THE RIGHT TO A DIGNIFIED DEATH- EUTHANASIA BETWEEN ACCEPT AND DECLINE

Lavinia ȚUȚU*

Abstract

Euthanasia *refers to the practice of ending a life in a manner which relieves pain and suffering. The word "euthanasia" comes from the Greek -- "eu" meaning "goodly or well" + "thanatos" meaning "death." So, euthanasia is literally the "good death." Euthanasia is categorized in different ways, which include voluntary, non-voluntary, or involuntary and active or passive. Euthanasia is usually used to refer to active euthanasia, and in this sense, euthanasia is usually considered to be criminal homicide, but voluntary, passive euthanasia is widely non-criminal. "Euthanasia's" original meaning introduced the idea of a "rightful death"."Active euthanasia" is taking specific steps to cause the patient's death, such as injecting the patient with poison. In practice, this is usually an overdose of pain-killers or sleeping pills. "Passive euthanasia" is usually defined as withdrawing medical treatment with the deliberate intention of causing the patient's death. "Voluntary euthanasia" is when the patient requests that action be taken to end his life, or that life-saving treatment be stopped, with full knowledge that this will lead to his death.Involuntary euthanasia is when a patient s life is ended without the patient s knowledge and concent.in this case the patient is unconscious, unable to communicate, or is too sick and weak to be aware of what is happening or to take any action on his own behalf.*

Keywords:

Euthanasia, Active euthanasia, Passive euthanasia, Voluntary euthanasia Involuntary euthanasia, Assisted suicide

* Student, 3rd Year, Faculty of Law, "Pentre Andrei" University, Iassy.

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Seneca in "Letters towards Luciliu" claimed in the seventh letter the human right to die: it`s a misfortune to live because you have to, but it`s not realy necessary to live of necessity. Thank Gods that no man can`t be held to live. He can trample necessity. Eternal law has not made anything better than to allow human only one possibility to going in fife, but countless to get aut of it. Seneca has not only claimed the right to die, but he also applied it on him, when his former pupil- emperor Nero- accused him of conspiracy. Seneca committed suicie by cutting his wrists in the bathroom. Human society taked as commitment, after the two world wars to be an eternal defender of human beings, worshiping the right to life to the point where he was idolized. Everyone was aware that what happened in the first half of 20 th century should not happen anymore. Suddenly, emerged in human consciousness more than ever a fundamental need to protect the right to life. Thus on December the tenth 1948 , United Nations General Assembly set up the international promotion and protection of human rights, right to life proclaimed in the third article of the universal Declaration of Human Rights provides that every human being has the right to live, to liberty and to his one security. Provisions that established international protection of the right to live once again stressed the importance of this right in the International Pact regarding civil and political rights, which provides in the sixth article that: right to life is inherent to human.the right must be protected by law. No one can`t be deprived of his life arbitraly.

At the opposite side of defending life is the right to death. Every time when euthanasia whas put into debate, it leadit to philosophical, religious, medical, sociological, legal controversy, putting practically into question the etent to which protection of the right to life should be exercised. Some authors, based on the idea that suicide is a right of every individual argued that anyone can send another person the right to take his life. In the last century was born a stream called „the law of death" who claimed for each individual, the right to claim to be saved from death torments. Legislature despite the new needs imposed by the society did not accepted this right law, showing an understandable caution in the permission of a person demanding to suppress his life, no matter how justified such an demand would be seemed. Among criminal laws which consecrated unpunishing the murder by request we could mention only Russia`s from 1926. This solution has been positively appreciated by some authors who militated to recognize the right of every person to decide on his own life. Likewise authors like K. Binding and A. Hoche in 1920 supported the legalization of euthanasia. They wanted to demonstrate that inhuman is not euthanasia procedure itself or its legalization, but rather order the pacient to die in agony, if it is possible to get rid of this torments by accelerating the process of ending a life.

