

Euthanasia, last life right and albanian legislation

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ABSTRACT

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.

1. EUTHANASIA UNDER ALBANIAN LEGISLATION IN FORCE

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.

Legal-criminal qualification

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 psychological) 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 course this 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. Let us consider a hypothetical case.

A, a hopeless sick person suffering from severe pain requires to the person B, his successor, to murder him, so as to end his suffering. Person B performs such an action after taking a serious and persistent request from A, and seeing his irreversible condition which goes toward death, but does not commit the murder for mercy, but because he wants to benefit from the inheritance. Thus, this person's motives are not often seen in cases of euthanasia. Will we qualify A's murder under the second paragraph of this article or as a case of euthanasia to which we will apply the minimum sentence possible? In our opinion in this case the social dangerousness of the offense is too small, or almost there is no dangerousness (we would say so to each euthanasia case). What should be discussed is the social dangerousness of the offender. We think that even if such an event would happen in practice, it is very difficult to find the real motives of the murder, because as it is known in most of the cases when the murder of the patient is not done by the physicians, it is committed by the relatives of the family. These are the people who first try to help their relatives, but also the persons who in any case suffer or enjoy the economic consequences of the death of their relatives. If we face such a situation and will prove that person B has not committed the murder motivated by positive motivations, but driven by negative motives such as benefiting from his inheritance, we would say that the social dangerousness of the offender exists and he should be punished with a higher sentence than any other person who commits a requested murder motivated from the

patient's condition, the sentence of which may be issued under the second paragraph of Article 78 of the Criminal Code.

Let us return again to the first paragraph of Article 78 (since we excluded Article 79, murder in other qualifying circumstances), which punishes the authors of murder to a minimum of fifteen years of imprisonment. Again, in our opinion, the sanction does not justify the social dangerousness of euthanasia, i.e. it is inconsistent with the purpose of the law, and then the enforcer of law can make a final attempt to qualify the murder as a simple one, i.e. under the provisions of Article 76 of the Criminal Code (Intentional murder). In England () the prosecutors asked the popular jury to convict the author of euthanasia for committing murder without premeditation (as a rule he should be punished for premeditated murder), fearing that the jury, being forced to choose only between guilt and innocence of the person could choose his innocence as the only way that would avoid the severe punishment that is provided for premeditated murder. If we would legally qualify euthanasia under this provision, the lower sentence would be of ten years imprisonment. Again, if we look at Italian criminal law, we will see that for the killing at request the penalty of imprisonment varies from 6 to 16 years, while for the simple murder, the law provides a higher penalty. Penalties for compassionate murder are lower in Germany and Austria, varying from six months to five years imprisonment.

Determination of penalty

To achieve the standards of neighboring countries which have provided by law the murder on request (Italy, Greece), in the role of the jurist who interprets the law and that has no possibility to change it, we should refer to the circumstances that affect the issuance of a decision by the court. Under Article 47 of the Criminal Code on the manner of determining the punishment, the court determines the punishment in compliance with the provisions of the general part of this code and the limits of punishment on criminal acts provided for by law.

In determining the range of punishment against a person the court considers the dangerousness of the criminal act, the dangerousness of the person who committed the act, the level of guilt, as well as both

mitigating and aggravating circumstances. From the above, it appears that the court can not give a penalty less than ten years if we are before murder on request, but we can say for sure that the minimum sentence prescribed by this provision will be given due to the dangerousness of the offence and the author, which are almost absent. An issue that can also draw attention is that of mitigating and aggravating circumstances in relation to euthanasia. Let's start with mitigating circumstances. In other murder cases, these conditions are seen case by case according to the types of murder and can not be predicted in advance, but such a thing could be made for euthanasia or merciful murder. Under Article 48 of the Criminal Code the following circumstances may mitigate the punishment concerning euthanasia:

a. When the offense is committed due to positive moral and social values;

ç. When the person who committed the act shows deep remorse

dh. When the person gives himself over to the justice authorities after committing the offence

Under Article 49 of the Criminal Code the court may also consider other circumstances as long as it deems them as such to justify the mitigation of the sentence. We can notice that in the case of euthanasia, i.e. murder committed by mercy for the deep pains that the victim proves, the mitigating circumstance prescribed by paragraph a, Article 48, can simply find concrete application. In the comments of this circumstance are mentioned feelings such as compassion, love and mercy, which lie at the core of euthanasia. While the two other circumstances can be verified case by case and are not absolute characteristics of euthanasia, but its relationship with these circumstances is like that of any other offense. The above circumstances are mentioned strictly to exclude the possibility of applying any other circumstances expressly provided for in Article 48. The circumstances in which the merciful murder (on request) is committed should certainly be considered by the court as mitigating circumstances. This is a court's right and duty provided by Article 49 of the Criminal Code. As such circumstances, except the motives with positive values, there can be also mentioned as possible, the health condition of the passive subject of this offence, which is serious and incurable, deadly and very painful, its "usefulness", which consists in the termination of the suffering of the sick person and maintenance of human dignity (an end

that in most cases only approaches lightly the death), the request made by the victim for his death should be serious, real and continuous. In our opinion there are many reasons to apply the minimum penalty provided by law for the crime of murder (regardless of its type).

