

## Euthanasia in Albania

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### Abstract

The right to live is a right guaranteed by the constitution as well as international legal acts in force in a country, and is based on the moral of a society. But does the right to live imply a parallel individual right to die? Or should the state protect the right to life of a person who does not want to live anymore, going like this against the will of that person? Albanian anthropology, as a post-communist society lacks the tradition of freedom, as in this case of the freedom that belongs to a man affected by an incurable disease. For this reason, in Albania not only we do not have a law on euthanasia, but the issue of euthanasia is not raised as an issue nor by the legislator nor by civil society. The purpose of this paper is to give an overview of euthanasia in Albania, as well as on some specific problems facing the Albanian reality. The methodology used in the paper consists with the combination of comparing legal provisions of euthanasia (or the lack of them) in a vertical historical continuity.

**Keywords:** *euthanasia, death, living in dignity, law on euthanasia.*

### Introduction

This work in particular will deal with one aspect of the right to life, the issue of euthanasia. In a time when in Albania there is still no law on euthanasia, nor even a specific criminal offense provided by the criminal code, the research is interesting to study the present situation but also to predict which should be the future steps to be undertaken in Albania.

The right to life that is guaranteed by the Albanian Constitution implies also living in dignity (Omari, Anastasi, 2008, 122). So the attention of the legislator is extended not only to guarantee life as a biological concept, but also to the quality of life who suffer from serious diseases that wish death instead of life.

Mitrush Kuteli a famous Albanian writer expressed in his will in his last days of life: "Death is the great rest, the detachment from pain. Indeed, even from joy, but at a time when one is bored, death is salvation: from both physical and spiritual pain. Both heavy."<sup>1</sup>

### The concept of euthanasia

In Albania, the issue of euthanasia has not had major repercussions. Very few, almost nothing is said about its depenalization. This is related to the lack of a tradition of protecting human rights in our country. During the communist regime the right to live was not even formally guaranteed by the constitution.

When the democratic constitution of 1998 was first drafted, its Article 21 which protects

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<sup>1</sup> [www.voal.ch](http://www.voal.ch).

the right to life was just one sentence: "life is protected by law". It lacked the proper attention to sanction in the constitution other components of this right related to issues such as when does life begin and whether abortion is allowed, when does the right to live end and should euthanasia be allowed in our country, as well as the issue whether death penalty is permissible or not.

All these shortcomings of the constitution, but also the latter lack of attention by the legislator on these matters sharpen the attention of researchers to research on specific aspects of the right to live. This work in particular will deal with one aspect of the right to life, the issue of euthanasia. Does exist as the parallel of the right to live, the right to die?

Given the general conclusions and opinions of the Italian Bioethics Committee, the concept of death is defined as "total and irreversible loss of the ability of the body to keep its autonomous functional unity" (Comitato Nazionale per la Bioetica, 1991).

Usually the moment of death coincides with stopping the heart rate (the so-called "cardiac death"). This is the traditional definition that has to do with lack of cardiac beating and of peripheral pulses in the presence of a plain electrocardiogram for no less than 20 minutes. In these conditions it is determined the end, in terms of permanent and irreversible possibility of recovery of cerebral functions and of all organs and apparatuses. Since 1959 the dead brain is mentioned, which means necrosis of the cerebral hemispheres and of the trunk, but it does not change the definition of the concept of death, but it simply indicates a new modality to identify the death and prepares the use of two alternative formulations: the traditional concept of cardiac death and its newest of brain death.

In contrast to natural death, euthanasia is defined as sweet death, or good death (from old Greek *εὐθανασία* consists of the prefix *εὖ*-, good and *θάνατος*, death) – it means inflicting intentionally and in the interest of the individual the death of a man whose quality of life is permanently damaged by a disease, a physical or mental disability (Sinani, 2012, 138).

There are different kinds of euthanasia:

- Direct active euthanasia where death is caused by the administration of drugs that cause death (for example, from toxic substances);
- Indirect active euthanasia is when the use of tools or substances that facilitate the suffering (for example, the use of morphine) cause as a secondary effect of shortening life;
- Passive Euthanasia is when caused by an interruption or failure of a medical treatment which is necessary for the survival of the individual;
- It is called voluntary euthanasia when it is a consequence of the explicit request of the subject, who is pronounced when he was able to understand or through the so-called biological testament;
- It is called Involuntary Euthanasia when it is not the individual himself who expresses such a will but a third person appointed (as in the case of euthanasia of children or mentally disabled persons);
- Assisted suicide is medical and administrative assistance to a person who has decided to die by suicide, but without interfering in the administration of substances.

Euthanasia is not an invention of our days. The term was first used by Latin writer Svetonio to show the death of the emperor Antonino Pio and much later in the 16th century it was retaken by the English philosopher Francis Bacon to show a new obligation for medicine: the ability to help those persons who are dying to leave this world in the most sweet and smooth way as possible.

While Moore (2010) defines euthanasia as a call of the priests or of the magistrate to a patient suffering from incurable disease who has no desire to live and end his life by not eating or sleeping in order to not feel the pain.

### **Euthanasia and religion**

Even today, especially in the world euthanasia remains a very thorny issue for religions. The Code of Medical Ethics and Deontology in Albania takes into account the religious beliefs of the patient and the patient's wishes when he is treated with drugs that ease pain to the patient.