K. Binding and A. Hoche had even suggested establishing a special commission composed by doctors and lawyers that would decide which cases were truly desperate and which one could be tolerated by patient. By desperate

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cases they understand, first of all people affected by a serious mental illness and, as a result of accidents they lost their consciousness. In the interwar Germany was introduced in Parliament a bill that provided for the person ho want to die, can address herself to the Court which based an a medical examination that proved the necessity of the request to authorize a doctor to help the pacient die in some way. Instead proposal was only in draft. In the Netherland, after years of public and medical discussions, there was adopted a law regarding the right to die whith dignity, providing harsh reactions, especially from Vatican, which raised the charge of „Nazi State". (Cioclei, (2007) :32)

In great pain, in monstrous pain, to die does mean anything, it is so natural that you can not descend to the level of such triviality. (Emil Cioran)

Euthanasia, etymologicaly, in greek means good death, quiet, smooth, serene, dignified. In legal doctrine, euthanasia is defined as murder committed under the impulse of a feeling of mercy to end physical torture of a person suffering from an incurable disease, whose death is inevitable in this case. Forensics specialists define euthanasia as a serie of medical actions or inactions based an a moral and legal foundation, being in the intrest of the pacient, meaning that could short pacient`s sufferings, which in this moment, medicaly speaking does not benefit of a treatment, but rather the end of life is near.

Active euthanasia occurs as a result of repeated requests and a long reflection of a patient and consists in the perpetrading some acts that bring death by using various methods such as the decommissioning of a device that sustain life, using an overdose drugs such as morphine (drug extracted from opium, able to calm the intense pain by acting on central nervous system). It was told that euthanasia is distinguished from assisted suicide, in this case a doctor or other healthcare professional helps the patient to commit suicide, at the repeated request and profound analysed situation, but the doctor does not interfere directly. Despite this distinction, the difference between euthanasia and assisted suicide is not really significant, this two actions are often treated as a single concept, namely- euthanasia.

Romanian law is strongly situated at the position of punising murder even in the conditions of euthanasia. Romanian criminal code from 1936 incriminated different the killing of a person as a result of strongly and repeated request or underneath a mercy feelling to stop torments of a dying patient (article 468, paragraph 1 and 3).

In other countries although the acts of euthanasia were not related to assassinate or murder, they were punished; for a milder punishment of the murder that was committed in these circumstances was required that pleadings were made by a victim completely conscious to be serious and persevering (that is insistently made) , repeated (to point that the pacitient`s decision persists) which excludes a decision made hastily, in a moment of despair. V.V. Stanciu

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argued that elements of a genuine euthanasia is: an incurable disease with fatal outcome, atrocious suffering, repeated demanding of the patient who asks for death as a liberation. Same author argues that even when all these elements are combined, a mercy killing is not a supporting fact in none of the laws of civilized countries. What makes us to decide which society is civilized and which not? Is it more civilized of our side to let a man on the verge of despair and suffering on the hospital bed, and to provide him only our regrets that we can not improve his pain, arguing that no civilized society would sent his fellows to death? Do we think that we may commiting a sin which in God's eyes is unforgivable? Or in many other cases, some of us believe that man must carry on alone his pain until the end, that somehow it might be a divine punishment at the middle. The society prefers to be superstitious, and even neutral in such matters, it shows that sometimes behaves selfish like an immature child, uninterested in other`s problems.

Goethe said that the most pleasant societies are those in wich rules between members a mutual respect. I do not think you respect more the human being if you let her to kneel more than needed to death. Romanian legislation does not allow euthanasia.

Criminal Code provides in art. 179, par. (1): The act of suicide induce or facilitate by a person, whether suicide or attempted suicide took place, shall be punished with imprisonment for 2-7 years, and paragraph (2) states: When the act provided in the preceding paragraph was committed against a minor or to a person who was not able to realize his act or acts could not be taked with conscious, punishment is imprisonment from 3-10 years.

