Euthanasia on cross roads of Right to life

- Nandini Tripathy, Student of Symbiosis Law School, Hyderabad

Euthanasia, this important ethical-legal moment concerns with the final stages of life. The confrontation of this moment with the right inevitably provokes reflections of different natures. Euthanasia is crystallized as a crossroad where the right to life and the right to die in dignity are faced . Although the latter seems to carry in itself a deeply paradoxical character, it is a fact that legislators should think seriously to complete the legal framework on this issue. This paper generally involves issues of ethics and law. This makes the problem to be considered primarily as a problem of moral existence of mankind. In Europe, there are constitutional precedents (the Swiss case) in which the right to life is not expressly guaranteed, but it is treated in the context of the right of self-determination- a fundamental right, which derives from the constitutional guarantee of personal freedom. Euthanasia, the right of personal freedom to choose courageously (in certain medical conditions) the right to death with dignity, must also be treated in such a status. The right of self-determination allows an informed and able patient to accept or refuse a treatment, even though by doing so he may die. The most important right, the right to life requires every doctor and person to respect his patient life. But in desperate conditions, in cases of terminal, painful, long and dignity degrading illness, the doctors are faced with the dilemma: to allow their patients live with pain while walking towards certain death or interfere with the request of the person to remain in the boundaries of respect for human dignity. Any solution that legislations have given to this issue reflects a kind of relativism of the social concept based on the fundamentals of human moral philosophy. When dealing with euthanasia, of course there are addressed issues of bioethics dimensions, thus accelerating the concept of human life and refusing its monolithic or dogmatic concept. The role of the last arbitrator is always very difficult to play.

In Europe and beyond, there is certainly a unity in regulation of this area, but there are attempts to export qualitatively the scientific knowledge on this field and to be positioned within the limits of human morality and the right of self-determination, what means recognition of the right of final decision to the person carrying human life, the man.

It is certainly a long and dynamic reflection taking place on the limits between life and death. Looking for a balance is difficult. On one hand it is the will and determination to protect human life as a fundamental value underlying the social order and on the other hand the

exigency of respect for individual autonomy, an aspect of which is the exercise of the personal right to live and die freely. Under such a reflection, the society has major legal obligations, among the leading, to maintain the quality of human life.

Currently most of the western legislations incriminate euthanasia. But there are different realities which make dynamic the legal landscape regarding this problem. This paper will cover aspects of the legal regime that the Albanian criminal legislation defines on this issue.At this point the Albanian criminal legislation, testifies for the emergency of amendment and adoption of more refined solutions.

Euthanasia means "*accelerated death of the person who suffers from an incurable disease, triggering fatal or serious physical abnormality, which aggravates the mental, emotional or physical state of the patient (terminal illness), and that can be caused in different ways and from different subjects, under the clear and continuous desire of the patient, with the only interest of giving an end to his sufferings*" .

Euthanasia can be presented in several forms, among which we can mention: the voluntary and involuntary euthanasia, active and passive euthanasia, euthanasia suicide and assisted euthanasia, euthanasia caused by doctors, public officials or their family and other relatives of the patient.

In our criminal law it cannot be found the term of euthanasia, nor any other term which can sanction the end of life of a person who wants it, as it happens in some countries .

According to the Professor Ismet Elezi "**murder is an unlawful act or omission, through which another person is deprived of life intentionally or recklessly**" . Euthanasia that is the subject of this paper differs very little from the murder described above, to not say that it doesn't differ at all. Both concepts consist of taking away another person's life. It would have been a difference if to the definition of murder we could add **"another person is deprived of life without his desire"**, but as it can be seen the desire of the person who dies is not taken into account for the legal qualification. Since euthanasia is not provided as a separate offense, nor decriminalized, we could state that the attitude of our criminal legislation on the issue of euthanasia is that it punishes euthanasia under the provisions of the Criminal Code, Chapter II, Crimes Against Life. From the legal-criminal viewpoint, euthanasia consists on a conscious act conducted intentionally by a person who ends the suffering (physical or psychical) of another person. If we want to classify euthanasia from the legal-criminal viewpoint, we should refer to crimes against life committed intentionally provided by the

