Euthanasia, National and International Perspectives

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Abstract: The topic of euthanasia can be defined and analyzed upon considering several perspectives, such as the legal, religious, historical, philosophical, medical or ethical ones. This article attempts to supply a brief presentation of these perspectives, indicating the existing trends and standpoints at world level in connection to perceptions regarding the phenomenon mentioned, exemplified by opinions described in the doctrine and relevant jurisprudence. At the same time, in this article I will try to indicate the weak spots of the Romanian legislation in the euthanasia area, upon supplying some proposals for legislative intervention. Concomitantly, it should appear the idea that not the right to die per se is to receive motivations and be included in the law, but the duty to live. This should be done first by drafting an adequate law to the terminal states that would guide their medical practice and comply with the world legislative trends.

Keywords: sweet death; physical suffering; medical accountability; right to die; embryo

Most countries adopted a penal policy in which euthanasia and assisted suicide are deemed criminal felonies, a situation that also exists in Romania. In the Romanian law system, euthanasia can be considered also a murder felony (that was committed, from the material element point of view, by action in the case of active euthanasia, and by inaction in the case of the passive one), and assisted suicide as felony of determining or facilitating suicide is regulated by article 179 of the Penal Code. Although there are no express criminal provisions concerning euthanasia, the silence specific to Romanian legislation is partially replaced by the provisions of the Medical Ethics Code adopted in 2005. Article 121 states *"euthanasia is completely forbidden, this being the use of some substances or means in order to provoke the death of a sick person, no matter the severity and prognosis of the disease, even if a perfectly conscious sick person has asked for this"*. Article 122 provisions *"the physician will not assist or indicate persons to commit suicides or*

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self-injuring by advice, recommendations, lending instruments, or offering other means. The physician will refuse any explanation or help as regards this".

However, there are law systems that based their norms concerning the felonies on the idea that the right to life is a liberty and does not involve the right to death by default. This right concerns not just the individuals taken as elements, but also the state and the society on its whole, given the family, social, and economic implications. Prohibiting and criminally punishing the euthanasia in the legal system of most countries involve a system of classifying the legislation thus that the Constitution and the national legal regulations do not allow euthanasia. That is although most times it would put an end to long and tormenting suffering, such as the case of incurable diseases leading to death, when the sick persons asks this repeatedly and even begs for this (having a tendency to divinize death as an act of liberation, relief, and reconciliation with himself). Often, the borderline situations such as passive euthanasia led numerous courts of law to believe that there is no reason to remove such cases from the medical profession's control and to leave them up to the justice.

Euthanasia is a very controversial subject, being adequate for a multitude of appreciations launched upon considering some various domains, such as philosophy, law, religion, ethics, and medicine. Mainly, the religious standpoint of moral and the public opinion, in general, and that supplied by the medicine and law areas condemn euthanasia without reservation. The degree to which interrupting a reanimation in case of long-term coma or vegetative state overlaps euthanasia should be seen not only from an ethical point of view, but also from the legal one, as long as euthanasia involves consent of the person wishing to avoid his direct confrontation with death. The risks of making euthanasia legal, as the jurisprudence shows, represent another reason for considering it a felony from a moral and legal standpoint. At the same time with the aging of population and increase of life span, euthanasia will tend to become even more a problem of relatively major confrontation of opinions. However, no matter the conditions, considering the anti-human aspects of euthanasia during World War 2, the present trends confirm the fact that the debates inevitably interfere with emotions, even if dying with dignity is a right. That is particularly because it is an integral part of the right to control life (Scripcaru, et al. 2003, pp. 276-277). The church authorities have a very critical and reluctant point of view in connection to this topic, seeing euthanasia as "a violation of divine law, a crime against life". It is believed that euthanasia is a special form of homicide with the participation of physicians and family. Life is a gift from God, and the church thus directs its followers to defend it and not to destroy it (thus observing the requirement of the sixth commandment). Along history, there are numerous examples of practicing euthanasia; the nomadic people knowledgably abandoned their elderly and sick persons that became a burden during their continuous travels, and in Sparta, the handicapped children

were left to die due to reasons connected to "public usefulness" (Aristotle, *Politics*, VII).