But are there any sufficient mitigating circumstances to reduce the penalty below that prescribed by law?

Article 53 of the Criminal Code states: **“In special cases, when the court deems that both the act and the person who committed it are of small dangerousness and there are mitigating circumstances, the court may sentence under the minimum or may decide a more lenient punishment than the one provided for in the respective provision”**.

Regarding the first part, i.e. the dangerousness of the author and of the offence, there is no question that they are low, regardless of whether the author may have committed the offense before, (i.e. regardless of his criminal past) he should not be considered as subject of high social risk, because the offence is not performed for personal interest. The Italian legislation has expressly held such an approach. What is to be discussed is the fact of the existence of mitigating circumstances which may persuade the judge to give a lower sentence than that provided by the criminal provision. In our opinion there are sufficient mitigating circumstances to reduce a sentence below the minimum provided by the criminal law that will qualify this offense.

A circumstance that exists in most cases is that of offence committed due to positive moral and social values, which is explicitly provided by law . Taking into account the possibility of application of the two other mitigating circumstances provided for by law, as above-mentioned, as well as of other circumstances that are not explicitly provided, but the judge can rule on the basis of Article 49, the reasons to believe in a reduction of sentence under the minimum provided by law are higher.

We think that such a situation will approach our criminal legislation with other legislations that address

this phenomenon by law (Italy, Greece, Germany, Switzerland, etc. mentioned below.). Taking into consideration that we agreed to not qualify euthanasia as a premeditated murder or as murder committed in other qualifying circumstances under the relevant provisions 78 and 79 of the Criminal Code, it can be approached an imprisonment penalty which is comparable with other countries (Italy, Greece, Germany, Switzerland, etc..), that have liberal legislation in this regard. But as we said above, the decision is issued under the relationship between mitigating and aggravating circumstances and not only under the mitigating circumstances. The Italian legislation, in contrast to many other jurisdictions that regulate euthanasia by law, expressly provides that in case of verification of a mercy killing it will be disregarded any of the aggravating circumstances provided for by the Italian criminal law . If the aggravating circumstances of Italian legislation are compared to those provided for by our legislation, it could be noticed that they are similar. The Italian legislator has rightly excluded the aggravating circumstances for the offense of euthanasia, because it is presumed that this offence is not done for the benefit of the author, but of the victim and certainly it has a small social dangerousness, to not saying that there is no social dangerousness. In our Criminal Code (in the case of euthanasia) can be verified the following aggravating circumstances :

c) Commission of the offence after a sentence was decided for a previous offence;

dh) Commission of the offense by abusing duties which derive from a state or religious function or service;

e) When the offence is committed against children, pregnant women, or other people who, for different reasons, cannot protect themselves;

g) When the offence is committed by taking advantage of family, friendship, or hospitable relations

The Criminal Code also provides for other aggravating circumstances, but if we faced a case provided for by law and that is not mentioned above, we think that this would not be the case of euthanasia. It may

happen that a person who commits murder for mercy upon the request of the victim has been convicted previously, but in the case of euthanasia, where the offender commits killing driven by feelings of mercy, he can never be considered to have a high social dangerousness and if this will be taken into account as an aggravating circumstance, it would be contrary to the purpose of law which is to reduce crime through the criminal punishment rendered in conformity with the social dangerousness of the offense.

The social dangerousness, as the material feature of the offense, prevails when the values protected particularly by the criminal law are violated. We think that in this case, it should be noted that when the offence is committed on the request of the victim, which is given in free will and rationally, it can not be claimed that it is acted against life protected by the Criminal Code as the most important legal relationship.

With regard to paragraph dh of article 50 of the Criminal Code (aggravating circumstances), we would say that in countries that have legalized euthanasia, the main executioner of euthanasia is the physician. In Albania, the doctor is still a public service officer. In many countries of the world, these people being in contact with their patients, are faced with the largest number of requests to commit the sweet death of their sick, hopeless, patients who suffer from diseases triggering a lot of pain. Again we should note that the position of a person who commits an offense of very small social dangerousness can not be aggravated.

Physicians, more than any other person know their patient's suffering. In Italy about 39% of physicians who treat the aforementioned patients receive request to perform euthanasia and execute about 4% of requests although this is a criminal offense. This fact was recognized by a health minister in Italy during the time he exercised this duty. We would be stand-offish to intimate that such phenomena do not occur in our country.

Even with regard to the point e of article 50 of the Criminal Code, we would again say that this can not be taken into account as an aggravating circumstance as long as the victim makes a clear request to die, which is addressed specifically the author of murder. It should be kept in mind the fact that in most cases, persons seeking the help of others to die can not do by themselves such a thing, because of physical incapacity resulting from the illness. Thus, in most cases of mercy killing (by request) the passive subject is unable to be defended, but even if he could defend himself he wouldn't do such a thing because he himself desires death. Commission of the offense against people that can not reject the author of these actions and cannot be protected from criminal acts shows a greater social danger of the author. As it is obvious, to the effect of this circumstance, the passive subject would resist if he could, but despite the impossibility he makes no resistance even in his mind, because he does not want, on the contrary he wants in complete conscious the performance of certain acts by the author to take the life of the patient, thus avoiding the social dangerousness that justifies this aggravating circumstance.