The two major religions, Catholicism and Islam often contradict the movements that depenalize euthanasia because religion is sacred and life is a gift of God and despite the suffering that accompanies it, only God decides when to end life. In the encyclical of Pope John Paul II, it is stated that euthanasia is a grave violation of the Laws of God as intentional killing of a human being is morally unacceptable.

On the other hand, in this document it is accepted that the obligation to treat and to be treated should be measured by the concrete situation: it should be evaluated case by case whether the therapy available to patients objectively proportional compared with the prospect of improvement of the patient. Waiver of exceptional means or of disproportionate means is not the same as suicide or euthanasia, but it is more an expression of the acceptance of the human condition in front of death (Vatican, 1995). According to Islam active euthanasia is prohibited. The only permissible idea is to leave a man die naturally.

While protestantism holds a different view compared to Christian Moslem doctrine. "Protestant view defines that God is not the only entity that owns the right to life. Man participates in progress with its master. Thus, the Protestant countries such as the Netherlands, Switzerland, UK, have given a legal sense to euthanasia, admitting active euthanasia or assisted suicide" (Sinani, 2012, 47).

### **Euthanasia in the Criminal Code and in Code of Ethics and Medical Deontology**

In Albania euthanasia is considered an ordinary crime and that because of lack of it as a crime by the law. The Criminal Code (The Criminal Code of the Republic of Albania, 2012) does not foresee euthanasia as a separate type in a specific offense but it is found through the interpretation of the articles that predict criminal acts of willful murder (Art. no. 76) that provides for punishment with imprisonment from ten to 20 years, and murder (Art. no. 78) which is sentenced from fifteen to twenty five years. There are also provisions infringement offenses withholding assistance (Art. no. 97) for which a fine is imposed or imprisonment up to two years for the person who by

law or because his job is obliged to provide assistance and without reasonable cause does not give it and consequently the withholding of aid is causing serious harm to the health, endangering life or death. With this provision in the penal code voluntary passive euthanasia is punished.

In the absence of a law on euthanasia provisions of the Criminal Code are met by the Code of Ethics and medical deontology (The Code of Ethics and Medical Deontology, 2011). In Albania the previous code of 2002 is abolished and since 2011 has entered into force the new Code of Ethics and Medical Deontology.

Article 4 describes the duties and mission of the physician. It can be understood that the fundamental duty of every doctor is the protection of life, physical and mental health of man and his relief from suffering. The physician should use his knowledge with respect to human life and to the health of the patient. So, the doctor operates only in the interest of protection of life and can not take anyone's life, otherwise he would commit a crime, which is punishable by the Penal Code as well as by the Code of Ethics and Deontology.

But the doctor has the right and obligation to use drugs and methods that facilitate the suffering of patients (art 24 and art 38 of the Code of Ethics and Medical Deontology), although the latter have as a side effect the shortening of the patient's life, but always in respect of the dignity of the person and of his wishes as well as his religious beliefs.

Article 28 explains how the doctor operates in this case. The doctor is obliged to obtain the consent of the patient before any proposed treatment or intervention. This means that the patient has the right to refuse medication which relieves pain but shortens his life and the doctor is obliged to respect the will of the patient after having informed him of the expected consequences. If the patient is under 16 years old, or unable to express his will to make decisions, the doctor can not intervene without notifying relatives of the patient or the person in charge, except for emergencies or in case of inability to contact these people. Patient's consent or refusal must be expressed by written form in the patient's clinical file and must be signed by him or by the legitimate persons who have his custody.

The Code of Ethics and Medical Deontology strictly forbids active euthanasia. Thus, Article 39 provides that the acceleration of the end of life or provocation of death is contrary to medical ethics. If the patient is unconscious, with no hope to live, the doctor should act in his discretion for the best possible. He must consult with other colleagues and with the closest relatives of the patient and decide for which therapeutic behaviour should be maintained.

## Conclusions

This paper showed that active euthanasia is strictly forbidden in Albania, but the code of ethics and deontology leaves a loophole for passive euthanasia in cases when the patient is unconscious, with no hope to live. In front of this situation, the physician must act in his discretion for the best possible cure after consulting the patient's close relatives.

This means that the doctor may decide to remove the devices that keep the patient in

life thus committing an act of passive euthanasia which is prohibited by the Criminal Code but is acceptable by the Code of Ethics and Medical Deontology. This analysis has raised some issues for discussion: first, the collision between two acts both with legal force in the Republic of Albania which should be regulated and secondly the lack in our legislation of a biological testament as it exists in many countries.

Biological testament or life testament is an act with legal force where the provisions that should be followed by the doctor and hospital staff are written not to artificially prolong the life of a patient (Sinani, 2012, 143).

The will of life is modifiable and revocable, which means that the conditions set in can vary, but they can also return the will itself to nothing. Although in Albania there is still no law on the will of life, Albania has ratified the Convention 01/07/2011 on Human Rights and Biomedicine of Oviedo of 1997, which determines that the previously expressed wishes of the patient for medical intervention must be taken into account.

In addition to these problems dealing with the legal framework of the issue, there is in my opinion, an even more acute problem in Albania regarding the cases of forced euthanasia by lack of equipment in hospitals (Topchannel, 2010). This obligation implies not only the drafting of appropriate legislation, but also to take concrete measures through investment in hospital facilities and training of medical personnel.

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