Some practitioners believe that in Romania a special law should be drafted, or the provisions that refer to preserving the special values in the Penal Code be completed, and such practice be criminally punished. The Penal Code of 1936 provisioned, in article 486, two versions mitigating the homicide with intent, one being the killing of a person following his repeated unwavering request, and the other killing a person out of pity, in order to put him out of his misery. Presently, as indicated above, the national legislation stipulates a series of felonies against an individual, which are characterized by the existence of a special legal object represented by the ensemble of social relations protecting the right to life. According to those supporting the euthanasia as criminal felony, the Penal Code should comprise a regulation of euthanasia as consequence of intervention of physicians or ending life due to the sick person's requests (active euthanasia), as well as by not granting actual therapeutic assistance or not performing the intervention of connecting a person to life-support machines (passive form). *My opinion* refers to the possibility to promote an alternate solution beginning with the idea that in the case of terminally ill persons whose suffering cannot be removed or treated by the existing means, arguments exists that could legally substantiate euthanasia. First, there is that concerning the right of the person to have his privacy respected, a ground in which the state would be positively bound to create a system allowing the sick person to choose the time of death.

A completely opposed analytical perspective is that creating an antagonism between the right to life belonging to a human being and the other rights acknowledged by the Constitution as belonging to another person. This matter can be included in several assumptions: the rights of the mother and the rights of the embryo can be placed face to face, the rights of an embryo and the rights of other embryos can be confronted, or the rights of a sick person can oppose those of another sick person. Often, it is believed that including euthanasia in the legislation implies to allow the government to go into an intimate problem connected to privacy. Considering that law does not punish suicide, numerous opinions believe that it is lawful for a person to die lucidly and with dignity.

Many supporters of euthanasia think that the solution indicated by the courts of law from Netherlands (the first country that included euthanasia in its legislation), a solution relying on removing the criminal aspect of the deed due to the existence of a state of need is valid. In the Romanian legislation, the necessary conditions for such a cause for removing the penal character of the deed are represented on one hand by the existence of an imminent, inevitable, and impossible to be removed danger, and on the other hand, by the development of a necessary, imperative and proportional reply connected to the state of danger.

My opinion is that there is a possibility to observe all these requirements by the action of the specialist physician, launched at the demand of the terminally ill patient. A medical team that would include a specialty physician other than that acting in this case and that would reach a conclusion on the impossibility to remove the suffering in question by medical procedures would find such a state. This action will lead to taking the patient's life as the only manner to put an end to his suffering. Such an action would not be proportional, but also necessary, considering that its result, the death of the patient, would have occurred anyway, but in much harsher conditions and after a longer distress. Without a doubt, the action could not be performed under any circumstance without the validly expressed consent of the patient.

According to the strict etymology of the word, euthanasia signifies, to a very broad sense, the art *"to die well"*. Only for approximately a century, it has focused on the act of "*delivering death*", by significantly altering the matter of "*peaceful death*". Confusions are everywhere thus that, in her report on the end of life, sent to the Ministry of Health of France in 2003, Marie de Hennezel suggested avoiding the euthanasia term believing that it could generate public commotion. Semantically, the *euthanasia* term comes from two Greek words, *eu* meaning well, good, and *thanatos*, meaning death. Francis Bacon coined this word in the 17th century with the significance of dying easy and sweet, and in the 19th century, it acquired the *sweet death* meaning, this being of "*mercifully killing*".

In 2000, the National Consultative Ethics Committee of France defined euthanasia as being "*the action of a third person willingly putting an end to the life of a person with the intent to end a situation deemed unbearable*". This definition adequately emphasizes the two basic elements of euthanasia, this being the act and the purpose. The first refers usually to an action, more seldom to inaction, and the latter – to the need to put an end to life. The adverb "*willingly"* underlines the intentional nature of the act, introducing an uncertain date when calling upon a situation deemed unbearable. In exchange, this definition does not indicate who and in which legal framework is entitled to believe a situation as being *"unbearable"*. However, the medical environment believes that this definition appears to be convenient for opening the debate, regardless of its imprecision.