From this point of view, it seems unfair to take into consideration this circumstance as an aggravating circumstance, without being in inconsistency with the social dangerousness and purpose of law. Regarding the aggravating circumstance of committing the offense by taking advantage of family or friendship relations , even in this case we would say that the judge or prosecutor should not take it into consideration. In practice, familiars are those who suffer the disease of their relative more than any other. Therefore, they are the first who approach to end the life of the seriously ill person and along with it, to end the sufferings, which were the reason of making the request to die. In this case the murder would be committed using family relations, because familiars are among the few people who have contact with the patient because of their relation, but it can never be spoken about neither of social dangerousness, nor of intention, to sanction such a situation. As long as the patient makes a request to end his life to its familiars, and as long as the natural love between family members exists, there is no room to talk about social dangerousness. As analyzed above, the judge has every opportunity to ignore any of the aggravating circumstances cited by the article 50 of the CC. The judge should do such a thing by analyzing the evidence, though sometimes it becomes very difficult. He should exclude these circumstances when a person suffers from a serious, incurable disease that causes much suffering, or that damages the dignity of the sick person. Such diseases may be paralysis, infection with AIDS (the syndrome of immunodeficiency), various types of cancer, etc. The judge should take into consideration the request of the patient, which must be real, serious, continuous and without vices, i.e. not taken in terms of fraud or intimidation. The judge should consider the motives, if the murder is committed for any personal benefit,

other than the feeling of mercy that brings only spiritual profit as a result of ending the suffering of the patient. The judge should keep in mind these criteria not only in the case of aggravating circumstances, but even when rendering the final decision for the author of the merciful murder (by request), for the legal qualification of the offence, the presence of mitigating circumstances, the type of penalty and whether to reduce or not to penalty below the minimum required by law.

With regard to additional penalties like the one provided by Article 35 (Deprivation of the right to work in the public service) and Article 39 (Deprivation of the right to exercise an activity or skill) of the Criminal Code, should the court also give them together with the principal penalty or not?

We tried to explain above why the position the doctor who he has committed a merciful murder can not be aggravated through aggravating circumstances (commission of a criminal act by abusing duties which derive from a state service point dh Article 50 of CC). However, if the court would declare the doctor guilty of intentional murder of his patient (in terms of euthanasia), then, it may use the additional penalty, respectively deprivation of the right to exercise the profession. However, the judge must judge case by case, because giving such punishments is not mandatory, as it is the case of seizing the tools with which is committed the criminal offence.

Our Criminal Code provides for certain circumstances that despite the violation of legal relationship specifically protected by the criminal legislation, exempt the subject of these violations from criminal liability. In the current legal situation in Albania, the doctor is criminally liable if he commits a murder on victim's request, but if a doctor would claim that his main task is to reduce suffering and not to keep the patient in life having no hope for the future, the decision of guilt would be put in doubt. In fact, this was the manner with which euthanasia became legitimate in Netherlands. The Dutch court, when compared the doctor's duty to keep his patient in life with his duty to minimize his pain, thought that the second task had the advantage. If we were to ask Albanian doctors, those who will give us a final answer in favor of the supremacy of one or another task would be rare. This situation becomes even more difficult if we refer to the legislation in this area, which is absent and does not provide an adequate solution to this issue. Under the Code of Medical Ethics and Deontology of 1998, the first doctor's duties is to alleviate the suffering of the patient, while the second, (which according to this code can not be ignored) is the doctor's

duty to not accelerate any case the death of his patient. This is a very controversial issue, but if one day euthanasia will be legitimated even in our country, it can be started from this point, i.e. the right and duty of the doctor to remove the pain or any other suffering of his patient. Another moment that would exclude a person from liability for murder committed against the person who requested this explicitly, concerns with the moment of death. When will a person be called dead? (In this case the request might have been made before the person has entered in the involuntary state, or it can not be done at all). Our criminal law does not specify such a moment. On the moment of person's death there are different theories, which do originate in our days and who are more often used for civil matters.

Will a person be considered dead when his brain dies, i.e. when the brain no longer performs any function?

Let us take the case of a person who is hit with a bullet in the head and is surprisingly paralyzed, with a large part of his brain that is missing, while his blood circulatory system still works. This blood system is maintained by medical devices. Nobody really knows if this person is alive or dead. There are different comments in different practices. If we would refer to the Italian judicial practice we would see that in this case, it is thought that the person is dead and as logical and legal consequence it can not be killed a person who is has died a long time before. The cases are different, but there are not precise definitions in the matter. The legal situation in which euthanasia is treated in our country is not contemporary.

At this point, the legislation has not moved in line with the general legal trend in other countries. A person who ends a patient's pain with the latter's request, risks life imprisonment (recalling Article 79). This situation must be changed. The absence of a provision that regulates at least murder on request and not all the problems of euthanasia is a fact that sooner or later will create confusion among prosecutors and judges. It is true that today's real problems of Albanian medicine are diverse and different from those of euthanasia, but noticing the legal realities of Western European countries which are consolidated at this point, for situation should be at least a juridical regulation. Say juridical and not legal, because the Supreme Court's intervention may regulate this issue. With the technological developments in the field of medicine that are being applied in our country, the people no longer know whether they are slaves or leaders of these machines, it is not known whether we add life to our days, or adds to our lives a few more

days. Let us take a case of the Albanian reality.

