as „Love bears all things, believes all things, hopes all things, endures all things.”³. The acceptance of the suffering that precedes death, of the cross before death is redeeming, and patience is a virtue that brings salvation in the latest hour, as „he who endures to the end shall be saved”⁴. The medical bioethics itself is against euthanasia, considering it contrary to the medical ethics, because the doctor has the moral and professional duty to fight for the patients' life, not to end it⁵, invoking the legal interpretations of human rights against euthanasia, according to which „the right to life does not imply the right to death”⁶.

The medically assisted suicide is legal in Belgium, Luxemburg, the Netherlands, Switzerland, Spain, Japan, Australia, Cambodia, Columbia, Canada, as well as in five American states – California, Montana, Oregon, Washington and Vermont. In Romania, according to art. 190 – The homicide committed on the victim's request, mentioned in the Criminal Code, „The homicide committed on the explicit, serious, conscious and repeated request of the victim suffering from an incurable disease or from a serious impairment, medically certified, causing permanent suffering that is difficult to bear, is punished by imprisonment from 1 to 5 years”. At the same time, in article 22 of the Medical Deontology Code of the College of Physicians, euthanasia is believed to be one of the acts that are contrary to the fundamental principles of practicing the profession of doctor.

2. Conceptual clarifications and delimitations

A unanimously accepted definition of euthanasia is impossible, since the precise basis of these definitions consists in strong moral convictions, however contradictory; if those who are for euthanasia see it as a release or aid granted to persons to be able to die with dignity, those who oppose euthanasia qualify it as murder or as suppression of life.

The explicative dictionary of Romanian language proposes two definitions for euthanasia, respectively „painless death” and „method to cause an early, painless death, by doctors, to a person suffering from an incurable illness, to put an end to his hard or extended suffering”.

In one definition, euthanasia is believed to be an action or a lack of action by which a health professional or a person close to the individual suffering from an incurable illness, deliberately causes the patient's death, out of the wish to put an end to his life marked by suffering⁷.

According to another definition, euthanasia would represent a totality of medical actions or lack of actions with ethical-legal support and in a patient's interest, shortening the suffering of an ill person who is currently not benefiting from an etiological treatment, in terms of medical science, on the contrary, for whom the prognosis is a close and unavoidable end”⁸. In other words, euthanasia is an act of assisting in the suppression of one person's life in circumstances that are medically justified⁹.

Essentially, euthanasia consists in the action of painless suppression of the life of a person whose hard and extended suffering is believed to be irretrievable, willingly prejudicing the right to life¹⁰.

Considering the fact that euthanasia has benefited from various classifications, in order to systemize the types of euthanasia, two criteria are important, respectively the personal will of the sick person¹¹ and the doctor's action¹², however, regardless of the type of euthanasia, one must avoid creating confusion between rights and liberties, namely that, from the philosophical-spiritual point of view, the human being

³ I. Cor. 13:7.

⁴ Mt. 10:22.

⁵ For these purposes, Pavel Chirilă, „Bioethics and Human Rights”, in Nicolae Răzvan Stan (editor), *The Orthodox Church and Human Rights* (Bucharest: Universul Juridic Publishing House, 2010), 269.

⁶ Jean-Francois Renucci, *Treaty of Human Right European Law*, (Bucharest: Hamangiu Publishing House, 2009)111; Victor Duculescu, *Legal Protection of Human Rights*, (Bucharest: Hamangiu Publishing House, 2008), 315.

⁷ Laura Macarovschi, Oana Mihaela Vișan, *International Protection of Civil and Political Rights*, (Bucharest: Sintech Publishing House, 2014), 108.

⁸ Almoș Bela Trif, Vasile Astărăstoae, Liviu Cocora, *Euthanasia, Assisted Suicide, Eugenia, Pro Verus Contra, Great Dilemmas of Humanity*, 73.

⁹ Alexandru Boroi, *Crimes Against Life*, (Bucharest: Național Publishing House, 1996), 39.

¹⁰ Nicolae Purdă, Nicoleta Diaconu, *Legal Protection of Human Rights*, Edition II, reviewed and completed, (Bucharest: Universul Juridic Publishing House, 2011), 185.