Dominique Dinnematin gave a new definition (Jalmalv, 2001, p. 64,); she stated that euthanasia is "*the deliberate act of giving death to a patient following his repeated demand*". Apparently, this definition has two original elements, the first being the "*patient*" notion (that seems to include the euthanasia act in a medical context), and the second referring to a "*repeated demand*". Thus, this definition excludes euthanasia concerning the patients that are unable to express their request in an unequivocal manner. This is close to the definition given by article 2 of the Belgian law on this matter (adopted in September 2002), the normative act that legalizes euthanasia in extremely strict conditions. This law defines euthanasia as

"*the act performed by a third person for ending the life of a person in an intentional manner, upon his demand*". That definition was also adopted by the Dutch legislation.

In 1999, the French Senate proposed a different definition that binds to reflections on the absence or presence of consent. Thus, euthanasia would be "*deliberately administering lethal substances with intent to cause death, upon the demand of the person wishing to die, or without his consent, according to the decision of a relative or of the medical team*". The expression concerning the "*decision of a relative"* must be clarified in order not to lead to ill faith. Among the definitions presented until now, it is obvious that this one has the broadest scope.

Another definition belongs to Professor René Schaerer. It states that euthanasia is "*the act made for voluntarily administering to a sick person, disabled person or lethal injured person of a drug or toxic product that would put an end to his life in a rapid manner, in order to end his suffering*". This definition leads without a doubt to the conclusion that only medical means can be used for causing euthanasia. However, from a legal point of view, the definition seems to be superficial particularly given its enumerative character.

Patrick Verspieren, another scientist, defines euthanasia in his paper (*Face à celui qui meurt*, DDB, 1987) as representing "*the fact of giving death in a scientific and voluntary manner; the action or omission intentionally causing the death of a patient in order to put an end to his suffering is also euthanasia*". From a legal point of view, the action or inaction (omission) notion leads to stating two dissimilar categories, being necessary to consider the possibility of not granting the necessary assistance to the endangered person.

The matter most debated is knowing whether, during a medical technique applied, a person can acquire from another a necessary intervention for dying. Traditionally, the active euthanasia resulting from the intervention of a third person in order to end the life of a person by deliberately administering lethal substances for causing death differs of passive euthanasia. The latter is stopping a painful or uncomfortable treatment if there is the belief that the case in question is desperate (Euthanasie, *Dictionnaire permanent de bioétihique*). First, the matter of knowing if a person can acquire the right for a third person to apply death is important. That is, if suicide, be it conscious or voluntary, can be assisted. More, euthanasia of a person unable to express his will indicates another matter, that of affecting the right to life of a person, of the conflict between the right to life and the right to the quality of life. Thus, from a strictly medical perspective, the euthanasia can be passive or active. The passive one is reduced to ceasing the treatment, as such to disconnecting the sick person from the medical machines that ensure maintaining his vital functions. Active euthanasia leads to taking the life of the patient by administering medications that will ensure "a peaceful death". Nevertheless, the

French Penal Code confirms this distinction also from a normative standpoint and differentiates the two types of euthanasia. Thus, the active one is when death occurs as consequence of the physicians' intervention, being equaled to premeditated murder, and the passive one is "withholding treatment for therapy purposes", thus representing not granting the medical assistance.