One of the cases mentioned in the press is that of the year 1997 in Skrapar, where a young man newly married and a father of a young child was hit by a stray bullet in the head. After were done all medical interventions in Tirana of Italy, he was still in a coma. His wife and family could not order passive euthanasia, and took him home and he continues to live today with his wife and child, lying in a room, fed by his wife and with a gastric tube in the nose. He does not react, because his brain dead, but only his heart, lung and intestine are working.

Situations like this encourage for a solution to the problem of euthanasia. Another case of most recent times also presented by the press is that of a father and husband who has transferred his family to a hospital room, not because he works at the hospital, but because he is paralyzed and needs artificial breathing apparatus 24 hours a day, which can be found only in the hospital, other than the fact that the person needs care and spending 24 hours a day. It is true that the criminal law has at the epicenter of his defense mechanism as a priority, human life and health in the context of freedoms and other fundamental rights of man. But should it protect life even from the person in whose hand the life is?

Man has a mysterious fear towards death. We say this because he has never seen death and again he fears it. But is it ethical and right that once a person passes this fear and decides courageously to face death, the society prevents him through the criminal law, without giving the necessary assistance, leaving him under the fear of a greater suffering than that of death, which is that of life without dignity that has remained to him.

If the politics and public opinion are not ready to legalize euthanasia, then it can be easily sanctioned lower measures of penalty for murders committed at the request of the terminal patient. Above, when we mentioned the types of euthanasia we considered even the assisted suicide of terminally ill persons as an expression of euthanasia. Even in our criminal legislation suicide is provided by Article 99 of the Criminal Code entitled cause of suicide. Of course, there the suicide may have various reasons and motives, but to us it is of importance the suicide of the person suffering from terminal illness, i.e. who has an incurable

disease, thus the cause of suicide is his health conditions. Serious disease is a very strong motive to commit suicide. The emotional and mental condition of the patient is too heavy, and he is likely to end his life and the unbearable suffering coming out of it by committing suicide. Murder at the request as explained above is found only when the patient due to his physical handicap is unable to kill himself, i.e. to find the sweet death. In fact there is little legislation that condemns suicide regardless of motive, by imprisonment or fine, of course, when it remains in attempt. Our legislation does not prohibit such a thing, giving priority to the freedom of individual more than his life. Such a thing is quite right. But our law does not punish nor assisted suicide, which is committed with the assistance of another person. This assistance may consist of spiritual assistance, as well as material aid. As it is seen from the abovementioned provision, (which only in a very broad interpretation can be considered as it regulates even euthanasia) the legislation protects the life of a seriously ill person only when he is under the pressure of a systematic ill treatment or of other systematic behavior which seriously undermines the dignity, committed by a person who has him under the material or any other dependence.

One of the most negative social effects of the disease is the exacerbation of the economic situation of the patient and his family. It is known that the patient is always in need of care, which is often provided through the money earned by people who are able to work. In such a situation the family may lose their feelings of love and begin to hope for a faster end to the life of the patient (these are exceptional and not general cases), making treatments that they should not make and that lead the patient to death. This kind of help is provided even in other legislation.

For the legal qualification of this offence, there should be a systematic ill treatment or other systematic behavior that affects human dignity and not only that, but that seriously affects it, and that these ill treatments are made by the person who is in charge of him. Our legislation different from the foreign legislation does not provide for the case of encouragement or instigation made by different people to achieve the seriously ill patient's suicide. Article 99 sets forth very clear the requirements to condemn causing suicide by leaving out an encouragement or incentive that have no common points with the provisions of Article 99. Besides "spiritual assistance" our legislation does not punish the person who materially assists in the suicide of the patient. Being under physical inability to perform all the preparatory acts to commit suicide, the patient seeks the help of others, for example, a paralyzed person, who can only use fingers, requires to his relatives to put in his fingers a syringe with a solution that brings

the sweet death, and then uses the syringe himself. According to our legislation the person that assists can not be qualified as an accomplice in the crime of suicide, because there is not such a criminal act, thus the assisted suicide is not punishable by our legislation. And under the definition of murder given above, there is no accomplice in murder in the role of assistant, because the murder consists in taking the life of another person. The person who assists can be held liable for the commitment of any offense related to lethal substances, but not for euthanasia.

2. EUTHANASIA PROS AND CONS

The policymakers of each country, before criminalization or decriminalisation of a phenomenon take 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.

Euthanasia will only be voluntary?

Advocates of euthanasia say that it will never be involuntary. They see things in black and white only. The fundamental question about euthanasia lies in the fact: if it is a movement that promotes the right to be free and the right to choose, or an aggressive actually to eliminate the weak, the elderly and of different?

Today this question can be answered: they are both. As most cases of domestic violence, women are the biggest victims of suicide due to lack of affection from the male spouse. Since women are generally known to live longer than men, they would be the preferred target of euthanasia. Most people who have been subject to euthanasia are women. If euthanasia would be voluntary, how many women would feel under pressure to choose it?