However, Law No. 46 of 21 January 2003 on patient rights states: The patient has the right to refuse or stop medical intervention, assuming responsibility for its decision in writing, the consequences of refusal or stoping medical acts must be explained to the patient. This article indirectly law governing the right to die, the patien`s decision can be regarded as an act of suicide, because by its refusal, in terms of medical intervention can cause death. Regarding the application of law, neither her could be applied the same in solving the trials of mercy killing, the courts consider these acts as murder, however, there were some exceptions. In some European countries and the Americas, there have been cases in which courts have rendered verdicts of acquittal of the defendants for acts of mercy killing or murder committed on request. An example of this kind we have the case of Dr. Herman Sander, who practiced his profession in the U.S. of New Hampshire and has been accused of killing, by injecting air into the blood vessels of a woman with cancer, whose end was inevitable, but suffered terribly, and the administration of painkillers had no effect at this stage of the disease. Dr. Sander said that he committed the act to end the suffering of the patient and at the request of the deceased husband, he recognized as a violation of law, but morally does not believe he committed a reprehensible act. To the acquited doctor was stoped his right to

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practice medicine on the ground that has not complied with moral and legal obligations arising from the medical profession. (Conachi, Selaru, Donciu, (2007) : 206-213).

I will never prescribe a lethal substance effects, even if I am asked, nor will give any advice in this regard Hippocratic oath)

The Hippocratic Oath is still sworned by doctors who begin their careers in this profession, but I do not know how many people are aware that such an oath isif not useless at least, superannuated whith nearly 2,000 years (Hippocrates lived between 460-370 BC), therefore wath application has this text to current conditions in which medicine has clearly shifted from cures and herbal treatments to open heart surgery or bone marrow transplants? With the development of medicine, changes have occurred in relation to diseases. They came to multiply in an alarming rate, have become more resistant to treatments, can come back, some of them may be transmitted more easily, while others have not yet cure. Certain diseases dehumanizes creating from a perfectly normal person a vegetable like in the case of amyotrophic lateral sclerosis. This is a progressive, disabling, fatal diseas. Walking, talking, eating, swallowing and other basic functions become more difficult over time. These conditions can cause various damage, disease and further complications. Another disease that does not forgive is cancer, especially if it is terminal does not give hopes to life to the patient. Perhaps more painful than cancer could be his treatment- chemotherapy that can have side effects that interfere with daily activities of people diagnosed with the disease. Such effects may include: changes in blood formula, and vomitisme, nausea, hair loss, fatigue.

Ethic Code of the Medical College of Romania states that doctor should try to reduce suffering of incurable patients, ensuring the dignity of dying, but has not in any way the right to cause him death deliberately , this is a criminal act, even if it was demanded by patient fully aware of the consequences of his wishes. There is a ground for concern about this issue because Euthanasia, initially intended for certain groups such as patients with terminal illness, is likely to be used sooner or later and for other patient groups such as elderly people, disabled patients, patients with emotional distress, the infirm and even children and newborn babies with birth defects.

People who disagree with euthanasia argue that there is no guarantee that one day a doctor or any other person shall practice euthanasia and other considerations than those of compassion. It also argues that until we will be able to establish an effective control over the practice of euthanasia is more prudent to be held outside the law. It is possible that a change in the law lead to a devaluing of human life, especially for the vulnerable members of society? Euthanasia would exert enormous pressure on people with disabilities, elderly, terminally ill? It is true that human beings are sometimes easily influenced,

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especially when the majority exercise pressure on the minority, but I don`t think that the society would have the nerve to decide which members may and do not deserve to live. In this case, it is important the patient`s point of view, if he believes that he could handle or not to suffer

*„Euthanasia, once accepted, is uncontrollable for philosophical, rational and practical reasons. Patients will die without and against their wish that if such legislation would be introduced."(*Declaration of the British Association for Palliative Medicine and the National Council for Hospice and Palliative Care Services Specialist declaration against proposals to legalize euthanasia and PAS site, 2003).

Euthanasia and assisted suicide - problems involved in the euthanasia procedure.

One of the main arguments in favor of euthanasia and assisted suicide is that it gives patient`s a "good death". However, dutch research shows the presence of complications occurring quite often in the euthanasia procedure or assisted suicide. Instead of dying quickly, for some of the patients took several days to die. Although dutch doctors have the longest experience with euthanasia than any other country, however, negative effects occur: 18% of cases where patients have turned to assisted suicide the doctor had to interfere and kill the patient. The reasons for this were that the patient awoke from coma, or difficulty swallowing oral medication, vomited or fell asleep before taking all medication. In addition, in almost half the cases started with SAM (assisted suicide), the patient did not die quickly so that the doctor had to interfere. While the patient was plened to die in half an hour after taking the lethal drugs, 19% of patients took them 45 minutes to 7 days to die. (Groenewoud JH and others, medical problems regarding the procedure of euthanasia and assisted suicide in medical magazine in New England, 2000, 342: 551-6).

