THE RIGHT TO LIVE AND THE FREEDOM TO DIE

Author: Daniela IANCU*

Abstract: “Dreptul la viaţă reprezintă un drept fundamental reglementat de legislaţia română şi consacrat în cele mai importante documente internaţionale referitoare la drepturile omului. Astfel, referitor la reglementarea dreptului la viaţă în legislaţia românească amintim că legea fundamentală a României din 1991 garantează, în art. 22 alin. 1 dreptul la viaţă, precum şi dreptul la integritate fizică şi psihică al persoanei, art. 26 alin. 2 prevede dreptul fiecărei persoane de a dispune de ea însăşi, iar art. 34 al Constituţiei României garantează dreptul la ocrotirea sănătăţii. În ce priveşte documentele internaţionale care reglementează aceste drepturi fundamentale, cele mai importante astfel de documente sunt Declaraţia Universală a Drepturilor Omului (art. 3) şi Convenţia Europeană a Drepturilor Omului (art. 2, 3, 7 şi 8). În doctrină s-a pus tot mai pregnant problema dacă prin garantarea dreptului la viaţă nu se garantează implicit şi libertatea de a muri, mai exact libertatea fiecărei persoane de a alege momentul la care să renunţe la viaţă. Este vorba despre eutanasie sau moartea medical asistată.”

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Before attempting to answer this question, we shall investigate the content of the notion of euthanasia and its regulations in certain national law systems.

The term “euthanasia” comes from Greek (eu=good and thanatos=death) and was first mentioned in Francis Bacon’s (the English philosopher) writings, who used it with the meaning of happy, peaceful death, determined by the active behavior of doctors who do not abandon the patient in the case of impossibility of ensuring the patient’s cure.

The explanatory dictionary of Romanian offers two definitions for euthanasia as follows: painless death and the method of causing painless death to an incurable patient in order to put an end to prolonged suffering.

Both medical and legal doctrines give various definitions to euthanasia.

In short, euthanasia represents the action or non-action oriented act of killing a person who suffers from an incurable illness in order to put an end to suffering.

* Judge, Penal Court House of Caras-Severin.
Both medical and legal doctrines make the distinction between active and passive euthanasia.

Active euthanasia is seen as the deliberate act of a third party to produce the death of an ill person in order to stop the person’s suffering by request of the latter. This category would include assisted suicide, which implies on behalf of the third party providing proper guidance and means to cause death of the ill person who wishes to commit suicide. When a doctor provides guidance and means, we deal with medically assisted suicide.

Passive euthanasia represents the intentional causing of death of an ill person by interruption of medical treatment or nourishment or by refraining from taking either.

We shall end this dictionary of euthanasia and its forms of manifestation by stating that one cannot talk about euthanasia in the absence of intentionally caused death. Therefore, certain medical practices (avoidance to apply beneficial cure to patient, ceasing to apply cure after being proven inefficient, unaccepted by patient or unbearable to patient) although labeled as passive euthanasia does not represent a form of euthanasia in the absence of willingness of causing death.

Below we shall present certain existing regulations which are to be found in various national systems and which concern euthanasia, found both in law and professional practice codes.

As far as the law system is concerned, the fact that most countries forbid euthanasia by law must be underlined.

In the USA, euthanasia is banned in all states with the exception of Oregon where it was legalized in 1997. In the same year (1997), The Supreme Court of the USA decreed that assisted suicide is not a constitutional right (case Washington vs. Gkucksberg 117, S.Ct.2258, 1997). Even in Oregon where euthanasia is permitted only in fatal illness situations in fact, the law has never been applied.

In Northern Australia, legalization of self-induced euthanasia was first obtained in the early nineties, but in 1997, the Australian parliament states it as illegal.

In Cyprus, art.218 of the Penal Code bans assisted suicide.

