



Euthanasia – A Legal or Medical Issue: A Narrative Review

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Abstract

Euthanasia is a highly controversial issue which keeps the scientific community and the general public divided into those in favour and those opposed to this manner of terminating a person's life. Ethical, medical, legal, religious and other reasons are used both to justify its legalisation and to argue against it. The main question which attracts differing opinions is whether—beside the right to life as the universal and most important right recognised by the European Convention for the Protection of Human Rights and Fundamental Freedoms—there is the right to die, implying that a person could choose how and when to end their life. The author of the paper analyses several issues. In addition to the introduction which considers the right to life in general, and in the light of international documents, the paper deals with the concept of euthanasia and its historical development, as well as the types of euthanasia. This is followed by an overview of the positions of the proponents and the opponents of the legalisation of euthanasia. Finally, the paper discusses the various ways in which euthanasia is regulated in contemporary criminal legislation.

Keywords: Euthanasia; Severe illness; Mercy; Murder; Law

Introduction

When we talk about natural or human rights, as a term that is often used today, the right to life is undoubtedly in the first place for several reasons. Firstly, all other rights derive from it. Secondly, if the right to life would not be ensured, then other human rights would not have their meaning and true value, including the right to freedom, which is immediately after the right to life in terms of value. Finally, if we talk about natural rights, then the right to life is to the greatest extent the natural right of man, and its termination extinguishes all other rights that man has (1). The right to life is a universal human right and therefore its protection and realization is regulated by numerous international and

domestic regulations. Thus, the Universal Declaration of Human Rights (2) (Adopted by the resolution of the United Nations General Assembly 217 A of 10 Dec 1948) states at the very beginning (Article 1) that all human beings are born free and equal in dignity and rights and that everyone has the right to life, liberty, and security of person (Article 3). The right to life is also guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (Adopted by the resolution of the Council of Europe of 4 Nov 1950), which stipulates that everyone's right to life shall be protected by law and that no one shall be deprived of his life intentionally save in



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the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law (Article 2, paragraph 1). The right to life is treated by Protocol No. 6 (3) and Protocol No. 13 (4) to the European Convention for the Protection of Human Rights and Fundamental Freedoms where attention is focused on the problem of retaining death penalty in the system of criminal sanctions. Protocol No. 6 recommends that states, where possible, abolish death penalty from their legislation, except for crimes committed in time of war or of imminent threat of war. Protocol No. 13 goes even further in protecting the right to life and emphasizes that complete abolition of death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings.

The International Covenant on Civil and Political Rights (5) (Adopted by United Nations General Assembly resolution 2200 A of 16 Dec 1966) stipulates that every human being has the inherent right to life, that this right shall be protected by law and that no one shall be arbitrarily deprived of his life (Article 6, paragraph 1). The constitutions of modern countries, in the section on the rights and freedoms of citizens, proclaim the right to life in the first place. The right to life is also protected by provisions of criminal legislation, so in almost all countries, crimes against life and limb are in the first place in a special part of the criminal code. In addition, the social norms are indirectly related to the right to life through the norms in ensuring a dignified life, because the right to life is not only the right to bare life, that is, any life, but the right to a dignified life (6). Man is born to live, and this is his natural aspiration. The right to life represents a good as a positively valued given. Human life is a physical course given by nature, a process as a biological component of existence. This good, apart from natural means, can be affected in other ways, by the actions of other persons. This right is more than a good and it always includes a relationship with other people. Therefore, opposite to the right to life stands the obligation of each individual to refrain from harming or endangering an-

other's life. The natural right of man is not to be killed and that is his natural legal minimum, but the right to life today in many countries is more or less extended in relation to that - for example, by making it a criminal offense not to provide assistance to a person in danger of life (7). In connection with the question of the right to life and a certain quality of life, the question arises whether the right to life is accompanied by the obligation to live, regardless of what that life was, or whether there is a right to die in addition to the right to life, i.e., whether the right to die is the flipside of the right to life. Therefore, the essential question is whether an individual has the right to independently decide how to end his life and whether he has the right to ask for help of another person in realizing such an intention. There can be no single answer to that question from a legal, medical, or sociological point of view, so it should be approached from several angles. In this sense, the European Convention for the Protection of Human Rights and Fundamental Freedoms affirms the right to life, and this right cannot be interpreted in a negative sense, so there is no right to die, and in that spirit, the European Court of Human Rights denied Diane Pretty, a citizen of Great Britain, the right to die (8).