Basically the problem here is the doctor`s intefering, although he provides cluesabout the entire procedure and offers indications to the patient how to do it by putting him at disposal lethal drugs, it happens that not all things take place as it should be . A study in the Netherlands show that in 1990 there were 2300 cases of euthanasia and assisted suicide, 400 cases (1.8% and 0.3% of all deaths). And the demand was three times higher but either pacients have given up or doctors did not interfere. In most cases of euthanasia and assisted suicide, patients were in terminal stage of disease, three quarters of patients suffering from cancer. The dynamic of euthanasia in the Netherlands has evolved from a total of 84 cases in 1986, risins to 454 in 1990 and 1322 in 1992.

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The medical Triumph

Once the disease appears serious the medic used to send him to hospital.. Surgical advances have resulted in the appearance of resuscitation procedures, mitigation or suppression of suffering and nerve sensitivity.These procedures were not applied just before, during or after surgery, they were extended to all the agonies, to make tolerably suffering. Hospital is not therefore simply a place where the sick are healed or die because of therapeutic failure, but is the place of normal, expected and accepted death by medical personnel. Time of death was prolonged and was also subdivided. The old symptoms such as heart and breathing shut-down, are not enough any more. Time of death is extended in accordance with doctor`s perception regardind the surviving chanses of patient:he can`t it can suppress death but can adjust the duration, from several hours to several days, weeks, months or even years. (Aries, (1996) :397-402).

In some countries, the time of death depends on the agreement between family and hospital eventualy justice or doctor`s decision: the dying person, who are already accustomed to leave himself on account of close relatives gradually abdicated giving discretionary powers to family regarding the agony and death. The family, in turn, freed herself from this responsibility by appealing to the only person in the possession of secrets in suffering and medical health. Decision of dying-no longer belongs to the dying person, initially iresposible neither to the family convinced of his inability. It is settled and organized by a bureaucracy which, although competent and humanitarian, treats death as something that must disturb as little as possible the family; Society in its wisdom, has created an effective means of protection against the daily tragedy of death, to be able to continue their activities without emotions or obstacles. (S. Levi and NAScoth).

Today no one is really concerned about his own death. But the popular image of the dying person, overwhelmed by tubes and breathing artificialy begins to pierce the prohibitions armor and shatter a long paralyzed sensitiveness.

The opinion of the Church

The church has a ferme stance of non-acceptance of euthanasia. The Catholic Church published the Declaration on Euthanasia of the Congregation for the Doctrine stating that nothing and no one can authorize the killing of innocent human beings, either fetus or embryo, child or adult, old, ill or incurable in agony. In addition, no one can not ask for this gesture omicid himself or for another that has his custody, nor consent to it explicitly or implicitly. No authority can legitimately impose it or allow it, for it is a violation

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of divine law, an offense to human dignity, a crime against life, an attack against humanity.

It may happen that the prolonged and unbearable pain, emotional reasons, or various other reason to believe that anyone can legitimately ask death or to procure others. Although personal responsibility in these cases can be reduced or even to subsist, however misjudgment of consciousness - and perhaps in good faith - do not change the nature of the omicid act, which itself remains forever inadmissible. Pleading for the very seriously ill, which sometimes require death should not be understood as an expression of a genuine will to euthanasia, in fact they are almost always full of distress calls for help and affection. Besides medical care, the patient needs love, human warmth with which it can and should surround all those who are close, parents and children, doctors and nurses.

Death does not always occurs in dramatic circumstances at the end of unbearable suffering. We must not think only in extreme cases. Numerous testimonies inconsistent leaving us to think that nature itself has provided easier path to lift off death who would be terribly painful for a man in full health. But we must recognize that death, often preceded or accompanied by cruel and prolonged suffering, remains in a natural way unsettling to the human heart.