In Norway, art.236 of the Penal Code forbids any person to assist the one that wishes to end one’s life, whilst art.235 Penal Code, states extenuating circumstances that for the aforementioned deed punishment can be reduced or eased provided that the perpetrator acted motivated by compassion toward terminally ill person.

In Denmark, assisted suicide is defined in section 240 of the Penal Code as assistance offered to a person in order to enable the person to commit suicide, while section 239 of the Danish Penal Code incriminates assisted death as it implies killing a person on request.

In France, the penal Code incriminates active euthanasia (when death results from medical intervention) and defines it as murder in the first degree, and passive euthanasia (when death results from failure to provide medical assistance or therapeutic abstinence from treatment) as crime.

In Portugal, art.134 of the Penal Code incriminates killing on request while art.133 incriminates compassionate euthanasia.

The Romanian penal Code (art.174) places euthanasia on the same level with murder in the first degree. The passive subject of murder can be any person alive, irrespective of age, gender, mental or physical condition. The person’s decision to
commit suicide is of no interest as well as the medical condition or stage of terminal illness.

In order to label an act as murder in the first degree the mobile or aim of the perpetrator is not taken into consideration. Our penal law does not admit the existence of any justifiable reason. It is forbidden to cause death of a person whose death is imminent in order to stop suffering and induce smooth death (euthanasia). Irrespective of the state of health of a person, the person’s life is intangible. Therefore, merciful killing remains murder in the first degree. The Penal Code of 1936, in art.486, stated two attenuating circumstances for murder, one consisting of killing a person as a result of persistent and repeated request and the other in killing a person incensed by pity in order to put an end to the person’s physical torment resulting from incurable illness. Both regulations disappear from the Penal Code of 1968, therefore, irrespective of mobile, intentional killing becomes murder in the first degree. The explanation for failure to view euthanasia among reasons for removing the penal character of murder lies, on the one hand, in the necessity of fully preserving the idea of intangibility of human life and, on the other hand, in the attention given to prevention of abuse of any kind as well as diminishing the possibility of murder perpetrated under the mask of euthanasia. Yet, the existence of such mobile can be taken into consideration in individualizing punishment.

Other regulations concerning euthanasia are to be found in art.179, Penal Code, which incriminates as crime determination or alleviation of suicide if suicide or attempt towards suicide has taken place; art.314 of the Penal Code incriminates abandonment, failure to provide help and home bereavement of any kind applicable in the case of a person unable to aid oneself by those supposed to guard and attend one, thus endangering the person’s life, health and physical integrity.

A specific situation is to be met in Holland. Art. 293 of the Dutch Penal Code incriminate euthanasia as crime. Nevertheless, the Dutch Parliament passed an act named “The Termination of Life on Request and Assisted Suicide – Review Procedure-Act”, which states that euthanasia is no longer considered a crime and is not punishable under certain circumstances, if the medic is exempted from sentences applicable by Penal code on condition the medic strictly observed express criteria stated by law and reported committing such deed, a control body being invited to investigate compliance to legal requirements. Holland has thus become the first country in the world to legalize euthanasia. Deputies representing Christian political parties opposed this law but they only obtained annulment of the act, which stipulated that the age limit for which this was applicable was 12, the limit being raised to 16.

As for professional codes, we shall present some examples reflecting ways in which the issue is viewed by the medical profession in various countries.

In Belgium, one of the countries that have legalized euthanasia in 2002, the Deontological Medical Code comprises explicit regulations concerning euthanasia. Art.95 stated the fact that a medic may not deliberately cause death of an ill person, nor assist in committing suicide.

The Czech Republic forbids euthanasia and assisted suicide in the Ethical Code of the Chamber of Medics.
In **Albania**, the Deontological Code of 1998 states with regard to euthanasia that alleviating suffering and pain constitutes a primordial duty of the medical profession. It is contrary to medical ethics though to hasten death.

