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Death with Dignity under the AUPs of the Law

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Abstract: In most developed states, public opinion is crystallized in favor or against euthanasia, but this fact is not reflected in the legislation. A clear and concise legislative framework is an absolutely necessary condition for discussing euthanasia. On one hand, medical personnel must carry out their activity in accordance with the law, on the other hand, the selection of patients who can request such a procedure must be concretely defined.

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Etymologically, the word "euthanasia" comes from the Greek "eu" which means good, happy and "thanatos" witch means death, combining the two words results the word euthanasia which means "easy death", "happy death".

In the "Treaty of Legal Medicine" from 1995 (under the editorship of V. Beliş) euthanasia is defined as "the doctor causing an early, painless death to an incurable patient, in order to end severe or prolonged suffering, in the terminal stage".

The classification of euthanasia includes:

• Voluntary euthanasia - euthanasia at the request or at least with the consent of the patient.

• Involuntary euthanasia - euthanasia against the wishes of a competent person (who can express his will).

• Non-voluntary euthanasia - euthanasia of a non-competent patient, such as people suffering from senile dementia or young children.

• Active euthanasia – the intentional termination of a patient's life by a physician who believes that death is in the patient's best interest.

• Passive euthanasia - ending a patient's life by omission, for example by withdrawing treatment (Hartling, 2021, pp. 27-39).

In most developed states, public opinion is crystallized in favor or against euthanasia, but this fact is not reflected in the legislation. A clear and concise legislative framework is an absolutely necessary condition for discussing euthanasia. On one hand, medical personnel must carry out their activity in accordance with the law, on the other hand, the selection of patients who can request such a procedure must be concretely defined (Cholbi, 2017, pp. 112-145).

In this paper I will analyze the legislative framework in which the euthanasia procedure is carried out in European states where it is legalized and legislated, states where the legislation does not exactly define the terms of this procedure but in which it is practiced as well as states where the euthanasia procedure is declared illegal.

In **Germany**, the issue of euthanasia is regulated by the Criminal Code.

Article 216 is the only one that directly refers to euthanasia, which it calls homicide on demand, and also establishes punishment limits: 'If a person commits a homicide at the express and serious request of the victim, he is liable to imprisonment between 6 months and 5 years".

The German constitution (through art. 1-1 and 2) protects the absolute right to life and the right to self-determination of the individual.

The right to self-determination includes the possibility of stopping the entire therapy upon request, so that, using this right, a terminally ill patient can refuse a treatment that could prolong his life.

The Federal Supreme Court ruled on the right to a dignified death, without suffering and in absolute agreement with the patient's wishes, defining passive euthanasia as follows: "interruption of medical treatment aimed only at prolonging life is legal, even mandatory, if the patient agrees, the suffering is inevitable, the agony has begun and foreseeable death is near," as a consequence of the constitutional right to self-determination. Passive euthanasia is allowed in the form of disconnection from the devices, at the request of the patient.

The Civil Code offered a solution to the situation in which the patient cannot give his consent, through the appointment by a Guardianship Court of a representative, empowered to act on their behalf.

In **Great Britain** euthanasia is not specifically indictable, jurisprudence equates it with voluntary homicide.

Jurisprudence allows access to passive euthanasia to patients able to give consent, but also to those who have expressed their will, prior to cognitive degradation, through a will.

Also, in the case of patients in a vegetative state, food and drink can be "cut off" without the need for legal approvals.

Article 4 of the Homicide Act called "Suicide Pact" allows the classification of involuntary homicide with a lesser penalty, the situation in which a person kills another person following a suicide pact concluded between them, with freely expressed consent.

The House of Lords ruled on the suspension of feeding and artificial hydration of a patient who has been in a vegetative state for approximately 5 years, following an accident on a football field.

The debates on this case led to the statement of the great principles that are imposed on all those who face the issue of euthanasia:

1. Administration of a lethal substance is strictly prohibited;

2. Patients have the fundamental right to refuse a treatment, even if this fact leads to their death;

In 2021, **Spain** became the 4th country in Europe and the 6th in the world to allow active euthanasia.

The law involves a ten-day cooling-off period and the opinion of an independent review board made up of doctors and lawyers, which should set

a minimum period of one month for any euthanasia request to be effective. This can be done in a public or private hospital or at home.

According to the law, the request must be made in writing and repeated after 15 days. It will have to be accepted successively by two doctors and then examined by an independent evaluation committee, made up of doctors and lawyers, which should set a minimum period of one month for any euthanasia request to be effective. Doctors can refuse to take part in euthanasia, invoking conscientious objection. Euthanasia can be performed in a public or private hospital or at home.

The issue of euthanasia has long attracted the attention of public opinion in Spain, a country with one of the highest life expectancies in the world. The debate intensified especially after the death of Ramon Sampedro, who became a quadriplegic at the age of 25 and who then demanded the right to euthanasia in court for 29 years. After the crime expired, one of her friends admitted to the court that she had participated in Ramon's assisted suicide.

Luxembourg - Since 2009, it has become the third country in the European Union, after the Netherlands and Belgium, to legalize euthanasia for those suffering from terminal illnesses, provided that the patient's option is validated by two doctors and a commission.

