

EUTHANASIA AND ASSISTED SUICIDE. PROS AND CONS REGARDING THE RIGHT TO END YOUR LIFE WITH DIGNITY

M.M. BÂRSAN¹ G.DRAGU²

Abstract: *The theme of euthanasia and assisted suicide calls for certain moral issues, but also for some legal issues. The two procedures are similar; however there are divergent elements, namely the fact that, in the case of euthanasia, the medic is the one who performs the act of killing, whereas in the case of assisted suicide, the patient plays the active role. Opinions on this issue are divergent and there are endless talks regarding these procedures, as EU countries do not have common laws on this matter. However, we believe that the most important argument which supports the right of a person to decide when to end his/her life is based on the principle of dignity and individual autonomy.*

Key words: *the right to live, euthanasia, assisted suicide, dignity.*

1. Introduction

The theme of euthanasia and assisted suicide raises a series of issues regarding the right to live, the right to certain procedures who will end the pain of the patient, the medical procedure which is performed, the right to die, the legal issues, the ethical and moral issues. At first sight, it may seem like an easy choice to make, one likely to end the suffering of many, but would this choice be easier if it would involve a person who is close to us? Starting from this question, we have chosen to research more information about euthanasia and assisted suicide, to balance both the positive and the negative aspects of this matter. As we have previously stated, the importance of these two notions resides in the fact that each person has the right to live. Article 2 of the European Convention on Human Rights states that each person's right to live is protected by law and one must not cause the death of another person with intent, except for the situation in which a death sentence is enforced, when such a sentence is established by the court of law for crimes which are punishable by death (European Convention on Human Rights).

¹ *Transylvania* University of Brasov, maria.m.barsan@unitbv.ro, corresponding author

² First year master degree, Advances criminal sciences, Law School, Law Studies
geanina.dragu@student.unitbv.ro

2. General aspects regarding Euthanasia and Assisted Suicide

Medically assisted suicide is a procedure through which the medic assists in the suicide of a patient by providing the medicine which will end the burden of disease. Euthanasia is the deliberate act by which the patient's life is ended, under certain conditions, directly by the doctors (Cimpu, 2020, p. 95). Unlike euthanasia, where the doctor is the one who performs the medical act, thus performing an active role, in case of assisted suicide, the medic plays a passive role, as the patient is the one who administers the lethal dose. In order to use these methods, certain conditions must be met: there must be consent from the patient (especially in regard to assisted suicide), the patient must suffer from a terminal disease and the suffering must be difficult to bear by the patient. However, assisted suicide can be used in case the patient suffers from depression, loneliness or lack of independence; for example, in Oregon, a state where this procedure is legal, 90% of those who choose to use it are people who have lost their autonomy and can't manage themselves (J. Wyatt, Cambridge Papers, 2015, p.5). Depending on the manner in which it is performed, euthanasia can be: active - when it is performed upon request from the patient and the doctor acknowledges that all the necessary conditions for this procedure are met, passive - characterized by abstaining from performing certain medical procedures or ending the treatment so as to cause the death of the patient, voluntary - requested and consented, involuntary - contrary to the patient's will, non-voluntary - patients who do not have judgment (Ticau-Suditu, 2016, p. 1106). Euthanasia was practiced both in primitive populations, as well as in the case of the more evolved ones.

For example, in Sparta, children with malformations or certain medical issues were killed.

In both Greece and ancient Rome there were certain legally regulated situations in which assisted suicide or kill on demand was encouraged. There was a certain correlative obligation to die in case the continued living of a person was a burden for himself or for others.

3. Legal Background

The legal background for such practice exists in the following states: Belgium, Luxembourg, Holland, Switzerland, Germany, Albania, France and also some states of the US: California, Oregon, Washington and Vermont. There are also states in which the patient can refuse treatment, which is passive euthanasia: Denmark, Hungary, Spain, Portugal, Sweden, England and the Czech Republic. In Romania, the legal background does not allow euthanasia or assisted suicide, by regulating the crimes of murder on demand of the victim, stated in article 190 of the Criminal Code and the facilitation of suicide, regulated in article 191 of the Criminal Code (Dobrinescu, 2019). These two crimes exclude the possibility of non-incrimination of the one who kills or determines the suicide of another person. Killing upon request from the victim requires the existence of a serious demand from the victim, phrased in an explicit manner, serious,

aware and repeated by a victim who suffers from a terminal disease confirmed by a medic, which caused permanent and difficult to bear suffering, as this regulation implies the right to live as a socially protected value and, at the same time, an attenuated version of murder under the form of direct or indirect intent. Murder upon the request of the victim defines the procedure of euthanasia, as the one who performs the act is not the patient, but the doctor (Bogdan, Șerban, 2020, p. 76).