The movement from voluntary to involuntary euthanasia would be like the movement of abortion

“We want abortion only to protect life and health of the mother”, the first lawyers claimed since thirty years ago. Today, abortion is allowed even if the child is half alive. People who support euthanasia say that abortion is something that people choose by themselves, and it is not mandatory for them. Such logic should function for euthanasia as well. History has taught us the danger that it can bring to the society, this is why euthanasia is applied in very few states, and this is the reason that almost all societies, even those who have not had any connection with religion for thousands of years, have considered euthanasia as a crime. Since the Soviets and to the Nazis, concentration camps together with the Cambodian killing fields, the history teaches us that legitimating killing of innocents has horrible consequences.

Euthanasia is a rejection of the importance and value of human life

The right to live is a basic absolute, natural and inalienable human right. The view that human life is the greatest value that should be respected and preserved at all costs is based on the old concept of the sanctity of life, but contrasted with the view on the concept, of the quality of life, from which derives the right of death - termination of life in situations where its continuation is meaningless. If the latter would be accepted, human dignity will collapse. People, who support euthanasia, compare it with the necessary protection, saying that in this case, although it may take someone's life, it is not punished by law. Only that in the case necessary protection life is taken to save another life, while in the case of euthanasia life is taken without saving any others life . A man, even though he is very ill and is unable to perform major life functions, is and will always remain a man. People are important because they are themselves, they are important to the last moment of their lives and it will be done as possible, not only to be helped to die peacefully, but also to live until they die.

Experience in the Netherlands

Shows that very few attempts have been made to improve the treatment of pain and symptoms, indicates that the legalization of euthanasia may reduce the attention of society towards people who are in human

needs. Legalizing euthanasia would reduce the confidence of the public and the patient in the medical treatment and physician morale. The trust of the patient to the doctor, whose task is treatment, shall not be reduced unless noted that euthanasia would only apply to patients with persistent demand.

Possibility of recovery:

It is not good to permit euthanasia because there is always the possibility of a wrong diagnosis and prognosis.

Religious argument

According to Christianity the sixth commandment of the Lord: Do not drown!, is violated: Although the religious beliefs are respected, however, the modern societies have the conviction that there should be created opportunities for man to choose according to personal convictions. Christian Catholic and Protestant, and Judaism churches, adopt passive euthanasia, but not that active. However, no limit can be placed between giving the lethal injection and not treating the illness. Islam considers life, work, conservation and protection of health as sacred, thus their violation, in part or in whole is a serious violation of Islamic principles.

B. Arguments in favor of euthanasia

Unbearable pain

Probably the main argument in favor of euthanasia is that the person is involved in great pain. Today, advances are constantly being made in the treatment of pain and, as they advance, the case for

euthanasia/assisted-suicide is proportionally weakened. **Euthanasia advocates stress the cases of unbearable pain as reasons for euthanasia**, but then they soon include a **"drugged" state**. virtually no uncontrolled pain cases can be found but in such cases it can be spoken about drugged patients into a no-pain state but they need to be euthanatized from such a state because it is not dignified.

"The right to commit suicide"

The second most important moment concerns with the right to be murdered, the right to kill yourself is not prohibited, no person is accused of attempted suicide in our penal code, i.e. euthanasia seeks to exempt from criminal liability, doctors, family members or other persons associated with the sick person and who assist in suicide. So euthanasia seeks to change the law in such a way that people can perform intentionally and directly the killing of the sick person. Suicide is a tragic act of the individual. Euthanasia is not treated as a private matter.

Should people be forced to stay in life?

No. Insistence, against the wishes of the patient, to extend in time his death by any possible means is against the law and practice. That would be cruel and inhumane. There comes a moment when continued efforts for treatment are not performed with passion, are not smart, or very medical. That is the time when all efforts should be placed on making the patient's remaining time comfortable. Then, all interventions should be directed to alleviating pain.

Greatest fear of death

Man comes to life without his will, learns how to survive, but never how to die. In most cases, patients who seek euthanasia know very well that they will face death, regardless of who will bring it, disease or

human hand. So they have no choice between life and death. They seek to choose between a quiet death and somewhat premature death than a more recent, but very painful death. So they manage to avoid the greatest fear of man, fear of death. All agree that, though inexplicable, because no living person has seen death, the greatest fear of man is death. At the moment ill persons exhibit a willingness to die, they avoid the fear and more than anything else in the world are afraid of life that has remained, life that are forced to pass in suffering. So people who want death should be helped. Criminal law that protects the right to live as a fundamental right does it for even for the fear of man from death. Doesn't it do such a thing for the right to die, at that moment that a person due to objective reasons is more afraid of life than death?

Euthanasia as an act of generosity

One of the Italian ministers of health , Verone, said that although he has ever exercised as euthanasia as a doctor, in some cases its exercise may be a gesture of generosity. This is an opinion that contradicts the religious view. It is somewhat utilitarian, pragmatic. In general seculars are of this opinion. Besides the fact that the patient is saved from unbearable pain, even the persons close to him are released. It also represents an economic interest for families that keep in life these people with very expensive treatments, even for the state in the case when patients are in public institutions.

3. EUTHANASIA IN FOREIGN CRIMINAL LEGISLATIONS

In the Italian criminal law, euthanasia is incriminated and conceived as: murder on request. Incrimination under Article 579 of the Criminal Code is clear: "Anyone who causes the death of a man at the request of the victim shall be punished with imprisonment from 6 to 16 years" . If we will see the components of the specified offense, they are the same as the crime of murder .

