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The Right to Life versus the Right to Die

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Abstract: Considered a current topical the euthanasia, or under other names such as medically assisted suicide, or death with dignity, is a procedure that ensures the death of people suffering from incurable diseases and who over time are subject to degrading suffering.
Recognition of a right to death is considered to be a delicate matter, susceptible to a multidisciplinary approach, with social, legal, moral, religious aspects.
Although euthanasia or medically assisted suicide is legalized in many countries, it practically calls into question the extent to which the protection of the right to life must be exercised.
Paradoxically, the very right to life - an essential principle, constituting the indispensable condition for exercising the other guaranteed rights, does not enjoy the establishment of well-defined borders.
This paper is a summary of this phenomenon, which is growing, motivated mainly by the care and protection that must be given to the individual, regardless of his condition.

Keywords: *euthanasia, medically assisted suicide, homicide, right to life, right to die, death with dignity*

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I. Introduction

Accepting the existence of a right to death in the context in which international norms aim at the right to life being an absolute and inseparable right, requires access to normative measures that identify, without the exercise of abuses, access to this right. Euthanasia is a "crime of murder" for reasons of compassion and pity for a suffering individual.

The act of ending life from a legal perspective must have a normative aspect, which imposes conditions and rules that allow the person in need to access with peace of mind and knowledge, euthanasia.

II. The right to life and its implications

Considered a primordial right, the right to life is enshrined in a multitude of legal acts both in the national and international space. Protecting the right to life through domestic and international rules is imperative and a necessity because it is a fundamental attribute of the person whose protection connects many more personal rights such as a right to protection of physical or mental integrity, the right to health, integrity etc.

As we have pointed out, the protection of the right to life finds its consecration in a wide range of branches of law within the legal system, such as a criminal law or a civil law through the institution of the natural person, or human rights.

Thus in art. 3 of the Universal Declaration of Human Rights states that "everyone has the right to life, liberty and security of person". Another legal support that pays special attention to the right to life is the International Covenant on Civil and Political Rights by art. 6 states that "every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

The European Convention on Human Rights guarantees the right to life of every person, but also regulates the cases in which this right may be infringed. Thus, Article 1 of the Convention states that "everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law". As a support to strengthen this statement is Article 2 of the Convention stating that "deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary" recourse to force. Thus, the normative act imposes several situations against which art. 2 of the Convention is justified:

a. To ensure the protection of any person against legal violence;

b. To make a lawful arrest or to prevent the escape of a lawfully detained person;

c. To repress in law any disturbances of public order or even the existence of an insurrection.

International acts have motivated national states that the obligation to protect and guarantee the right to life be fulfilled within a legal framework, a fact materialized by their adoption of criminal rules.

The obligation imposed by international acts on national law is in fact intended to provide a legal framework for the protection of the right to life, which would discourage the annihilation of that right. Moreover, international law also suggests the establishment of procedures for the application of criminal law that do not allow abuses by state authorities or any individual with intent to violate this right.

The Romanian Constitution through art. 22 paragraph 1 mentions that "the right to life as well as the right to physical and mental integrity of the person are guaranteed". Regarding the situations in which the intentional occurrence of the death of a person is allowed, the Romanian legislation currently excludes the execution of a capital sentence pronounced by a court, as the death penalty has been abrogated. More, art. 22 para. 3 of the Constitution prohibits the death penalty.

As such, the right to life is a guaranteed right that does not suffer harm, this being sanctioned.

Although protected by a wide range of normative acts, the right to life with adjacent implications is limited to the "right to die", a phenomenon that is defined as euthanasia.

III. Euthanasia – or the death – conditions regarding the incidence of Crimona norms

Terminologically, the word euthanasia comes from the union of two Greek words, namely the word "eu" which translates as "well, good" and "thanatos" which means "death". Moreover, the expression Thanatos, in the ancient Greeks is found in the name of the god of death. The first attestation of the term te eutanasie is found in the work "The Lives of the Twelve Caesars" by the Latin historian Suetonius (1998, p. 19). As a first application of the euthanasia procedure we find it displayed in Roman history, the Roman emperor Hadrian (76 AD - 138 AD) asked his doctor Hermogenes to resort to euthanasia.