¹¹ In relation to the personal will of the ill person, euthanasia may be volitional (when the patient, fully aware, decides to terminate his life), involuntary (when the patient has not been consulted in relation to the termination of his life, although he has the capacity to decide, or if he previously declared that he refuses euthanasia) and non-volitional (when the life of an ill person is terminated, because said person can no longer decide for himself whether to live or die, because of his mental or physical condition).

¹² In relation to the doctor's action, euthanasia may be active (when death occurs deliberately and actively, by positive means) and passive (when death is caused deliberately by abstention from or interruption of current measures of treatment or of feeding).

is free to end his life when he deems fit, but the right to proceed accordingly does not exist legally, ethically or socially.

By reference to freedom, one of the greatest fundamental values of mankind, marking its historical course and evolution and placing our analysis in a philosophical frame, the man's choice of life or of death is the expression of manifestation of his own freedom of thinking and the result of an individual decision, or, as the German philosopher, Martin Heidegger, appreciated, as representative of the existentialist conception, in mid-20th century, the decision of the human being to end his life is an act of supreme freedom. From this point of view, of the abstract man and of freedom as general value, one may begin to agree with the social, institutionalized acceptance of assisted death.

From another point of view, of the Dutch philosopher Baruch Spinoza, who defined freedom as an „understood necessity”, man is a free being not when he does what he wants or what he desires, but when he understands and becomes aware of the major objective needs of his social environment and of the environment of the era when he lives, proving himself responsible. Consequently, the acceptance of the decision to die is grounded on a strictly personal responsibility and may be made by any human being, without however calling upon other persons to bear witness to his disappearance.

3. Legal and case-law framework in terms of euthanasia

Moving on to the legal frame, most states of the world establish, defend and guarantee by law the right to life, and reject, implicitly, the recognition of the right to assisted death.

At international level, in article 3 of the Universal Declaration of Human Rights¹³, it is stipulated that „Everyone has the right to life, liberty and security of person”, and in article 6(1) of the International Covenant on Civil and Political Rights¹⁴, it is stipulated that „Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.

In articles 2, 3, 7 and 8 of the European Convention of Human Rights, are regulated: the people's right to life, the right to health, the prohibition of torture and of inhuman or degrading treatments, as well as the respect for private life.

Considering the requests filed to the European Court of Human Rights by citizens of certain states, by which they requested support to enable their own death, as the law of their country prohibited euthanasia¹⁵, the Council of Europe adopted the Recommendation no. 1419/1999, arguing its position against euthanasia by the fact that the right to life is guaranteed on the grounds of article 2 of the European Convention of Human Rights, and the states have the obligation to protect their own citizens, to refuse their intentional death, „regardless of their reasons and of the desire to die, expressed by an incurable sick person or by a dying person, this is no legal justification for actions destined to cause death and does not constitute a legal ground to cause the death of another person”.

In support of its position, the European Court of Human Rights has held the fact that the text of article 2 is not capable to create a right to self-determination, based on which one may have the possibility to choose between life and death, and it does not give the individual the right to ask the state to allow him or to facilitate his death¹⁶.

Art. 2 of the Charter of Fundamental Rights of the European Union regulates the right to life: „Everyone has the right to life. No one shall be condemned to the death penalty, or executed”, appreciating that, as long as individuals that represent a serious social danger are not and cannot be convicted by the national law of the states to physical suppression, even more so the persons wishing to die cannot be granted the wish to commit suicide.

The European Convention for the protection of human rights and of dignity of the human being with regard to the application of biology and medicine¹⁷ aims at protecting the human being and guarantees to any person, without discrimination, the respect of its integrity and of the other fundamental rights and freedoms with regard to the application of biology and medicine by the parties to this convention. In art. 1 para. (2) of the Convention, it is shown that every signing State adopts in its domestic legislation the necessary measures to give effect to the provisions of the Convention, and art. 27 stipulates that none of the provisions of this Convention „shall be interpreted as limiting or otherwise affecting the possibility for a Party to grant a wider measure of protection with regard to the application of biology and medicine than is stipulated in this Convention”.

In Chapter II of the Constitution of Romania, the fundamental Rights and Freedoms are provided, and, according to art. 22 para. (1): „The right to life, as well as the right to physical and mental integrity of person

¹³ Corina Florența Popescu, Maria-Irina Grigore-Rădulescu, *Legal Protection of Human Rights*, (Bucharest: Universul Juridic Publishing House, 2014), 54-55.

¹⁴ Raluca Miga-Besteliu, Catrinel Brumar, *International Protection of Human Rights*, Lecture Notes, V edition, (Bucharest: Universul Juridic Publishing House, 2010), 43; Corina Florența Popescu, Maria-Irina Grigore-Rădulescu, *Legal Protection of Human Rights*, 56.

¹⁵ Cristina Otovescu-Frăsie, Andreea Băndoi, „*Respect of the right to life versus euthanasia*”, The Romanian Magazine of Bioethics, Vol. 7, No. 2, (April – June 2009): 13.

¹⁶ By decision Prettyc. United Kingdom of April 29, 2002, CEDO believed that the prohibition of euthanasia did not constitute a violation of the right to life, refusing to acknowledge the person's right to die.

¹⁷ Corina Florența Popescu, Maria-Irina Grigore-Rădulescu, *Legal Protection of Human Rights*, 66.

are guaranteed". In developing the constitutional provisions, the New Criminal Code, in its special part, regulates crimes against persons, as well as crimes against life, body integrity and health.

As previously shown, in the category of crimes against life, art. 190 of the Criminal Code incriminates the homicide on the victim's request, a crime that does not exist in the Criminal Code of 1969. Although, according to art. 26 para. (2) of the Constitution of Romania, reviewed, „any natural person has the right to freely dispose of himself”, the homicide on the victim's request or the active euthanasia has been incriminated, because the right to dispose of another person's life does not exist, even though said person may demand such a solution explicitly, seriously, consciously and repeatedly, due to his suffering. Art. 190 of the Criminal Code considers the case of a person suffering from an incurable disease or from a serious impairment, who asks for the termination of his life in order to put an end to unbearable sufferings that he must endure and who no longer hopes in the possibility to get better or to heal his impairment¹⁸.

The existence of union legal regulations and of the case-law of ECHR have not prevented the differentiated reflection of euthanasia in the frame of national laws of the European States, a fact determined by the different legal thinking and by the manifested religious influences.

In those States where euthanasia is forbidden by legal regulations, the ill persons and their families addressed the justice to end their suffering or the suffering of family members.

Thus, in France, president Jacques Chirac rejected, in 2003, the euthanasia request filed by Mrs. Marie Humbert's son, Vincent Humbert, aged 21, but the mother gave her son a lethal dose of barbiturates.

In 2008, Remy Salvat, aged 26, suffering from a very rare degenerative malady, addressed the French president, Nicolas Sarkozy, the request to allow him to

die with dignity, but, following the president's refusal, the young man committed suicide in August.

In UK, the supreme court, in 1993, made a favorable decision and admitted the petition filed by the parents of Anthony Bland, aged 17, allowing the doctors from NHS hospital to unplug his machines, because, in 1989, following the collapse of a tribune of the Sheffield stadium, Anthony had suffered serious cerebral lesions.

Also in UK, the justice was on the side of young Hannah Jones, aged 13, suffering from a serious heart disease for more than eight years, because of which she had spent very much time in hospitals and had been submitted to multiple surgical interventions. Thus, scheduled for a heart transplant, the little girl refused, stating that she could no longer endure new surgeries and pain and claiming that she no longer wished to stay in hospital and be consulted by doctors.

In Romania as well, Eugen Constantin Anghel, aged 28, suffering from cirrhosis, esophageal varices, umbilical and inguinal hernia and hepatic encephalopathy, asked president Traian Băsescu, by a letter addressed to him, to be allowed to undergo euthanasia, but the answer was negative.

4. Conclusions

The moral convictions, the medical and legal arguments, the theological and religious points of view represent enough reasons to make it impossible to establish the uniformity of legal solutions concerning euthanasia, as no regulation, no matter how comprehensive it is, is able to provide an answer to the multitude and variety of human and clinical situations. However, the remarkable evolution of medical technologies and techniques, doubled by a change of the individual and collective vision of death and agony, contributes to a new reflection of euthanasia in the system of values and of social institutions.

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¹⁸ Tudorel Toder and others, *New Criminal Code*, (Bucharest: Hamangiu Publishing House, 2014).