Even the Greek legislation provides for a lenient penalty for persons who assist the people who want to die than for murders committed against the will of the victim. If we refer to the Italian Criminal Code

provisions concerning to murder, it can be seen that they differ from the above provisions in three moments:

1.

The subjects. In the case of murder, the two subjects are unqualified, thus it can be any person who takes the life of another person. While in the provision dealing with euthanasia, it can be seen that there are special subjects. It can be subject of this offence only the person against whom the request to murder was addressed and only against a person who has expressed a desire to die.

2.

The subjective side. They differ in the subjective side, because in the offence of murder the motive does not have any importance for the legal qualification of the offense, while in the above provision the motivation is necessary for its legal qualification. This consists in the assistance the murderer seeks to provide to the victim, that why we think that it has a lower penalty.

3.

The sentence. If there is a simple murder, then imprisonment would not be less than 21 years (it can be up to life imprisonment), while in the case of the above provision it varies from 6 to 16 years. Also, it should be noted the fact that in the offence of euthanasia it is not applied any aggravating circumstance confirms, a fact that confirms again the small social dangerousness of this offence .

The Austrian criminal law , also provides for a special provision for the murder in terms of euthanasia. Incrimination of offense by the criminal law is as it follows: “Anyone who causes the death of another person, by a clear and persistent request of the victim, shall be punished with imprisonment from 6 months to 5 years.”, While Article 78 of CC states: “Anyone who pushes another person to commit suicide,

or helps him is punished with imprisonment from 6 months to five years". In the case of Austrian legislation, for the legal qualification of the work it is necessary that the request made by a person is not only obvious, but persistent, and continuous. The Austrian law also punishes those who push a seriously ill and hopeless person to suicide.

In the Norwegian criminal law, euthanasia has found a particular form of treatment . Article 235 of the Norwegian Criminal Code states that penalties provided by sections 228 and 229 of the Criminal Code are not imposed when the murder was committed with the consent of the victim. Article 228 states: "Anyone who commits violence against the person of another or otherwise assails him bodily, or who aids or abets thereto is guilty of assault and shall be punished by fine or imprisonment up to 6 months". Section 229 states: "Anyone who injures, another person in body or health or reduces any person to helplessness, unconsciousness or similar state or who aids or abets thereto is liable of occasioning bodily harm and shall be liable to imprisonment up to three years, but not exceeding 6 years if the offender's actions caused any illness or disability lasting more than two weeks, or any incurable defect or injury is caused, and not exceeding eight years if death, or considerable injury to body or health results ."

In the Icelandic criminal legislation it is provided that "Anyone who kills others at the request of the victim shall be punished by imprisonment with a minimum of not less than 60 days and maximum of three years".

Article 214 of the Penal Code punishes with imprisonment or fines anyone who helps others to commit suicide, if the offense was committed for personal motives the punishment would be up to three years".

As it can be seen the Icelandic legislation provides for more lenient penalties for those who committ euthanasia. The minimal sentence can go up to 60 days of imprisonment.

In the Greek criminal legislation , euthanasia is incriminated as required murder. In article 300 of the

Greek Criminal Code it is provided that “Anyone who has committed a murder on the basis of a serious and persistent request of the victim and of mercy to those who suffered from an incurable disease is punishable by 6 to 16 years”. Article 301 of the Criminal Code states: “Anyone who with intent has led others to suicide, if suicide is committed or remained attempted, as anyone who has given assistance is punished by imprisonment.” For the criminal legal qualification the request must be persistent .

In the Criminal Code of Costa Rica , the case of euthanasia is provided in a separate provision. Article 116 of this code states that: “Punishment is applied from 6 months to three years on those who driven by a sense of mercy murder a severely sick and incurable person, under its serious and persistent demand even when the murderer is a relative of the victim”. Article 93 of the Criminal Code, paragraph 6, provides for the possibility of forgiveness from the court for the person convicted of merciful murder, made at the request of the victim found in the terminal stage. Article 115 of the Criminal Code provides: “Anyone who encourages others to commit suicide or who helps to commit suicide shall be punished with imprisonment from one to five years if death has come as consequences, if death does not come, but are caused severe damages, the penalty will be imprisonment from 6 months to three years”.

Besides the penalties, this legislation has rightfully left to the discretion of the court that considers the matter, the forgiveness of the person author of the offence provided for in Article 116 of the Criminal Code above-mentioned. In this way, this is a more humane legislation. Another point to be noted is the strong conditions to be met for the legal qualification of the offence (section 116). We can mention mercy as boost for commitment of the offence, thus it is not enough for the author of the offence to commit the murder at the request of the patient, but he must have had mercy on him .

If we refer to the criminal legislation of Uruguay, Article 315 of the Criminal Code punishes those who help others to commit suicide, while Article 37 of the Code excludes from criminal liability those who kill for mercy under the terms of the following provision: “Judges have in their discretion to exclude from criminal liability anyone who has no criminal records and is the author of the murder driven by motives of mercy, on the basis of constant prayers of the victim”.

The Legislation of Uruguay leaves in the discretion of the court to decide on euthanasia. It is to be noted the exemption made to the recidivists.