In the work "The New Organon", the author F. R. Bacon (1620), opens the subject on the types of death from a philosophical perspective and is considered the creator of the term euthanasia.

As such, euthanasia is a deliberate act of ending a patient's life with the intention of ending his or her suffering. Another paradigm of this procedure is the medically stopped suicide, a distinct euthanasia procedure that is based on self-inducing the death of a patient with the direct help of a doctor.

The legalization of euthanasia has led to wide debates not only from a moral, social, medical, religious point of view but primarily from a legal point of view, because there is an interference between the right to life enshrined in many branches of law and the established right to death only from a criminal perspective in terms of the crime of murder.

Euthanasia is a complex issue that is placed at the confluence of life and death, between free will and religious canons, between therapy and deliberate medical intervention in order to cause the death of the patient (Marty, 2004, p. 3).

Euthanasia or committing murder in the name of the patient's compassion means provoking the death of the person with his consent. The problem arises only in patients with end-stage disease (Pivniceru & Dascalescu, 2004, p. 90).

There are currently three trends in euthanasia:

a. *Vitalism* - according to which biological life must be maintained at any cost and by any techniques. This current is based on a form of biological idolatry that places the abstract value of physical existence above the personal needs and final destiny of the patient (Breck, 2001, p. 257).

b. *Dignified death* - which refers to patients in agony, they must be allowed to choose how they want to die with dignity. In this situation, the patient must be guaranteed the freedom to decide on the treatment of the disease that should be in the terminal stage, to be given solidarity and compassion, to be administered a treatment that takes into account the relief of suffering, also mental, which due to the severity of the disease put him in a state of dehumanization, the goal being that the patient dies with maximum consciousness and minimal physical pain.

c. *Acceleration of the death process* - is the process that is based on the withdrawal or cessation of life support systems at a certain point in the treatment, a fully moral fact thus allowing the patient to die a natural death.

From a Romanian historical perspective - the phenomenon of euthanasia was sanctioned starting with the Transylvanian Criminal Code art.282, which provided that "*he who by determined and serious desire of a person,*

was determined to kill her, will be punished with imprisonment for up to 3 years. The penalty of imprisonment between 3 and 8 years shall also apply to the person who causes another to commit suicide or strengthens his decision to commit suicide or facilitates his execution in any way, if the suicide took place."

The criminal code from the time of Carol II, 1936, through art.468 par. (1), states that "he who kills a man as a result of his insistent and repeated request, commits the crime of murder at the request and is punished with severe imprisonment from 3 to 8 years; according to par. (3)", of the same article "*the punishment is the correctional imprisonment from 1 to 5 years, when the deed was committed under the conditions of the previous paragraphs, under the impulse of a feeling of pity, to end the physical torments of a person suffering from a an incurable disease whose death was inevitable.*"

As a result of the criminal texts in the view of the legislator of 1936, euthanasia and assisted suicide were provided as mitigating variants of the crime of murder, with minor sanctions, compared to the sanction of art. 463, namely the crime of murder which provided a penalty of 25 years of forced labour.

The Criminal Code of 1968 no longer provides for the mitigating act of murder at the request of the victim, incriminating only the crimes (art. 174-176) of simple, qualified and particularly serious murder and the act of determining or facilitating suicide (art. 179).

The new Criminal Code – Law no. 287 / 2009 provides for the crime of killing at the request of the victim, as an attenuated form of murder, thus rewriting the regulation not only in line with the existing tradition in our law (art.468 Criminal Code of 1936), but also in the tradition most European codes.

Respective para. 216 German Penal Code, para. 77 Austrian Penal Code, art. 143 paragraph (4) of the Spanish Criminal Code, art. 134 Portuguese Penal Code, art. 114 Swiss Criminal Code, para. 235 The Norwegian Criminal Code being considered as an attenuated form of murder, as a result of the new regime of mitigating circumstances enshrined in the General Part of the New Criminal Code in question. Regarding *the determination or facilitation of suicide*, the regulation was based on the differences between the act committed and the attempt, this being close as a description with the provisions of Article 580 of the Italian Criminal Code, art. 135 Portuguese Criminal Code and paragraph 235 of the Norwegian Criminal Code.

It is noteworthy that both crimes are studied from the perspective of the necessary, related to the state of terminal illness, in this regard euthanasia is viewed from a passive and active perspective.

According to art. 190 of the Penal Code, the crime of *killing at the request of the victim consists in the explicit, serious, conscious and repeated killing of the victim who was suffering from an incurable disease or a serious illness medically attested, causing permanent and unbearable suffering*, and shall be punished by imprisonment from one to five years.

The special passive subject within the crime is a natural person suffering from an incurable disease, an infirmity, causing permanent suffering. Both illness and suffering must be medically attested.

In order to invoke the crime, a series of essential requirements related to the conduct of the subject must be met.

1. Conditions regarding the patient's request

- He must constantly show his will to suppress his life;
- The request must be serious;
- The request must be aware of the victim, he must know the consequences of his request;
- The request should be repeated, reiterating the permanent request, so that the reason is permanent and constant, reflecting the victim's decision.

2. Conditions regarding the condition of the victim

- The victim suffers from a medically certified illness or infirmity;
- The disease is incurable or the disability is irreversible, being impossible to improve the victim's condition by any medical means;
- The illness / infirmity causes permanent and unbearable physical or mental suffering.

If the concrete deed is not typical in the sense of fulfilling all the conditions provided in the incrimination norm, it will be qualified as murder (art. 188 Penal Code) or qualified murder (art. 189 Penal Code).

Although euthanasia can also be passive, and in terms of the material element, the killing activity can also be committed by inaction, the doctor who no longer administers a drug (the case of Lambert and others against France ECHR (C-46043/14), ECHR) that has the effect of prolonging a patient's life or no longer performs a resuscitation procedure, will answer penal for committing the crime of murder at the request of the victim if the other conditions regarding the conduct and condition of the passive subject are met.

If the doctor's action is not a direct one, at the repeated request of the incurable patient suffering by providing information on how he can commit a suicidal act (eg shows him how to stop a medical device or explains the effects of a substance and how he can procure it), and the patient tries or succeeds in committing the suicidal act, the doctor will

answer as the perpetrator of the crime of determining or facilitating suicide (art. 191 Penal Code).

As can be seen, the initiation of the euthanasia procedure involves a series of imperative conditions, so that the doctor's action does not fall under the criminal norms that sanction the crime of murder.

In essence, another main element is the consent of the victim, which according to art.22 Penal Code, the consent of the injured person is a justifying cause, aiming to remove the illegality of the deed, ie its contradiction with the rule of law.

The consent of the injured person was provided as a justifying cause, according to the model of other legislations (art. 50 Italian Penal Code, Art. 38 Portuguese Penal code, etc.).

The consent will not have effect in the case of crimes against life, in which case the law expressly excludes its justifying value.

However, regarding the content of the crime of murder at the request of the victim, we note that the victim's consent, repeatedly expressed, is a positive condition in the content of the criminalization rule, its existence practically depending on the criminalization of the act. The presence of the victim's consent with all the characteristics of his request for the suppression of his own life (explicit, serious, repeated, and conscious) determines the typicality of the concrete deed. The removal of this element - consent - requires another legal qualification of the deed - murder or aggravated murder.

Globally, the phenomenon has been adopted by concrete regulations in some states. In 2014, euthanasia is legal only in the Netherlands, Belgium and Luxembourg ("Belgium euthanasia", n.d.), Estonia, Albania, Washington, Oregon and Montana (Macleod, 2011, p. 209) in the United States, and since 2015, the Canadian province of Quebec ("Quebec end-of-life-care", 2014).

Globally, euthanasia has been criminalized in Mexico, Thailand, Estonia, the Northern Australian State, and American State of California (IOM, 2013).

Killing at the request of the victim or euthanasia worldwide has several ways, namely voluntary and involuntary. If the voluntary method is adopted by a number of states and operates under legal regulations, the involuntary method is considered illegal in all states of the world.

Regarding this procedure, we can say that it created various controversies by the fact that there were supporters who vehemently oppose this procedure, on the grounds that life is divine or that the right to life is an absolute right and groups or associations of doctors who strongly support

the application of this procedure for medical reasons, considering this as a benefit and a necessity to the patient.

The West Encyclopedia of American Criminal Law emphasizes the idea that euthanasia is a murder "out of pity" - "... If a person kills another person in order to end the other person's pain or suffering, the killing is considered a homicide. It does not matter if the other person is about to die or is terminally ill just prior to being killed; the law generally views such a killing as criminal. Thus, a "mercy killing", or act of Euthanasia, is generally considered a criminal homicide ..." (Lehman & Phelps, 2005) - and is also considered a crime, the term being used as a synonym for murder committed at the request of the patient (Tomás Valiente Lanuza, 1997).

The meaning of the term "homicide" implies the intervention exercised with the intention of ending life in order to reduce physical suffering (Mohanty, .2004).

In this sense, we specify that not all forms of homicide are subject to criminal law. Thus, excusable and justified homicide are not subject to criminal law.

The term itself is limited to its active variety, in the sense of awareness; The University of Washington published a statement on euthanasia on its website: "*Euthanasia means that, in general, the doctor would react directly, for example by giving a lethal injection, to end the patient's life*" (Luce & Alpers, 2000).

Medically assisted suicide is therefore not classified as euthanasia by the American state of Oregon (Bamgbose, 2004), it is categorized as a death with dignity, not being criminally sanctioned.

Unlike medically assisted suicide, stopping medication or non-treatment for life support, with the consent of the patient (volunteer), it is considered almost unanimously, at least in the United States, as legal (United Nations Human Rights Committee, 2001). The use of life-saving drugs or techniques that have the ability to alleviate suffering but that lead to the death of the patient have been considered legal by many court decisions.

IV. International issue regarding the legalization of euthanasia

Contrary to the existence of the right to life, euthanasia is a phenomenon that actually develops the extension of a right to death, a right that a patient with an incurable disease in a terminal state should benefit.

The question that was asked was whether it is moral, legal for this patient to invoke a right to death in the conditions in which he has a major guarantee of the right to life?

Under these conditions, the states of the world sought reasoned answers, thus signalling conditions or necessities that require the exercise of a right to die.

Some governments have legalized voluntary euthanasia, but in general it remains a type of homicide in criminal law. In the Netherlands and Belgium, where killing at the request of the victim has been legalized, it remains a crime although it is not prosecuted and is not punished if the perpetrator (doctor) meets certain legal exceptions (Rosas, 2016).

Belgium is one of the countries that legalized euthanasia on 28 of May, 2002, and as a result it was found that this procedure was requested by the terminally ill, young people or children.

In December 2013, the Belgian Senate voted in favour of extending the right to euthanasia of terminally ill children. The imperative conditions are for the pediatric patients to be aware of their decision and to understand the meaning of euthanasia, "*the request must have been approved by the child's parents and the medical team*", the disease must be in the terminal stage, and the children must be in very great suffering (Higgins, 2013), and the stage of the disease is impossible to alleviate through medication, the presence of a psychologist is also required to determine whether the patient can make this decision. In this case we are faced with a voluntary request for euthanasia (World Heritage Encyclopedia, n.d.).

By Decision 6-3, the Constitutional Court of Colombia ruled on May 20, 2010 that "*no person can be held criminally liable because he took the life of a terminally ill patient who gave him personal consent to do this*", according to the Washington Post. In this sense, one can see the extension of euthanasia admission, the granting of the right to death, in more and more states of the world.

Canadian criminal law and assisted suicide are recognized in application of the decision (Greer, 2012) of the Supreme Court of English Columbia which amended the section, art. 241 (b) of the Canadian Criminal Code arguing that it imposed more than discriminatory burdens on individuals with severe disabilities, for which sections 7 and 15 of the Charter of Rights and Freedoms, which entered into force on June 15, 2012, the Canadian Federal Parliament amending the provisions of the penal code accordingly in June 2013.

On February 6, 2015, the Supreme Court of Canada ruled unanimously in Carter V Canada (AG) that Canadian adults with exercise capacity and suffering intolerably and permanently have the right to medical assistance in dying. However, the court suspended its ruling for 12 months to give the government the opportunity to draft legislation and develop new

laws and policies on assisted death ("Supreme Court rules", n.d.). In January 2016, the court granted an additional 4-month extension to suspend the ruling to give the new Liberal government free time to consult with Canadians on drafting a law to comply with the ruling. As an interim measure, it has also decided that provincial courts can now start approving euthanasia applications until the new law is passed (Dehaas, 2016).

A report by the parliamentary committee tasked with studying the matter in light of the Supreme Court of Canada's ruling recommended that anyone facing "intolerable suffering" should seek medical help to die. On April 14, 2016, the liberal federal government of Canada introduced legislation to legalize assisted death under more restrictive conditions than recommended by the committee, allowing access only to those with terminal illnesses for whom death is "reasonably foreseeable."

Voluntary euthanasia is also legal in India ("India joins", 2011). On March 7, 2011, the Supreme Court of India legalized passive euthanasia by suppressing life in patients in a permanent vegetative state ("India joins", 2011) but forms of active euthanasia, including the administration of lethal compounds, are illegal.

Passive euthanasia is legal in India ("Aruna Shanbaug case", 2011). On March 7, 2018, the Supreme Court of India legalized passive euthanasia by withdrawing vital support for patients in a permanent vegetative state (Lundin, 2009). Forms of active euthanasia, including the administration of lethal compounds, are illegal leading to the death of the patient.

In Switzerland, deadly medicines may be prescribed to a Swiss person or to a foreigner, if the recipient has an active role in the administration of the medicine. More generally, Article 115 of the Swiss Criminal Code, which entered into force in 1942 (being written in 1918), considers that assisting suicide is a crime only if the motive is selfish.

In Sweden, passive euthanasia was considered legal after a major court ruling in 2010. This means that a healthcare professional can legally cease life support at a patient's request if they understand the consequences of their healthcare provider and the administration of a lethal substance is also illegal ("Legality of euthanasia", n.d.).

In the Netherlands in the 1973 "Postma case", a doctor was convicted of facilitating his mother's death following repeated explicit requests for euthanasia. While confirming the conviction, the court's ruling set out the criteria by which a doctor would not be required to keep a patient alive against their will. This set of criteria was formalized in several lawsuits in the 1980s.

In 2001, the Netherlands passed a law legalizing euthanasia, including physician-assisted suicide (Janssen, 2002). This law codifies the twenty-year-old convention of not prosecuting doctors who have committed euthanasia in very specific cases, in very specific circumstances. The Ministry of Public Health, Welfare and Sport claims that this practice "allows a person to end his life in dignity after receiving every available type of palliative care" (www.minvws.nl) The United Nations has examined and commented on Dutch euthanasia law ("Human Rights Committee concludes", 2001).

The Groningen Protocol was drawn up in September 2004, which sets out the criteria to be met in order to euthanize children without a doctor being prosecuted (Verhagen & Sauer, 2005).

V. Conclusions

One of the objectives of law is for the legal system to constantly correspond to social needs and to be in line with the dynamics of social relations. The legal system no longer has to be out of phase with reality, with practice. Consequently, this type of social relationship involving euthanasia must be properly regulated.

Euthanasia will be a topical issue as long as those factors that brought it up today will predominate, as long as life will fight death and pain, the purpose of society will be to come to the aid of the suffering.

The presence of states that allow euthanasia, and that have a revealing experience regarding the attitude towards death, against the background of religious influences, the public opinion is divided in the group for and against this phenomenon.

However, medical law provides for the rights of the patient as well as the obligations of health personnel, tending, through a too rigid interpretation of Hippocrates' principles, to create a real therapeutic obsession fuelled by fear of criminal sanctions and economic and professional repercussions (Stanila, 2014).

Compared to other legislations of the European states, the Romanian medical legislation is far from satisfying the desideratum of the rigorous regulation of borderline situations such as those referring to terminally ill patients, to artificial feeding and hydration, to situations of interruption of resuscitation procedures or performing certain therapies that ensure survival.

In this context, the doctor is determined and obliged to apply a medical treatment or procedure, otherwise he may be criminally liable.

The lack of concrete regulations to be the subject of this phenomenon limits the action of the doctor to the detriment of the patient who is suffering from a terminal disease. As such, in this context, the Romanian legislation eliminates the assurance of a dignified right to death.

Euthanasia will be a permanent topic when the factors that brought it up will constantly predominate, as long as the right to life is in conflict with a possible right to death, the purpose of the legislator should focus on the need and will of the suffering patient (Astarastoaie & Stoica, 2003, p. 101).

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