It is true that making euthanasia legal, in the absence of guarantees that, at one time, under the pretenses of doing good, of a "supreme" good to the victim, could lead to severe and irremediable mistakes, abuses, towards the victim, as well as to creating a new category of "*euthanasia practitioners"*, the true "*experts"* in killing. More, in Europe, beginning in 1994, and in Australia, beginning in 1996, there are laws that partially removed euthanasia from the felonies list (*Rights of the Terminally Act)* by legalizing euthanasia in well determined conditions. However, the problem acquires a new dimension when it is about medical help for suicide purposes. Thus, the Supreme Court of the Australian federal state Northern Territory, by a decision of 1996, allowed that a person competent to act on behalf of the patient could authorize a physician to assist a sick person in ending his life. The Supreme Court of the Northern Territory believed this piece of Australian legislation as conform to the constitutional norm. From the historical point of view, euthanasia was legalized first in 1906, in the United States, in the federal state Ohio.

Presently, euthanasia is legal in only four European states, the Netherlands, Belgium, Luxembourg and Switzerland. According to the statistics supplied by the Kingdom of Belgium, the number of euthanasia performed in 2012 reached an all-time record, with 1432 cases. This took place during the national debate concerning the possibility to expand the applicability of the law to underage persons and those suffering of degenerative mental illnesses, such as Alzheimer. The federal commission for controlling and assessing euthanasia registered last year a 25% increase as against the previous year, when euthanasia had been performed to 1133 cases. As well, according to the data given by the same commission, this practice is more common among the population in Flanders region, where 81/% of the total number of euthanasia procedures was recorded (1156 cases) by comparison to 19% in Walloon (276 cases). The reason for this discrepancy between regions would be Flanders' closeness to the Netherlands, the first European country that excluded euthanasia from the felonies list. Actually, most cases of using euthanasia were on patients suffering of cancer, but also a high number was registered for persons having neurological disorders.

Despite the quite high numbers, the commission mentioned above supplied insurances in connection to the marginal phenomenon character of this cause of death at national level, euthanasia representing just 2% of the total number of deaths that occurred in Belgium in 2012. Ten years ago, Belgium followed the example set by the Netherlands, being the second European state that partially

legalized euthanasia. The law concerning this, that entered in force on September 22, 2002, allows the physicians to apply euthanasia in the case of sick persons requesting it and who are affected by lethal illness causing them "constant and unbearable physical and psychical suffering". In December 2012, the Belgian Parliament began to analyze the possibility and the need to expand the law also as regards the underage persons and those affected by degenerative mental illness, the reform trying to guarantee the right to autonomous decision and the legal safety for physicians. There must be said that the present day regulation provisions that a second doctor must be consulted before using any type of euthanasia procedures, including that the cases of patients not suffering of mental illness must be referred to a third medical opinion.

The help supplied for suicide is not a felony in the Kingdom of Sweden, for special cases, thus that the physicians are entitled to disconnect the machines to which the terminal sick person is connected in order to support his vital functions. On its turn, in Germany, the Federal Court of Cassation formulated the principle according to which a medical treatment meant to mitigate the suffering of a dying patient is not a felony because it has an involuntary but predictable side effect that would hasten death. Presently, in Great Britain, euthanasia is forbidden although during 1993 – 1994 doctors were also allowed to disconnect the machines that insured the artificial life supporting of the terminally ill persons. Still, there is certain reluctance concerning euthanasia, although many draft laws would substantiate it either by the person's inability to have relations with other individuals, when the treatment becomes useless for improving the sick person's clinical state, and the medical care cannot insure survival, a fact also confirmed by the patient's family members that give their consent (Scripcaru et al., 2003, p. 278). The Constitutional Court of Columbia approved in 1997 euthanasia with the consent of the sick person facing a terminal phase of his illness.

On its turn, the Canadian court analyzed the controversy connected to passive euthanasia, the right to benefit of such a practice, although it contradicts the government's interest to protect the right to life, not being contrary to any fundamental right. Concerning this, the case Nancy B. v. L'hôpitale Hôtel de Dieu of Quebec (1992) can be cited. In it, the plaintiff aged 25 years was confined to her hospital bed for over two years and asked that she be disconnected from the breathing machines. The hospital refused her demand, but the court accepted it subsequently, deeming that the difference between ceasing the treatment that allowing the continuation of life until the time of the natural life and the aid given for putting an end to life that leads directly to life are different matter. As well, the case Sue Rodriquez v. Federal State of British Colombia (1993) is important. There, the plaintiff wished to control the time of her death, and the Supreme Federal Court believed that article 214 paragraph b) from the Canadian Penal Code (forbidding conciliation, aiding and instigation to suicide) violated the provisions

of the Canadian Chart of Human Rights and Freedoms. Subsequently, the plaintiff died after receiving medical help, in unclear circumstances (Scripcaru et al., 2003, p. 273).