In the Danish legislation it is recognized the passive Euthanasia, as well as termination of therapies to desperate patients, while active euthanasia or assisted suicide is not legitimate. In Sections 239 and 240 of the Danish Criminal Code, are expressly prohibited the assisted suicide and homicide by request. Relatives of patients may authorize the termination of treatments for the helpless sick. Also, it is permitted to give the patient medication to ease his pain, although these drugs may lead to patient's death.

In the German criminal law it is provided for a separate offense, murder committed with the clear request of the victim. This murder is punished with imprisonment from 6 months to 5 years . Although German law gives priority to person's freedom to decide about his life, it does not indicate the cases when a person can ask to be murdered by others, when he is ill from an incurable disease, is not able to commit suicide, or is suffering from endless pain.

For the legal qualification of Article 216 of the Criminal Code that deals with the murder on victim request it is sufficient that the request is clear and not persistent or continuous as required some of the other legislations. It is up to the court to determine case by case which will be called a clear requirement.

In the United Kingdom legislation, euthanasia is prohibited and punishable. Euthanasia is considered as murder and could be sentenced to life imprisonment. In certain cases the law recognizes the physician's right to interrupt the therapy to their patients if they see that the continuation of therapies is useless and will not bring any result. Recently the court has denied to the husband of Diane Pretty, a woman with serious health problems, the authorization to help his wife die. The incurable nature of her illness prevented her possibility to kill herself. Under English law, the woman could choose death only if she would be able to judge on it on her free will .

The Spanish criminal legislation in connection with murder in terms of euthanasia provides as follows: “Anyone who assists or incites others to commit suicide is punishable with imprisonment for a long time. If assistance will be given to the extent that the victim will kill himself, he shall be punished with imprisonment for a short time. As it can be seen, the Spanish criminal law prohibits euthanasia; it even condemns the assistance given to committing suicide. In difficult cases provided for in the Code, the application of medical therapies is left in the physician's discretion. Besides these cases everyone is free to accept or refuse medical treatments.

In the Swiss criminal legislation euthanasia is incriminated and defined as murder with approval. Article 114 of the Swiss Criminal Code provides that: “Anyone who causes the murder of a person under the constant and serious request of the victim is punished with imprisonment”. Article 115 of this Code punishes with imprisonment up to five years anyone that for selfish motives incites someone to kill himself or assist him. Even the Swiss Criminal Code, although too old, has provided euthanasia as a criminal offense for which imprisonment punishment is imposed. This penalty will be lower than the penalty imposed for murder committed without the victim's request.

In the Netherlands on 28 November 2000, the Dutch parliament approved (the first country in the world) the true legalization of euthanasia. Starting from April 1st, 2002 the law came into force effectively. The act of euthanasia must be documented with a written report of the results of which indicate that the patient has been affected by the incurable disease, that there was unbearable pain and has asked it to full consciousness. Such conditions should be verified by another doctor, colleague of the pleader, also the report must contain the patient's clinical history and the tools used for euthanasia.

If we refer to the legal regulation of euthanasia in the Belgian legislation we can say that in 2002 it was adopted a law on the voluntary euthanasia, which sanctions that doctors who practice euthanasia in major or minor patients, but who are able to understand and require it with the free will shall not be punished.

Efforts to provide a legal solution to the problem of euthanasia are seen even in Australia. In the northern territory of the Australian Federation starting from June 1995 the law “On the rights of the terminal

patient” came into force to legalize euthanasia. This law legitimized the possibility for the conscious and adult patient with incurable and unbearable pain to request euthanasia. The Australian law highlights the existence of a “right to death”, from the moment that it is considered as medical treatment in the care of patients, by accepting that even other persons, when the patient is unconscious, can sign in the presence of witnesses on behalf of a patient’s request to apply euthanasia. In 1996 this law that legalized euthanasia was repealed.

In USA there is not a criminal uniformity in connection with the murder or suicide on request. There are legalized “testaments of life” and the appointment of a representative for decisions on possible inability. All U.S. states recognize the right of patients to refuse medical therapies. Since 1997 Oregon has a law that allows the terminal patient to require the use of a medicine with which he can the end his life and allows doctors since 1994 to provide medicines to patients who do not have more than 6 months of live. In October 1997 the Supreme Court ruled that although euthanasia is a constitutional right, all countries can or not to legalize it. Despite that Oregon is the only U.S. state that has legalized euthanasia. Now in U.S. the debate on euthanasia has reached the doors of the courts, where the law is established by cases. These courts had to consider whether the U.S. Constitution gives people the right to take his life, or if it says that they have the right to allow someone else to take their life. It is thought that the first case of euthanasia documented and tried in the U.S. is the case People against Roberts in 1920. In Michigan, the wife of Frank Roberts was sick with incurable multiple sclerosis. With her request he prepared his poison and left near the bed, she drank the poison, knowing what she was doing. Michigan Supreme Court convicted Roberts of murder, arguing that without his actions the death would have not occurred .

According to Polish criminal law murder at the request of the victim is a “sui generis deliktum”, i.e. an act of mitigating circumstances if compared to the simple murder. Since we are in terms of euthanasia, according to the Polish Criminal Code , two conditions must be met: (1) the offender must act according to his sympathy for the victim and (2) at the request of the victim. The victims should be in such a position to give reasons for sympathy. The request must be clear, direct, firm, conscious and convincing. According to this interpretation the persons who have not attained the age, who have mental deficiency or who are unconscious can not make such request.