Physical pain is certainly an unavoidable element for the human condition; biologically it is a warning whose utility is indisputable, but as it reaches the human psychological life, he often outruns its biological usefulness and thus can acquire such a size as to arouse desire to eliminate it with any price

According to Christian teaching, the pain, especially that of the last moments of life, acquires a special significance in God`s plan and in fact is a participation in Christ suffering and union with the redeeming sacrifice which he offered as obedience to the Father. Therefore it should not surprise us that some Christians wants to moderate the use of analgesics, to accept voluntarily at least part of their sufferings and thus associate to the sufferings of Christ crucified. There would however be prudent to not impose a certain behavior as a general heroic behaviour. At the contrary, human and Christian prudence suggest for most patients to use drugs to be able to relieve or remove the pain, even though there may arise as side effects numbness or to be less lucid. Regarding those who are unable to speak, can logically be assumed that such persons want to take this drugs and to be administered by doctor`s advice.

But the intensive use of painkillers is not without difficulties, because the phenomenon of habit usually requires increased doses to maintain efficiency. It should be remembered a statement by Pius XII, which retains all its validity. A group of doctors have asked the following question „elimination of pain and consciousness by narcotics ... is permitted by religion and morals for doctor and patient (even if death is near and provides that the use of narcotic drugs shorten life)? Pope replied: If no other meansare possible and that in this circumstances, does not prevent the fulfillment of other religious and moral duties: yes. In this

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case, in fact, it is clear that death is not willed or in greate demand in any way, is intended only to relieve pain effectively, using for this purpose those painkillers available in medicine.

The painkillers that produce loss of consciousness to sick persons deserves special consideration. In fact it is very important that people not only can fulfill their moral duties and family obligations, but rather to prepare fully conscious to the encounter with Christ. So Pius XII warns that „it is illicit to deprive the dying of self-consciousness without a serious reason."

The theologically opinion on the right to die as a right correlative with right to life, was expressed by J. Breck, saying„ beyond a certain point, physical pain or psychic suffering can overcome the will and defeat the best intentions of heart. Many have experienced this pain, just as a dehumanizing, leaving them hopeless and oppressed by the thought only of their own miserable condition." Therefore, it requires of human understanding compassion, logical and rational, that de suffering does not have the role of redemptive sin and such an idea should not be imposed. Pope Paul VI, in his message in 1970 to the International Federation of Catholic Medics, said, in many cases would not be an useless torture to impose vegetative reviving in the last phase of a terminal illness? The doctor`s duty is, rather, to try smoothening the sufferings, instead of extending as much as possible, by any means, a life that it`s not really human and bound to its natural outcome."[1]

The right to life is the first of human rights, the supreme value on the internationally scale of human rights. Also, the European Court of Human Rights, after stating that right to life is one of the fundamental values of democratic societies which form the Council of Europe, it recognized his pre-emption in the council provisions wich he consider them as a priority, underlying principle of the sanctity of life protected by the Convention".

Respecting the right to life is the necessary condition to exercise all other rights. According to conventional texts, the right to life must be protected by law. This means not only that the State refrain from taking life intentionally but also that he should take the necessary measures to protect life.

Supported by some, disputed by others, euthanasia certainly raises many questions and issues that will require time and deep thinging on the value of life and death for their solution. It`s so easy to talk when we look over the verge when we are not directly affected by such tragedy. Only the dying or affected by a disease and their families can fully understand the suffering that they must endure. No matter how you look at it, death is never dignified, we all kneel before her, but at least we could show that has a human face however paradoxical that statement may sound.

[1] www.catholica.ro

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References:

Treaties, courses and monographies

Cioclei, V. (2007). *Manual de criminologie*, C.H.Beck, Bucuresti.
Donciu, M., D., Selaru, M., Conachi, S., (2007). *Note despre suicit si eutanasie,* Timpul, Iasi.
Aries, P. (1996). *Omul în fata mortii*, EMeridiane, Bucuresti.

Webography:

www.catholica.ro

TUTU, L., (2010) THE RIGHT TO A DIGNIFIED DEATH- EUTHANASIA BETWEEN ACCEPT AND DECLINE in Jurnalul de Studii Juridice, Anul V, Nr. 3-4/2010