In addition, active euthanasia is strictly prohibited in France by article 38 of the Code of Medical Deontology, which expressly states that the physician is forbidden to cause deliberately the death of a patient (Decree 95-1000 of September 6, 1995, on the Code of Medical Deontology). This form of euthanasia is in fact similar to any other felony according to the common law provisioned by the Penal Code, as showed above. In exchange, it was deemed that the association sending a guidebook to a patient wishing to die for not suffering a long painful agony is not criminally punished. In February 199, 35 senators submitted a draft law concerning the right to die with dignity. It referred mainly to authorizing a person for acquiring active help for dying. In Spain, the Constitutional Court issued in 1996 a decision according to which the right to death is inexistent. According to the constitutional judge, a person can decide to die, his life being an asset included in his freedom area, but this manifestation is an act punishable by law, is not a subjective right that involves the possibility to acquire the help from public powers. Thus, it is a liberty and not a right. As well, in the recent Romanian legislation, by the provisions of Law no. 46/ 2003 concerning the rights of patient, it is stated "*the patient is entitled to terminal care in order to die with dignity*" (article 31), and according to article 13, "*the patient is entitled to refuse or stop medical intervention, accepting written responsibility for his decision*". By considering such a deed as felony, the new Romanian penal law supplies an additional guarantee for protecting the life of victims (persons) suffering of a terminal illness or severe disability that causes permanent, tormenting and excruciating suffering.

In connection to the content of right to life, the scope of article 2 of the Covenant must not be disregarded. That is, the right to death must be included, upon referring directly to physician-assisted death (Bîrsan, 2002, p. 174 and the next), the first case concerning this dating back to 2002 (case Pretty v. Great Britain). In it, the recommendations of the Parliamentary Assembly of the Council of Europe were considered and ECHR reached the conclusion in principle that article 2 of the Covenant does not lead to the existence of a right to die, be it by the help of a third person, be it by the help of a public authority. Thus, by their refuse to authorize the immunity against penal prosecution of the spouse in the case when he would have helped the plaintiff to commit suicide, the British authorities would not have violated the clauses of article 2 of the Covenant.

Later, certain courts in the Anglo-Saxon world acknowledged the existence of a right to die in relation to maintaining the patients alive by the use of support machines. Thus, the Supreme Court of Justice of the United States of America stated, "the man's freedom leads to his ability make decisions on refusing treatment, the state not having any legitimate rights on anybody's life, and the

decision not to stop a palliative treatment degrades the man and maintains the suffering of the family towards the dying person" (Scripcaru et al., 2003, pp. 277-278). Thus, the decision 'do not resuscitate' the sick person if the treatment does not bring him any benefit or when the quality of life after resuscitation will be inhuman is admissible. Considering this context, the State of California first acknowledged in 1987 the right to death in a normative act that stated the cessation of treatment in such situations. The Supreme Court of the US acknowledged this right to death (in connection to case Nancy Cruzan) because the "sick persons did not express their desire previously".