Human life is primarily a personal good, but it is also a social interest to preserve and protect the life of every human being. However, can we talk about the public interest in someone's life even in the case when such a life does not represent any value for the individual, but rather suffering and torture. That is why today a new category of rights is increasingly being imposed, especially in the countries of the Anglo-Saxon legal area, and that is the right to die, not as opposed to the right to life, but as a component of the right to life (9). At the end of the 19th century, the well-known Italian theoretician of criminal law defended man's right to die (10). In this sense, the Supreme Court of the American state of New Jersey, approving passive euthanasia in the well-known case of the girl Karen Quinlan, stated the following in the judgment: "The right to choose death takes precedence over the state's interests in preserving the lives of citizens" (11).

The Concept of Euthanasia and Its Historical Roots

The term euthanasia can be defined from the lexical, legal, medical, and sociological aspects. Seen from the lexical aspect, it represents a coinage of the Greek words "eu" and "thanatos", which, in the literal sense, would mean a good or gentle death. This is where, for the most part, the consensus of those who deal with the problem of euthanasia ends. Some argue for a definition that would include any action or inaction that shortens life, in order to end the suffering and pain of a dying or terminally ill patient (12). In the legal literature, euthanasia is defined as taking the life out of mercy of incurable patients (6), in order to shorten their suffering, because leaving the patient in such a state would not even be humane (13). Others point out that euthanasia can be neither a humane nor a merciful solution, because instead of eliminating suffering, it deprives the suffering man of his existence (14).

Not disputing that the problem of euthanasia is primarily legal, then medical (15) and ethical, its social component cannot be ignored, as its rich history indicates, because these social elements were once even the most important when deciding on life or death. It can have characteristics of a social nature by discharging severe and, according to the prognosis, incurable patients from the hospital and leaving them to the family to provide the patient with much reduced medical assistance through home treatment with recommended therapy (16).

When it comes to the history of euthanasia, there are opinions that the term euthanasia was first used by Francis Bacon of Verulam in his work "Novum orbarum scienciarum", published in 1620, where he proposes the introduction of euthanasia mediate - medical euthanasia (17). He points out that it is the doctor's duty to restore health and relieve pain, not only when this can lead to healing, but also when it will provide the patient with a peaceful and tranquil death (18). The word euthanasia in its current meaning was first used by William Lecky in the work "History of European Morals" published in 1869 as a

shortening of the sufferings caused by illness and as a remedy against the exhaustion of old age (19). However, bearing in mind that the word euthanasia is of Greek origin, it originated in the Hellenistic period and meant helping terminally ill people to die peacefully, rejecting silent observation of hopeless life and terrible agony (20). In addition, if we look at the text of the Hippocratic Oath, which dates back to the fifth century BC, in which it is said "I will not give a lethal drug to anyone even if I am asked, nor will I advise such a plan", it indicates that the institution of euthanasia is much older and should not be tied to the beginning of the seventeenth century and to Francis Bacon.

In the literature, you can find the information that the word euthanasia was first recorded in the third century BC in the theater piece *Ant* by the comedy writer Posidipo, where it is said that "of all that man can desire from the gods, he desires nothing better than a good death" (21). Plato also expressed his position on euthanasia, and in his book "The Republic" he says that "a citizen does not even have the right to be sick, so if he gets sick, he should be allowed to die" (22). Supporters of euthanasia can also be found among the ancient Romans. Thus, in his work "Conversations at Tusculum" (*Tusculanae disputationes*), the famous orator Cicero (106-43 BC) says "why should we suffer, one door is open to us - death is the eternal abode, where nothing is felt anymore". Roman legislation at the time of the empire prescribed the confiscation of property for suicides, but citizens who decided to commit suicide due to severe pain or a disturbed mind were exempt from this. In the norms known as "Corpus Juris Civilis" compiled by the emperor Justinian I (483-565 AD), there is also the principle of "volenti non fit iniuria", i.e. "to a willing person, injury is not done", i.e. "there is no harm to the wanting person". It could be concluded from this that euthanasia is justified.