Once the new Criminal Code came into force, by Law no 286/2009, the Romanian lawmaker regulated the crime of killing upon request of the victim (the lawmaker used the marginal name of killing on request of the victim and not murder on request of the victim, in order to exclude this deed from the category of first degree murder); in the introductory part of the new Criminal Code, it is shown that: *„reintroducing this text was necessary as a result of the new regime of extenuating circumstances regulated in the general part. Indeed, if in the previous regulation, murder upon request of the victim could be valorized as an extenuating circumstance, thus leading to a significantly reduced sentence, in the regulation of the new Criminal Code, even if in the presence of an extenuating circumstance, the punishment will no longer be reduced,,*. This is why, in order to allow for a punishment which is correspondent to the degree of social danger of this deed, it was decided to regulate it in a distinctive manner.

The determination or facilitation of the suicide of another person represents the deed of causing or facilitating the suicide of another person, resembling the crime previously described, as the value it protects is similar, namely protecting the life of the individual, since this crime is committed with direct or indirect intent. The incriminating text defines the procedure of assisted suicide so as the patient is the one who makes the final decision. Once euthanasia is legalized, it will result in the killing of people even without their consent.

The experience of countries which allow this procedure shows that it can get out of control despite the fact that it was clearly regulated from the beginning who are the people to whom euthanasia can be applied to, namely people who suffer from terminal illness; currently, it was extended to older people, handicapped individuals, those who suffer from depression, loneliness, physically impaired and newborn children with physical issues.

Hippocrates's oath states that: "I will never prescribe a lethal substance, even if I am requested to do so and I will never provide advice on this matter". The doctors are the ones who decide on the treatment and procedures depending on the patient's condition and the suffering it causes and if the patient refuses an aggressive treatment, it is not considered to be suicide.

We believe there should be limits in regard to assisted suicide or euthanasia, especially in regard to differentiating the case in which these procedures can be performed, namely in case of patients who are in the terminal phase of their illness and have the possibility to opt for these procedures. In case of depression, loneliness, lack of autonomy, there must be the chance to treat the patient, as once society accepts and normalizes such procedures, the right to die will become a duty to die. In regard to the patient's autonomy, if euthanasia is legal, then the doctor makes the decision to shorten

the patient's life, thus complete power will lie in the hands of doctors and this will cause further lack of trust in the medical act and medical professionals, as the procedure of euthanasia will likely be seen as treatment of even a method which can be easily performed. Those who agree with these methods of ending suffering claim that no one must be considered a burden to himself or others, as each person has the right to opt for such procedures and that a patient has the legal possibility to refuse a certain treatment which will lead to passive euthanasia, which is not legal.

These arguments, can be in turn, disputed by the fact that each person has rights, but we must not violate the sovereign right to live and allow for euthanasia and assisted suicide to become a frequent practice. The fact that a patient refuses treatment must not mean that he can't accept another treatment, as passive euthanasia refers to the refusal of treatment and the acceptance of death.

Accepting these methods means giving up the right to fight for your life and create a world in which one can let go of his own life easily. As mentioned before, even in cases such as depression, loneliness, it can lead to induced death or assisted suicide and we believe these methods are of no help in such cases, as the only result they produce is death. We must also state that laws should be nuanced, as we do not deny the use of assisted suicide or euthanasia in cases where the person who is suffering can't be helped in any way, thus requiring specific methods to end their pain.

The positive aspects of these procedures are the fact that the person who is suffering ends his torment, his family must not undergo any efforts which are in vain and the costs are substantially reduced. The negative aspects are the fact that, once these procedures are legalized, there is a real possibility they can get out of control and be performed in other cases, the doctor can be put in a difficult position, his mental state can be affected, the patient and his family go through difficult times, as the choice to end your life is not an easy choice to make.