It is useful to emphasize the previous jurisprudence, in the case Quinlan v. State of New Jersey the court of law granted to a woman in vegetative state "the constitutional right to have her life artificially extended" (Scripcaru et al., 2003, p. 273). To the criterion of cerebral death, induced by Karen Quinlan's state, a court of law of US also added the lack of convincing unambiguous evidence that the person would have opposed the cessation of treatment. The difficulty in setting out the borderline between life and death, as in the case mentioned above, was due to the life-support technologies, which led to the occurrence in 1996, in the State of California, of the legal instrument named *Natural Death Act*. It allows any adult "to order the not application and interruption of the life support therapy when he is facing the extreme limit of his essential conditions", a fact expressed in an obvious manner before a possible vegetative state. Thus, the intention was to regulate some extreme life conditions and terminal phases between life and death, when therapy would truly delay death but without leading to resuming a normal life. In other words, the interruption of life-support therapy in a vegetative state binds to the irreversibility diagnosis for life to be certain, without doubts, the law instrument in question recommending the refraining from "hopeless treatments" (Scripcaru et al., 2003, p. 272). There must be mentioned that although the terminal phases of life, the long-term coma and the vegetative state that, insure the maintaining of the vital respiratory and cardiac functions, they also involve the abolishing of human relations. More, they impose the expression of medical opinions concerning not just the irreversibility diagnosis of the cerebral functions, but also the expression of the opinion according to which is it humane or not to leave a patient in such a state to die, upon indicating of course the fact of the existence of a clear persuasive evidence in connection to the patient's opposition to artificial life support therapy.

On its turn, the norms included in the *Self DeterminationAct* substantially broaden the rights of the sick person. In 1997, the Supreme Court of Justice of the United States annulled the decisions of three courts of appeal on condemning assisted suicide and thus recognizing the constitutional right of the sick person to choose. During the same year, as consequence of organizing two referendums, in the State of Oregon the assisted suicide was approved in restrictive conditions (the person should be assisted by a physician that prescribed the medication and the person

must administer it by himself). More, countless states in the US apply the *living will*, according to which the testament has a legal statute (Scripcaru et al., 2003, p. 278). This testament concerning life must be signed while two witnesses attended, which are not relatives, possible heirs, or the attending physician. It is not valid for pregnant women that can state in their testament the wish to be kept alive by life-support for the development of the fetus until the due date, followed by ending their life. Still, it can be emphasized the fact that in the United States, the Supreme Federal Court of the State of Massachusetts acknowledging the right of a sick person to refuse treatment, believed that the physician can oppose this will due to reasons connected to the physician comfort of an innocent third person, the wish to protect the ethical integrity of the medical team, or the resolve to hinder suicide and protect human life.

It must be noticed that the European Parliament drafted the Recommendation on the rights of dying persons to die with dignity, stating that, although "technological processes can threaten the fundamental rights of man, also including the right to die with dignity, the person is entitled to be informed on the sickness and treatment for borderline states, as well as to be psychologically prepared for death. And if cerebral death is irreversible, the family can ask in writing to waive the life extension therapies". Subsequently, bioethics recommendations have been drafted for the conscious terminal states, finding that it is the right of the patient to be treated as a living man, to maintain hope, and to be cared for. At the same time, the sick person is entitled "to ask to be released by physical pains, to find him spiritually, not to die alone and, as such, to die in peace and dignity".

Conclusions

Nevertheless, in Romania proposals for *lege ferenda* concerning euthanasia cannot be made in the present day legislative context, although the Penal Code of 1936 referred to this as "killing a person following his repeated unwavering request", because the Romanian Constitution protects the right to life in general, as showed in detail in the first chapter of this paper, the public authorities being bound to protect the privacy, family life, and intimacy. Given this context, *I still believe* that legalizing euthanasia might seem to be useful considering that death seems to be inevitable, and medicine can facilitate it for observing the dignity of the sick person (assisted death). Even if the state has no part in a private life and individual freedom domain, as it is the case of right to die, the individual would thus have the liberty to waive a life of suffering.

My opinion is that, practically, not the right to death should be supported and made legal, but particularly this duty to live should be supported by the state of law. This should take place first by drafting legislation adequate to terminal states that would guide the medical practice concerning them and that would observe the legislative

trends imposed by the countries enumerated above. This legislation would probably prove useful in order to avoid the conflicts between physicians and the relatives of the patient, as well as the medical accountability accusations.

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