current Criminal Code. The section of crimes against life committed intentionally expressly provides for certain types of murders in eight different articles. In our paper it is of interest only intentional murder (Article 76) premeditated murder (Article 78), murder committed against a minor, a person with physical or mental handicap, who is seriously ill or pregnant woman, when the qualities of the victim are evident or known. (Article 79, paragraph a and b). If a case of euthanasia comes into the practice of a judge or prosecutor, they will have to choose which of the above provisions should apply. Will they apply Article 76 (intentional murder) convicting a person for committing a simple murder and sentencing him to imprisonment ranging from ten to twenty years? If we were enforcers of legally unqualified law, this would be the smallest possibility because in most cases, compassionate homicide (on request) are done intentionally, which would force the judge to apply Article 78 (premeditated murder), which provides for punishment with imprisonment from fifteen to twenty years, or Article 79 (qualified murder) because we know that euthanasia except deliberately premeditated, is carried out against persons with physical, mental or seriously ill, qualities that are not only evident, but constitute the essence of euthanasia. Not only had this, but euthanasia as a concept justifies only murders committed to the mentioned category of persons. In such a situation, an enforcer of the criminal law would face tough choice opportunities. If he would refer to the comparative criminal law, he would not only see that the penalties provided for qualified murder in the legislation of the respective states are not applied for compassionate murder , but as in the case of Greece, Italy and the other examples mentioned in this paper, special penalties, more lenient than for any other ordinary murder committed intentionally are imposed. The Albanian criminal law makes no difference on whether the murder was committed at the request of the victim or not. As a result of this logic, law enforcers, if faced with a euthanasia case, will classify the offense under paragraph b of Article 79 of the Criminal Code which protects the lives of seriously ill people and would give a sentence of imprisonment that goes from 20 years to life imprisonment.

In our opinion, such a legal situation is unacceptable, because even though euthanasia is classified as a criminal offense, in the legislation of various countries, democratic or undemocratic, with high religious influence and no religious influence, it is classified as a crime with a less social dangerousness than other murders committed intentionally, thus even than the simple murder. In the case of euthanasia, all elements required by law for a legal qualification as murder in other qualifying circumstances (Article 79) are met. The definition

of the Professor Ismet Elezi to qualified murders as **"intentional murder made for such special circumstances, which characterize the figure of crime",** fully confirms this fact.

This results, even if we take one of the elements of the offense provided for in Article 79 paragraph b of the Criminal Code which states: **intentional murder committed against a person with physical or mental handicap, seriously ill or pregnant, when qualities of the victim are evident or known is punished by not less than twenty years or life imprisonment**.

Compassionate murder (euthanasia), is always committed intentionally otherwise it would not qualify as such. This emerges even from the motive that encourages the author to perform the act, which is compassion for the situation in which is the victim. Compassionate murder in order to be qualified as such must also be committed only to persons who wish the death but are not able to find it by themselves. Inability to find death is clearly materialized by means of the request addressed to the author of murder, because of the fact that they are physically handicapped or suffer from a disease that causes severe physical or mental pain, which is incurable, as required by the aforementioned provision. An act can be legally qualified under Article 79 paragraph b of the Criminal Code, if the physical handicaps and severe disease are known to the murderer, otherwise the qualification will be done in relation to another figure of offense. The compassionate murderer knows very well these qualities and under this basis he commits the murder, in order for the victim not to suffer more due to these handicaps or diseases.

We can say that legally this is the most appropriate provision to be used by law enforcers if faced with a case of euthanasia, because when all elements are met as shown above, it cannot be claimed for the simple murder or premeditated murder. The element of the subjective side of this offence that serves to the legal qualification is that the murder should be committed intentionally by knowing the qualities of the victim. It is not required any particular motive or purpose.

But nevertheless there is a discrepancy between social dangerousness of this criminal act (Article 79 of the Criminal Code) and social dangerousness of euthanasia. Such a thing can make a criminal law enforcer not to apply such a provision because it is inconsistent with the function of criminal law of the Republic of Albania, which aims to punish and educate people, who with their actions or inactions show that they are dangerous to the society, by means of punishment which should be proportionate to the social dangerousness of the crime

and its author. Since the court must give a decision, (it cannot refuse the situation on the ground that the law is absent or incorrect) it should give it referring to the provisions which are more lenient than those of Article 78 or 76 of the Criminal Code. To perform such an action should be before a murder committed under a clear and continuous request by the seriously ill patient. The murder should also be committed for positive reasons such as feelings of compassion and not for any personal interest, whether or not economic. Of coursethis is a dangerous initiative, and in order to not remain so for a long time, the legislator or judicial practice should decide on this issue because there is a divergence between the purpose of the law and its "content". **Article 78 states:**

"**Premeditated murder is punished by fifteen to twenty five years of imprisonment.**

Murder committed for interest, retaliation or blood feud is punished by not less than twenty-five years or life imprisonment".

In case of the first paragraph, in order to qualify this offence, it is required only that the murder is committed intentionally. This is the same for the case of euthanasia. All or at least most of the murders committed for mercy are with premeditation but even if the qualification is done according to this criminal offense, the sentence still does not justify the social dangerousness of the offence or of its author. The sentence is much higher than the sentences provided in criminal legislation of the countries that have addressed this issue by law. An important moment is related to the second paragraph of this article which says**"Murder committed for interest, retaliation or blood feud is punished by not less than twenty-five years or life imprisonment".** Euthanasia, more than anything else, is murder conducted at the request of the victim who suffers from an incurable, fatal disease, which causes great pain for as long as the patient is alive. But very few jurisdictions explicitly provide for the reasons of the murderer on request for the legal qualification of the offence. We can mention here, the Costa Rican criminal law which by means of Article 116 of the Criminal Code of 1970 states: "punishment is applied from 6 months to three years on those who driven by a sense of mercy, murder a seriously ill and incurable person, under the serious and persistent request of the patient even when the murderer is a relative of the victim.

The policymakers of each country, before criminalization or decriminalisation of a phenomenonstake into account their potential positive and negative sides. Below we are trying to provide elements that are pro decriminalization and against criminalization, as well as elements that are pro criminalization and against decriminalization. Since in the largest

number of countries, including our country, euthanasia is a crime, we will begin with arguments against euthanasia.

A. Arguments Against Euthanasia

Euthanasia would not only be for people who are "terminally ill"

Although the law may provide for a period of 6 months, doctors say that it is impossible to predict exactly when a patient will die. Some people diagnosed as terminally ill people do not die for years despite the diagnosis. Increasingly euthanasia activists define the incurable disease with phrases such as "hopeless disease", "desperate illness", physical or psychological pain, physical or mental incapacity, or an unacceptable quality of life, i.e. each person who has a suicidal impulse. This problem of terms and inability to define in absolute the diseases those cause death, by those who do not do so hinders the application of euthanasia without negative effects.

Euthanasia can become a means of health care cost containment

Health insurance companies would benefit greatly from euthanasia if it would spread widely. Tools used for death by euthanasia cost about $ 40, while to cure a disease it can be used even $ 40,000. In the recent years it has been often discussed the problem of the high economic cost of treating illness, the latest apparatus of medical techniques often have a very high economic cost. In such a climate, euthanasia can save some costs.

If euthanasia would be legalized there is a risk that doctors will widely apply it instead of long-term cures, so as to reduce the costs for their patients. The terminally ill are a class of people that need to be protected by the family, the economic and social pressure. The patients are often vulnerable to the pressure due to chronic pain, depression, and medication effects. Those who treat euthanasia as a right should be aware that such a right could soon be back on duty to die. There are fears that financial problems can be raised over family love.