4. Haas versus Switzerland

We believe that relevant to this matter is the case Haas versus Switzerland, in which *the plaintiff, who suffered from a severe bipolar disorder for almost 20 years, attempted to end his own life on two occasions and was admitted to a psychiatric facility. He became a member of an association which, in order to ensure a dignified life and death for its members, suggested an assisted suicide. Believing that he can no longer continue to live with dignity because of his disease, the plaintiff requested the help of this association. In order to obtain the necessary drug, natrium pentobarbital, which required a medical prescription, he contacted several doctors.*

The court believed that article 8 of the Convention regarding the respect of one's private life was not violated and the state of Switzerland did not violate any of their obligations in the case of the plaintiff. The Court considered the tendency of the member states to protect the life of the individual rather than to end it. The court ruled that the request of Swiss law to have a medical prescription for this drug had a legitimate purpose, namely that of protecting people from taking rushed decisions and to prevent

possible abuse, as the risks should not be underestimated within a system which facilitates the access to assisted suicide. From my point of view, the Court correctly ruled, considering the risks of the patient, but also for the doctors who would prescribe such a drug for a patient with mental illness (The case Haas versus Switzerland, 2011).

We believe the Strasbourg court shows increased precaution in this sensible and controversial matter, as is euthanasia and assisted suicide.

We also believe that the reason for such an approach is the absence of unified and consolidated laws in the EU member states in regard to the incrimination or non-incrimination of euthanasia and assisted suicide.

5. Conclusions

In conclusion, as we have presented in this article, starting from article 2 of the Convention, the regulation of the obligation to respect the right to life is completed by Hippocrates's oath, which accentuates the negative obligations of the doctor to not prescribe lethal drugs, even if he receives such a request and to abstain from providing any advice on this matter.

Euthanasia and assisted suicide are similar, the only difference is the fact that in case of euthanasia, the doctor plays an active role, as opposed to assisted suicide, where the active role is played by the patient.

The controversial views on this subject will continue to exist for a long time, as this subject was always an issue of debate and opting to support one view or another represents a decision of great responsibility, given the significant implications of these issues as it regards the most important attribute of a human being, their life. As the cases are different, the law must be nuanced so each case must be solved by considering its specifics.

There is no novelty that euthanasia and assisted suicide present the same dilemmas to society as all other mentions of suicide. In continuing with this claim, we can state that, if we admit that in certain contexts, under the pressure of severe suffering, life can become a source of humiliation, thus depriving the patient of his dignity, than death becomes more of an absolution.

If we are really considering the idea that people should have the sovereign right to decide what happens to their bodies and exercise control over their own life, then a natural consequence of this fact is that control should be extended to the way in which they decide to die, as those who are in the final stages of their lives are still rational beings able to understand the situation they are in, the choices they have and the awareness of the irreversibility of such a decision.

In conclusion, in such matters, one must always consider the specifics of each case so as to allow the individuals the possibility to use euthanasia or assisted suicide under certain conditions; foreign judicial practice offers numerous examples in this matter. But, the questions to which we are still looking for answers would be: do we have a right of life and death over our peers? Would a life of suffering and disease be considered a life deprived of dignity?

References

- Bogdan, S., Șerban, D.A. (2020). *Criminal law. Special Part. Crimes against the person and against the performance of justice*. Bucharest: Universul Juridic Publishing House.
- Cimpu, G. (2020). Ethical-legal discussion regarding euthanasia. Aspects of ECHR jurisprudence, „Constantin Brâncuși” University of Târgu Jiu, *The Series of Legal Science*, no 3/2020, p. 95.
- Dobrinescu, I. (2019). Killing upon request from the victim. Theoretical issues in regard to the purpose and functions of incrimination. *Universul Juridic Magazine* no. 6/2019.
- Ticau-Suditu, A.-F. (2016). The legal issues of the procedure of euthanasia. *The magazine for investigating crime*, no 1/2016, „Alexandru Ioan Cuza” Police Academy.
- Wyatt, J. (2015). Cambridge Papers, *Euthanasia and assisted suicide*, Timișoara, 2015, page 5, available at: <https://www.areopagus.ro/educatie/seria-de-studii-crestine-areopagus/2015>
- Case Haas versus Switzerland, Decision of January 20th, 2011, available at: <https://jurisprudencedo.com/HAAS-c.-Elvetiei-Refuzul-de-a-acorda-medicamentele-necesare-pentru-sinuciderea-unui-bolnav-psihic-comunicata.html>
- European Convention on Human Rights, available at: https://www.echr.coe.int/documents/convention_ron.pdf