According to the law, a doctor who responds to a request for euthanasia or suicide assistance cannot be sanctioned criminally or civilly.

In **Belgium**, the legal framework regarding euthanasia is much more defined, euthanasia being legalized since September 2002. The euthanasia law protects from a legal point of view the medical staff that performs euthanasia at patient's request (Jones, 2017).

The patient must be an adult or an emancipated minor, in compliance with all substantive and criminal procedure conditions. The entry into force of the euthanasia law did not change the Criminal Code.

From the point of view of Belgian law, euthanasia is: "an act practiced by a third party, which intentionally ends the life of a person, at his request".

The law stipulates a series of conditions regarding the patient, which must be respected:

- to be capable and aware;
- to formulate the request in a "voluntary, thoughtful manner and repeated" manner and
- not to be constrained by anything;

- to be in a serious medical situation, without a therapeutic solution, generated by an organic, definite pathology that causes unbearable suffering, difficult or impossible to alleviate, and regardless of whether this suffering is the consequence of an unprovoked (natural) condition or an accident (Jones, 2017).

The patient's request must be made in writing, the document being drawn up, dated and signed by hand. In the situation where the patient is not able to write, the request is made in the presence of the doctor, by an adult, without material interests following the patient's death. So the medical file will include all the documents related to the evolution of the disease as well as the request for euthanasia.

The patient can change his mind at any time, which will result in the cancellation of the request. Before making the decision, the doctor is obliged to explain to the patient as detailed and comprehensible all the information regarding his state of health, the life expectancy generated by that specific pathology, therapeutic options, evolutionary possibilities and prognosis. The patient must "be convinced that there is no other reasonable solution in this situation and that the request is absolutely voluntary" (Jones, 2017).

The doctor performing the act of euthanasia must request opinions:

- To another doctor, independent, specialist in the patient's pathology, who prepares a report from which the basic conditions related to the patient's condition are fulfilled;
- The team that cares for the patient (nurses, assistants, doctors);
- The close relatives of the patient, designated by him.

As a measure of retrospective control it is stated by the law the doctor's obligation to send a detailed report of the procedure to the Federal Control and Evaluation Commission, within 4 days. The commission has 2 months to rule on compliance with all legal regulations, and if mistakes are found, the commission can decide by a qualified majority (2/3) to notify the Public Ministry and criminalize the act.

On the 1st of April 2002, the euthanasia law came into force in the **Netherlands**.

This assumes that physician-assisted euthanasia and suicide are not punishable if the physician acts according to the criteria of diligence.

The due diligence criteria refers to the patient's request, (his suffering), the information provided to the patient, the absence of reasonable therapeutic alternatives, the request for the opinion of another doctor and the method chosen to end life. The law requires doctors to report the act of euthanasia to a medical review board (Cholbi, 2017).

The legal debate on euthanasia in the Netherlands began with the "Postma Case" in 1973. The "Postma Case" refers to a doctor who facilitated the death of his mother following her repeated and explicit requests for euthanasia. The doctor was convicted, and during trial, the court also established the criteria under which a doctor is not required to keep a patient alive against his will.

Current legislation allows the medical review board to suspend prosecution for doctors who have performed euthanasia when each of the following conditions are met:

- the patient's suffering is unbearable, with no prospect of improvement
- the patient's request for euthanasia must be voluntary and persist over time (the request cannot be accepted when under the influence of other people, mental illnesses or drugs)
- the patient must be fully aware of his condition, prospects and options
- at least one other independent doctor must confirm the conditions mentioned above
- the death must be performed in a medically appropriate manner by the doctor or patient, and the doctor must be present
- the patient is at least 12 years old (patients between 12 and 16 years old require parental consent)
- the doctor must report the cause of death to the general prosecutor according to the relevant provisions of the Law on burial and cremation.
- a regional evaluation committee evaluates whether a case of euthanasia or assisted suicide meets the criteria of due care. Depending on its findings, the case will either be closed or, if the conditions are not met, brought to the attention of the prosecutor (Hartling, 2021).

Currently, euthanasia is practiced every year on more than 4,000 patients, mainly terminal cancer patients, as well as, increasing in number, severe Alzheimer's disease patients. The first euthanasia performed on a patient with Alzheimer's disease took place in the Netherlands in 2011.

Currently, a third of legitimate requests are honored by doctors. A Dutch doctor faces a genuine request about once every three years.

Romania

Both euthanasia and assisted suicide are illegal under Romanian law. The deontological code of the Romanian College of Physicians specifies the following:

- art. 23 - "The doctor must try to reduce the suffering of the terminally ill patient, ensuring the dignity of the dying person, but in no case has the right to deliberately cause his death, an act that constitutes a crime, even if he was persistently requested by a perfectly conscious patient".

- art. 24 - "Euthanasia is absolutely prohibited, i.e. the use of substances or means capable of causing the death of a patient, regardless of the severity and prognosis of the disease".

art.28 - "The doctor will not facilitate suicides or self-poisoning by giving advice, recommendations, lending instruments, offering poisons, etc. The doctor will refuse any explanation or help".

It is noted that, in Romania, active or passive, direct or indirect euthanasia is prohibited, as well as assisted euthanasia, but it is specified that the dignity of the dying must be ensured.

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