When it comes to the relation of church (religion) to euthanasia, Christianity is against euthanasia, and the sixth commandment of God "thou shalt not kill" points to such a conclusion, and the fact that it is only in the sixth place does not mean its

subordination, because the first five refer to general tenets of Christianity, while the other five represent prohibitions that must be respected in order to live in accordance with Christian morality. Thus, the principle of the Christian faith "do not kill" can also be paraphrased from the point of view of the euthanasia problem with the words "do not kill even out of mercy" (23). Islam is also against euthanasia, and such an attitude can be derived from one of the principles of the Koran, which says "whoever kills a person, not for murder or for spreading mischief in the land, will be as if he killed whole of humanity."

Otherwise, the idea of an inalienable right to life is derived from the principle of the sanctity of life, an old and original religious principle that forbids the intentional termination of life, regardless of whether it is required or not (24).

Types of Euthanasia

In theory, there are several divisions of euthanasia, and here we single out some of them. According to the method of execution, euthanasia can be active or passive (25,26). Active euthanasia represents killing by active action, that is, active assistance in dying. Passive euthanasia is stopping or giving up further treatment of the patient and letting him die. Active euthanasia is further divided into active direct euthanasia, where life is taken by a doctor, at the express request of a patient overcome by a subjective feeling of unbearable and hopeless suffering (27) and active indirect euthanasia, where the doctor gives the patient medication in order to reduce pain and suffering, even though it shortens the patient's life (28), which both the doctor and, more importantly, the patient are aware of (29). In active indirect euthanasia, the so-called "dual or double effect theory" known in American legal practice comes to the fore, which implies a situation when a doctor gives appropriate therapy to relieve severe pain, knowing that such therapy can or does lead to shortening of life, so this behavior of the doctor is considered legally permissible because the motive of the therapy is not a shortening of life, and there is no request of the patient in this direction, but the motive is to help the patient stay

alive and the desire to make the suffering bearable (30,31). Considering whether it is prohibited or permitted by law, euthanasia can be *de facto*, and it is reduced to privileged killing (mercy killing) and *de jure*, carried out on the basis of legal permissibility and under the conditions provided for by law (32).

Considering whether there is a request from a dying person, euthanasia is divided into voluntary, when the dying patient requests or agrees to euthanasia, and involuntary, when the patient does not agree with it or is unable to decide on it. There are opinions that the attribute voluntary should not be emphasized, because it is contained in the definition of euthanasia, because if it is not a voluntarily accepted procedure, then it is a plain murder (33). In the case of voluntary euthanasia, the request (consent) of the dying person can be given at the time when the person wants to die (34), or in advance - testamentary (28) in which case it is a kind of anticipated command of the will of the individual (29). In addition to these divisions, in the literature we also encounter the so-called social and negative euthanasia, so social euthanasia exists as a type of passive euthanasia, where old and incurable patients are discharged from the hospital and go home earlier, which reduces their care to a minimum, and accelerates dying, and negative euthanasia exists when the patient is placed by the medical worker in a position where drugs are available for him to commit suicide, considered inducing suicide (35). From a legal and medical point of view, the most important division is active and passive euthanasia.

Should Euthanasia Be Legalized - Pro Et Contra?

Regardless of the fact that discussions about euthanasia have been present for so long in our literature (legal, medical, sociological, etc.), opinions are still divided on whether euthanasia should be legalized or not. Supporters of the legalization of euthanasia emphasize the reasons of humanity in the foreground, because it is difficult to remain indifferent to the great suffering of a patient for whom it is only a matter of days when

he will die, when there is already a way to eliminate these sufferings and make it possible to die without pain. Does a person have the right to a "humane death", why ignore the hopelessness of his life and the intensity of suffering that he can no longer endure? Man is free, with many restrictions, at least in one way, and that is to choose the last path, and that is something inviolable and only given to him, and to defend him from himself is the hypocrisy of both civilization and science, which interferes in one's intimate life (36). It is true that with the progress of medicine, the patient's life can be prolonged, but painful dying can also be prolonged indefinitely, so that the human self is nullified to the level of biological mass when a person is only a burden for the family, so if dying is a necessity, it must be dignified and that not because of death, but because of life (37). We also find support for euthanasia of the creator of psychoanalysis, Sigmund Freud, in an order which he gave to his personal physician to freely end his suffering once he judges that the rest of his life will be just a sad vegetation.

Opponents of euthanasia also refer to humanism and morality but give them a different meaning. In this sense, the criminal law norm that forbids euthanasia is legalized morality, and since the law is essentially moral, it is immoral to kill, even if it is out of mercy. Life is the greatest human value, so if its value was small in the past, now circumstances have changed and life should be protected by all means and, in all situations, even when everything seems hopeless (38). In addition, the decision on whether it is a hopeless case is left to a human being who can also make mistakes, and abuses are not excluded either. If supporters of the legalization of euthanasia compare it to suicide, the opponents retort that a person has a free choice when it comes to death, because suicide is not punishable, it cannot be accepted that he can transfer this right to another (39). In addition to these arguments against the legalization of euthanasia, other reasons are cited - that it is in conflict with medical ethics, that medical diagnoses and prognoses are often relative, that medicine advances every day, so what is incurable to-

day may be curable tomorrow, that the autonomy of the patient's will and the ability to reason are highly debatable in the final stage of the disease, that the doctor needs to encourage the patient and not extinguish the hope for recovery.

Regarding the legalization of euthanasia, the Council of Europe also took a clear position, prohibiting active and allowing passive euthanasia, considering that it must be allowed to stop therapy if the patient does not want it, because it prolongs his suffering, so in that case the procedure cannot be qualified as murder out of mercy, but as letting the disease take its course (40). In this sense, with Recommendation No. 1418/1999, the Council of Europe encourages the Member States to decriminalize active indirect and passive euthanasia, while active direct euthanasia should be prohibited. Ten years later (2009), the Council of Europe takes a significant step further towards the adoption of active direct euthanasia by adopting the Recommendation on the principles concerning continuing powers of attorney and advance directives for incapacity, which, using the principle of autonomy of the will, provide that any person can in advance, in case of later incapacity, authorize a person to decide on certain issues for him, and these issues include active indirect and passive euthanasia, while the possibility of applying active direct euthanasia remained open (41).

Without disputing the complexity of philosophical, medical, and theological debates about euthanasia, perhaps the most complex aspect of euthanasia is how to legally regulate the issue. Modern legislation regulates this differently, and mainly three forms of response of legislators to euthanasia have been differentiated:

- 1) Legislation in which euthanasia is treated as plain murder (42).
- 2) Legislation that legalizes euthanasia under the conditions stipulated by law,
- 3) Legislation that gives euthanasia the status of privileged murder.

There are fewer and fewer countries that treat euthanasia as plain murder, and more and more countries are moving towards legalizing euthanasia. However, the majority of countries have cho-

sen the middle path and treat euthanasia as a privileged murder.

Conclusion

Euthanasia, understood as the deprivation of life out of compassion, represents both a historical and a contemporary issue from a medical, ethical, sociological, religious, and legal point of view. The basic problem of euthanasia comes down to the question of whether the patient's right to choose death over life in certain personal circumstances takes precedence over the general (state) interest in protecting the life of every citizen. Every person in a state of illness has the right to ask for all medical measures and procedures to be taken, even in cases where it is obvious that they cannot improve their health or eliminate pain. Moreover, many will agree that medicine has advanced so much that artificial life support is possible, regardless of the fact that there is no prospect of the patient's recovery. But, on the other hand, the right of a person (patient) to refuse the use of medical means that could artificially extend his life, or to request the suspension of the application of these measures, must be allowed.

The issue of euthanasia, viewed from the criminal law aspect, comes down to the question of whether to legalize euthanasia or not. In this regard, modern legislation differs, and we could divide them into three groups. The first group includes countries that have legalized euthanasia, and their number was small before, but is now increasing. In the second group are those countries that equate euthanasia with plain murder. The third group is, for now, the most numerous, where a middle path was chosen, so euthanasia is criminalized as a privileged form of murder. However, regardless of whether euthanasia is approved or criminalized as a criminal offense, we must also "legally and morally supervise" it. That is why it will continue to be an issue that will not lose its relevance and there will probably still be a single opinion in relation to its lexical meaning, and for the most part there will still be conflicting opinions, including regarding its permissibility.

Journalism Ethics considerations

Ethical issues (Including plagiarism, informed consent, misconduct, data fabrication and/or falsification, double publication and/or submission, redundancy, etc.) have been completely observed by the authors.

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Conflict of interest

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