In **Germany**, the Federal Medical Association published a guide entitled “Principles of the Federal Medical Association on Medical Accompanied Dying” which contains hints according to which life prolonging measures may be omitted or interrupted on patient’s request, on condition these measures only delay death and disease evolution cannot be prevented.

In **Italy**, the Professional Code of Medics strictly forbids euthanasia in art. 36, stipulating that a medic may not, even on patient’s request, practice or facilitate in any way treatments able to determine death.

In **Luxemburg**, art. 45 of the Deontological Code of Medics forbids euthanasia, stating that the medic has no right to deliberately inflict death upon a patient.

Holland and Romania are opposed in this matter; in **Holland**, a country in which euthanasia was legalized in 2001, professional medical associations designed guides of good practices for cases implying euthanasia, this being purely the obligation of the medic.

In **Romania**, the Deontological Medical Code of 2005 stipulates in art. 121: “Euthanasia is strictly forbidden, that is utilization of any substances or means used to inflict death of an ill person, irrespective of the seriousness and prognostic of the disease and even if specifically required as so by the fully aware patient.” Art.122 says that: “The medic will not assist or urge suicide or self-inflicted injury through advice, recommendations, loaning of instruments or providing any means. The medic will refuse to provide any explanation or help in this respect.”

Euthanasia is strictly prohibited by deontological and ethical codes in Poland, Portugal and Slovakia.

These legal regulations as well as those existing within the professional codes indicate the fact that in the great majority of aforementioned countries the general idea is that the right to live does not imply the right to die which would allow the individual the possibility to opt for such a solution.

Let us see now how The European Court for Human Rights answered to the question whether art.2 of E.C.H.R. stipulates correlative to the right to live the right to die.

A relevant case concerning this aspect is **Pretty vs. Great Britain** (case 2346/2002 – Sentence 29th April 2002) in which the European Court answered in principle. The plaintiff suffered from an incurable disease because of which the state of her health was deteriorating rapidly. She was completely paralyzed, unable to express herself coherently, tube-fed, yet fully aware. She asked British authorities to allow her husband to assist her in committing suicide and the refusal her request met with was attacked in the European Court for Human Rights.

E.C.H.R. decided in principle, as related to this case, that art. 2 of the Convention does not stipulate the right to die. The court underlined that art.2 of the Convention poses no link to the issue concerning quality of life and beyond all, it consecrates prohibition of force and any behavior apt to produce decease of a human being, and it does not create
the right to self-determination which will thereby translate itself in the right of the individual to demand the state to allow or facilitate death.

The court insisted on underlining the fact that its decision complies with Recommendation 1418 (1999) of the European Council which recommends the Council of Ministers (The Council of the European Union) to encourage member states to respect and protect the dignity of the incurably ill and dying by maintaining the total ban on intentional ending of their lives.

As a conclusion to this article we can notice that in the majority of states legislation incriminates euthanasia or assisted suicide on penal basis, consequently considering that the right to live, internationally guaranteed and consecrated, does not implicitly imply guaranteeing the right to die.

The issue of euthanasia raises, above all, ethical and religious problems. People’s attitude versus euthanasia is generally determined by their perceptions upon life and death. Social and political views upon the matter in hand come to complete the picture. Human relationships are largely determined by the rule according to which we are not allowed to kill willingly another person, while society protects us from being killed. Naturally, the following question appears: “What happens if we give up on this protection?”

Promoting and respecting fundamental rights and liberties of man represents a barrier against violence and abuse, a guarantee of individual and social morality.

In the restrictive area of euthanasia, the discussion revolves around the necessity to protect and respect the right to live, as a primordial, natural and fundamental right as well as around the existence of the right to die, of requiring infliction of death in the circumstances in which the quality of life is significantly altered as an expression of the human right to self-determination. This right represents in fact the liberty of choosing euthanasia and like any liberty, it has its own limitations, which are to be found in the right the state has to intervene through legal regulations that limit this liberty or declare it unacceptable.

References: