

Euthanasia – a Contemporary Issue

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Abstract: The right to life is one of the fundamental rights of people that have to be respected and protected by each state's legislation. The connection between the right to life and criminal law is a significant one, as the Criminal Code incriminates a few categories of crimes that can prejudice it. Although that as an object of crimes against life, a person's life is recognized, the right to life remains a value that can suffer from criminal attempts. Often, in literature, the correlation or the relation between certain criminal acts is discussed, such as the genocide, illegal abortion, euthanasia, infanticide and the right to life, the possibility of mutual influence and their coexistence. Furthermore, the problem of euthanasia involves also the examination of practical and juridical connotations connected to the free accomplishment of the human fundamental rights and the right to life in particular. Can the compatibility or the incompatibility of euthanasia with the right to law be decisive? The answer can only be an affirmative one, as through this approach the judicial statute and the scope of euthanasia can be determined.

Keywords: right to death, euthanasia, criminal law, right to life

According to the Romanian criminal doctrine (Udroiu & Predescu, 2008, p. 74) life, as a biological characteristic of human beings, represents the synthetic fundamental attribute without which any other characteristics of human beings wouldn't exist. In the criminal doctrine it has been asserted that, in relation to the vital functions of organisms (respiratory, cardio- circulatory and cerebral)¹, the final point of life coincides with brain death (Filipaș, 2008, pp. 94- 137).

¹ "It seems that the sign of life in the human organism is given by the central nervous system and the material object of a crime is represented by the central nervous system. Why? Because the cease of the central nervous system gives me the answer to questions in the criminal field: when was the crime committed? When the activity of the central nervous system ceased? When is attempt? When there is still life in the central nervous system, it was affected but hasn't been suppressed. When can a doctor transplant a living organ? When the central nervous system ceased to function...the brain has a cultural significance. We exist as humans because of the thinking product given by the brain. We are a social-psycho-bio nature. That is why it is said that the human being is a social animal. Without this social dimension we cannot talk about a person. In the same context, what is the seat where the social

Starting from the origins of Romanian people, the Geto-Dacians have benefited from written laws reminded by Iordanes, but they haven't been kept. The judicial power was held by priests, that exerted it same as the druids in Gallia. After the Dacians were defeated by the Romans, the rules of the Roman law were extended in the new province of the Roman Empire. The citizens were judged by the governor or his lieutenant. He held *ius gladii* (the right to punish with death). During the invasion of the migrating populations, the application of the Roman law continued, but only in part, as the own judicial norms and customs had priority, formed during centuries by the local people. During the Byzantine occupation (9th -12th centuries) the Basilicas were applied, a collection of civil and criminal laws elaborated gradually in the capital of the Eastern Roman Empire. The penalties provisioned for murder crimes were death and mutilation of the perpetrator. Then was when the disposition related to the difference between the attempt and the consumed crime appeared. During the crystallization of the Romanian feudal states, the customary or unwritten law was still applied. This type of law was consigned by the documents of that period under the naming *Valachio or Valachorum antique lex et consuetude*. The first Romanian legislations were the Romanian educational book of the Romanian tradition (1646), printed at the Trei Ierarhi Monastery in Iasi and Law strengthening (1652) printed in Târgoviște. According to these, murdering a person was punished with death by hanging or decapitation. The attempt was punished milder. Reasons that defend the punishment were regulated (insanity, age, the superior's order, legitimate defense) and also reasons that diminish the punishment (mania, intoxication, sleepwalking etc.). At that time, a clear distinction was made between intentional murder and unwittingly murder ("the one who kills by mistake and without wanting to will not be sought as a murderer") and between the spontaneous murder act ("posthaste murder") and the premeditated act ("planned murder"). The last feudal enactment was the Caragea Enactment (September 1st 1818- December 1st 1865). According to this law murder "is at first unwitting or inadvertent". The one who will "kill inadvertently, alone or with others, will be killed". "Who will kill defending his life from peril, is not guilty; he who is child or insane or nor careful will kill, is to redeem the murder with money from the family of the murdered one". The Criminal code in 1865 regulated the murder with will for which the punishment was hard labor for a limited period of time, first degree murder, "when done earlier or together or after another crime" as well as "when with purpose, or to prepare or facilitate, or execute a crime or help hiding or ensure the impunity of the authors or

manifests itself? Is the central nervous system? This is why we say that the aptitude, the social relation is essential for the human development and definition if human life.

accomplices to that crime” for which the punishment was hard labor for the rest of the life; the premeditated murder, also punished with hard labor for life; murder of the first degree relatives, wife or husband, punished with imprisonment for life; murder of the illegitimate child, punished with reclusion; involuntary murder punished with imprisonment from 3 months to 1 year and a half and fine (Hanga, 1980, p. 61). In what concerns the legal regulation of euthanasia in Romania in the inter-war period the relevant document is the Criminal code “King Carol the 2nd”, adopted in 1936. In article 468, al.1, the Code provisioned that ‘the one who will kill a man following the insistent pleadings of that man, commits the crime when asked and is punished with imprisonment form 3 to 8 years’; al. 3 of the same article provisions a condition that attenuates the act mentioned in the first paragraph: *“the punishment is correctional imprisonment when the act was committed under the conditions mentioned in the former paragraphs, under the impulse of a sentiment of compassion, to put an end to the physical pain of an individual who suffered from an incurable disease whose death was inevitable because of that”* (Boroi, 1999, p. 35). By making a comparative analysis of this article with article 463 of the same Code, that stipulated that “the one who kills an individual, commits a murder and is punished with hard work from 10 to 25 years and civic degradation from 3 to 8 years” we can notice that the punishments provisioned for killing by request or killing out of mercy are diminished in these two cases and expressly provisioned by law as being crimes different from murder. These provisions followed the ones existing in the Transylvanian Criminal code that stated in article 282 that “the one who, through the serious desire and determination of a person, was determined to kill that person, will be punished with reclusion up to 3 years”. The imprisonment from 3 to 8 years is also applied for the one “who determines someone else to commit suicide or facilitates the suicide of that person”. Article 468, al. 1 “King Carol the 2nd” Criminal Code mentions the following conditions of murder by request: “the victim should have been alive and would have asked repeatedly, in a serious and pleading manner to be killed, a proof that will demonstrate a firm decision, persistent and irrevocable, so that the idea of a decision taken in a hurry or in a moment of depression would be eliminated” (Ratescu, et al., 1937, p. 99). In the analysis of the text V. Dongoroz underlined the fact that it does not matter the cause for which the victim wished to die (incurable disease, honor or sentimental reasons). The text of article 468 tries to eliminate the discussions mentioned in the doctrine, according to which the consent of the victim would annul the criminal character of the action. Although the acts of euthanasia were not assimilated with crime or assassinate, they were still punished. The attenuating circumstances in paragraph 3

will be applied if the following condition will be cumulated: the action is committed based on a sentiment of compassion caused by the physical pain of an individual suffering from an incurable disease and the individual's death would have been inevitable because of that illness. The lack of one of these conditions is sufficient to eliminate the attenuation of the punishment. Euthanasia is not legalized in Romania and is subject to the Criminal Code in the category of first degree murder (art. 175) (Perju- Dumbravă, Morar, Fulga, Avram, Todea & Siserman, 2008).

The discussions on euthanasia depends in a great extent on the economic and cultural level of a people and in Romania the arguments against euthanasia are multiple: it is contrary to the medical principles; there are errors of diagnosis; at any moment a new treatment for the incurable disease can appear; the existence of abuse for medical advantages; the idea that many suicidal people who have been resuscitated regretted the decision.

Euthanasia is reduced to a question in Romania: "the excess of vanity would extend euthanasia where is not needed?" Euthanasia is a "conflict", an "idea" that is fiercely debated and disputed at a theoretical level but a real and legal solution for it hasn't been found yet.

In the Romanian judicial doctrine appeared the opinion that the acts of euthanasia could be unpunished if the instances would apply a certain reasoning. In the case of the sick people with physical and mental suffering that cannot be removed and the medical assistance is useless, the criminal impunity of the doctors can be argued. In this sense, the state of necessity regulated by article 45 of the Criminal Code can be invoked. Thus, there is a social peril inevitable to the health and integrity of the individual. The action of eliminating this state, euthanasia, is the only way in which the suffering can be ended and consequently, is necessary. It is in the same time proportional, if the decease is compared with the prolonging of the suffering for the individual and the relatives. This reasoning, in the author's opinion, has to be applied only in that case the disease is proved to be incurable and the consent of the victim is given (Chiriță, 2003).

In Romania, there aren't any "institutions" and home caring of the patients on the verge of dying is very difficult, in small and overcrowded apartments. Also, in the intensive care units these patients are accepted only if they have followed treatments in other units of a hospital but those coming from home are not accepted to die in the intensive care unit.

The Romanian Constitution¹ as well as the Criminal Code protect life in an absolute manner and condemn euthanasia.

In the absence of specific laws that regulate “the problem” of euthanasia and considering the impossibility to deny its existence, the solution chosen by the medical units and even by the patients is one that respects the ethical and medical principles, as well as their own conscience.

It all depends on the cultural and economic level and in Romania it is risky to make a decision on suppressing artificial life and there is also the risk of medical- legal incrimination. The family must be correctly and repeatedly informed on the uselessness of maintaining artificial life. The act of stopping the useless therapy measures has to follow an agreement of a medical commission. If the needed consultations have been made, which are the consultation of the patient by two different doctors, separately, twice during a day and the cerebral death has been declared by them, the ventilation of the patient is ceased.

Thus, although blamed and condemned by doctors and codes, although it is not accepted in any case, in theory euthanasia exists and the Romanian judicial instances have not admitted any conviction of a medical doctor for his ‘crime’.

Euthanasia is a concept related to the degree of evolution of a society and today, the Romanian society, although at the beginning, is starting to get more familiar with this concept. If until now the emphasis was on the constitutional principle of guaranteeing the right to life, today another concept has to be revealed, the human dignity². And the human dignity in its profound meaning implies also a dignified death, a certain quality of life until the end of it.

Together with the medical progress, more and more sick people in serious conditions are kept alive, that seems to blur the frontier between life and death. In front of a patient with few chances to live- incurable disease, severe pain, old age, severe insanity, total addiction- there are three corresponding conducts for 3 concepts: therapeutic bitterness, palliative intercession and euthanasia.

Almost generalized until recently, the *therapeutic bitterness* tends to lose in front of the palliative conduct, an important part of the therapeutic stages. Euthanasia remains the great dilemma. Often, for example for the patient over 65 years old,

¹ Art. 22, al. 1: “*the right to life and physical and mental integrity of an individual are guaranteed*”.

² Art. 1, al. 3 in the Romanian Constitution: “*...the human dignity ... represents supreme values and are guaranteed*”.

considered to be unproductive at a social level, euthanasia consists in avoiding medical care, which comes in contradiction not only with the ethics but also with human rights. Who can assume the responsibility of euthanasia and in what extent it is really desired by the patient suffering? Academician C. Maximilian said “*There shouldn’t be forgotten that the patient who asks for euthanasia actually asks for help to live*”.

Many patients in terminal stages who solicit suicide or euthanasia are suffering from depression¹ and after an adequate treatment, they abandon the request. Depression shouldn’t be taken for a normal state of sadness before death. In the attitude towards euthanasia there is a great extent of hypocrisy. Most of the doctors and jurists deny this but this state is manifested in the actual relation with the patient. For example, on a visit to a patient who lost hope of getting better it is decided that “there is nothing more to be done, we stop medication, antibiotics...”

In 1995, a study was conducted² on the opinions towards euthanasia of medical personnel. The study included 50 people- geriatrician, surgeons, oncologists, neurologists and psychiatrists as well as 30 nurses from the same medical specializations. The result was that over 95% rejected euthanasia.

But when asked what would they do when confronted with the situation of choosing whether to continue their own treatment or not, most of the doctors sustained euthanasia.

Euthanasia can be considered as an end, the one of re humanization, of death approaching.

But before that in the first place and surpassing any cultural and social barriers, *the right of the patient to the truth* has to be recognized. This access to the truth is always present in a relation between two persons and emphasizes the respect for the individuals.

In the second place, the society has to recognize *the respect of the patient’s decision* as being *an absolute and imperative right*. Here too the medical team has to present the patient all the possible options. Never should the medical team and especially the

¹ A young man of only 29 years old asks for an official approval for euthanasia from the President of Romania. The author of the desperate appeal to the President is Eugen Constantin Anghel and the first 18 years of his life were spent in the “Ion Creanga” foster home in Piatra Neamt; he died on Saturday night, in the Clinical Emergency Hospital in Constanta. (www.cotidianul.ro, 30.11.2008).

² The study was conducted by two psychologists, Pavel Popescu and Mihaela Gavriloiu and Dr. Constantin Bogdan.

doctor decide to treat or not treat without having discussed the issue with the patient. More than that, the life of the patient has to be respected even if he cannot make a decision for himself at a certain point. No one, not even an expert, has the right to assume the control of a person's death. The incapacity of a patient, his state on unconsciousness cannot serve as an excuse or a reason to ignore his/her *right to a dignified death*.

In the third place, the doctor has to be able to administrate all the palliative measures that a patient needs, without the fear of being sanctioned, even if these measures entail the diminution of life expectance. The purpose in these cases is to control pain and not cause death.

Restoring a meaning to death at the beginning of the 21st century is a considerable challenge, whose point of departure could be acceptance of the fact that for many generations, *death was intentionally pushed away from life*.

The Romanian legislation is very firm in what concerns punishing murder even in cases of euthanasia. The Romanian Criminal Code in 1936 incriminated in a distinctive manner the murder of a person if it followed a persistent and repeated request or caused by a sentiment of mercy and to put an end to the pain of a person suffering from an incurable disease (art. 468, al. 1) (Dongoroz, 1969, p. 117).

In mentioning the reasons, the text was proved to indicate the discussions in the doctrine, according to which the consent of the victim would annul the criminality of the action. Although the acts of euthanasia were not assimilated to murder or assassinate, they were still punished. For the gentler punishment of the crime committed in these conditions the request had to be made by the victim, in right mind, serious and persistent, repeated, which would exclude a decision made in a moment of despair. In commenting the law, Vintilă Dongoroz underlined the fact that the reason for which the victim wishes to die does not matter (incurable disease, honor).

In the same context, the elements of a veritable euthanasia are (Stanciu, 1962, p. 1):

- An incurable disease with fatal evolution;
- Severe pain;
- Repeated request form the patient begging to die as a release.

Even if these three conditions are met, the murder out of mercy does not represent a justification in none of the legislations of civilized states as the same author asserts.

According to the Criminal Code in force (Pascu & Lazar, 2005, p. 78) euthanasia has no judicial efficiency. The dispositions in article 468 of the old Criminal code were not included in the Criminal code in 1969, motivating thus that in such cases, the dispositions regarding reducing the punishment will operate, when attenuating judicial circumstances exist and that in our law, the victim's consent does not eliminate the criminal liability in none of the cases of euthanasia because the right to life, corporal integrity and health are essential values of humans. For the crimes against these values, the guilt cannot be eliminated based on the fact that the victim gave his/her consent.

In a theoretic discussion (Antoniou, Dobrescu, Dianu, Stroe & Avrigeanu, 2003, p. 250) if the right to life is protected because it answers an interest of the individual or because s a social value consented by the entire collectivity, the dominant thesis was the one that the state defends human life in the individual's interest, for which life is the supreme asset, but the defense regards mostly the obligations that the individual has towards the family and society. The latter interest prevails. This explains why murder by request or with the victim's consent in not placed outside the criminal penalties.

In the Romanian legislation, article 121 of the Code of medical deontology it is stipulated that "euthanasia is forbidden, meaning the use of means or substances with the purpose of causing the death of a patient, irrespective of the gravity or the diagnosis, even if the euthanasia was persistently requested by a perfectly conscious patient". In article 122 of the same code it is provisioned that "the doctor will not assist and will not urge to suicide or self mutilation by advice, recommendations, loaning instruments or offering the necessary means. The doctor will refuse any explanation or help in this direction".

De lege lata, the Criminal code in force does not contain any distinctive article regarding euthanasia. The person accused of euthanasia practices will be liable for murder, even in the situation in which the action or inaction were made for mercy, with the purpose of ending the prolonged and useless pain of the victim, as long as the victim is not in cerebral death. If death appears following the expressed refuse of the patient to follow the medical treatment or take the medication prescribed by the doctor or if the interruption of the treatment or the cut out of medical equipment intervene after establishing the cerebral death of the patient, the existence of a criminal behavior of the doctor or the medical assistant will not be declared (Udroiu & Predescu, 2008, p. 78).

In relation to the Romanian legislation in force, that does not accept murder by request or by consent, arguing that in this case an attenuating judicial circumstance in favor of the author would be at the most granted and this is why we must regard the protection of life as being based on the interest of the society. Even if in regulating this protection the criminal law considers the meaning of life for the isolated individual (such a reality should not be neglected) which is provoking death with the help of others even for ending the pain caused by incurable disease. Death (Antoniou, 2002, p. 19) in this case would become a better solution of the patient (euthanasia) than the continuation of life, the Romanian criminal law punishes the ones that would urge or help the patient to end his/her life, as well as the ones who, at the request or with the patient's consent, would take his/her life.

Within the draft of the Criminal Code adopted by the Romanian Government on February 25th 2009, the crime of "murder at the victim's request" was regulated, as an attenuated form of murder, re inscribing the regulation not only in line with the existent tradition of the Romanian law (article 468, Criminal Code in 1963) but also in the tradition of most of the European criminal codes (art. 216 in the German Criminal Code, art. 77 in the Criminal Code of Austria, art. 143, al.4 in the Spanish Criminal code, art. 134 in the Criminal code of Portugal, art. 114 in the Criminal code of Switzerland, art. 235 in the Criminal code of Norway).

Euthanasia will be a present topic as long as those factors that brought it into pipeline will prevail, as long as life will fight against death and pain. But until this issue will stop being in the pipeline, it will shake the religious systems, medical practices, philosophic knowledge, shortly human moral and conscience.

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