If we refer to the criminal provisions of Somalia it can be observed that murder committed with the consent of the victim is punished with imprisonment from six to fifteen years and death if the victim is a minor less than eighteen years old or mentally deficient . Article 438 of the Code states: “Anyone who encourages others to commit suicide or forces them to commit suicide or assists by any means is punished by five to 10 years if death has come. If death does not come then the penalty varies from one to five years, always if from the attempt to suicide has been any serious damage to health”. In the analysis of these provisions it is immediately noticed the severity of penalties imposed on persons who murder at the request of seriously ill persons. The penalties vary from 6 years to life sentence, depending on the subjects of passive euthanasia.

Finally, it is worth mentioning in this paper even the criminal law provisions provided in Colombia for the murder on the victim's consent. Article 326 of Colombia's Criminal Code provides: “Anyone who causes the death of others to end the sufferings from incurable physical abnormalities and that causes more pain, shall be punished with imprisonment from one to three years”. The following article says: “Anyone who really has driven others to suicide, or provided efficient assistance, shall be punished with imprisonment from 2 to 6 years”.

Through a decision by 6 votes in favor and 3 against the Colombia Supreme Court ruled that “no person shall be criminally liable because he murdered a “terminal” sick who has given a clear authorization to act in this way. “The court defined the “terminal patient” as the person with a disease such as cancer, AIDS, kidney and liver problems if they have not any hope of life and severe suffering”.

1.

PROPOSAL FOR IMPROVEMENT IN ALBANIAN LEGISLATION RELATING TO EUTHANASIA

As we explained above, our criminal law has legal vacuum with regard to the phenomenon of euthanasia or murder on request. For this reason we are presenting a model clause that can find concrete expression in the current Criminal Code.

Article X

Murder on request

Anyone who causes the death of a man at the request of the victim shall be punished with imprisonment from 5 to 10 years.

The aggravating circumstance provided for in Article 50 of this code shall not be applied.

The provisions that sanction murder (under the relevant sections) shall apply if the act is done:

- 1) Against a minor under 14 years old;

- 2) Against a person who is mentally handicapped or that is in the mental state of immunodeficiency diseases due to alcohol or substance use;

- 3) Against a person whose consent is obtained by force or by fraud.

- 4) Based on a claim that is not serious, persistent and not derived from a terminal illness

5) For material profit or any other kind, and not driven by motives with positive values.

In exceptional cases the court can decide on the exemption of the criminal liability of a family member who has committed murder of the sick person.

The exemption is not allowed if the family is a recidivist.

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A. SHEGANI - V. MUÇMATAJ - R. KRISTO, " Aspekte Juridiko - Penale te Eutanazise " , Revista Shkencore Studime Juridike - Botim i Fakultetit të Drejtësisë të Universitetit të Tiranës; Nr.1 / 2005, Tirane, 2006.

In this paper Euthanasia will also be called as merciful murder or murder on request.

Refer to the second part of the paper in which will be treated a comparative overview.

See I. ELEZI, *E drejta penale, pjesa e posacme*, Tirana, 2002,, p. 30.

This is how euthanasia is also known.

See: I. ELEZI *E drejte Penale, pjesa e posacme*, Tiranë, 2002, p. 35.

See A. BLASER, 'Euthanasia and Human Rights Law: Compatible or Contradictory?' [2000] International Studies Association, available in <http://www.ciaonet.org/isa/bla01/>

See I. ELEZI - S. KAÇUPI - M. HAXHIA "Commentary of the Criminal Code of the Republic of Albania", Tirana, 2001, p. 235.

Refer to article 579 of the Italian Criminal Code.

See article 48, paragraph a of the Criminal Code

See article 579 of the Italian Criminal Code

See article 50 of the Albanian Criminal Code

C. CATANZARO "Eutanasia:
aspetti a confronto" available at <http://www.sophia.unical.it/tesi/eutanasia/default.htm>

See letter g of article 50 of the Albanian Criminal Code.

C. CATANZARO, "Eutanasia:
aspetti a confronto", available in: <http://www.sophia.unical.it/tesi/eutanasia/default.htm>

www.euthanasia.com.

Idem.

Idem.

“The fundamental values and personal dignity of every human being does not vary according to circumstances” Papa Gjon Pali II , 2004.

Idem.

Idem .

Idem

C. CATANZARO, "Eutanasia: aspetti a confronto", available in <http://www.sophia.unical.it/tesi/eutanasia/default.htm>

See article 579 of the Italian Criminal Code, 2010 .

In this case, are not applied the aggravating circumstances provided in Article 61 of the Code cited above. The provisions that sanction murder in other qualifying conditions will be applied, if the offence is committed:

- 1) against a minor under 18 years;
- 2) against a person who is mentally handicapped, or that is in the mental state of immunodeficiency diseases due to alcohol or substance use;
- 3) against a person whose consent is obtained by force or by fraud.

See. A. SHEGANI - V. MUÇMATAJ - R. KRISTO, " Aspekte Juridiko - Penale te Eutanazise " , Revista Shkencore Studime Juridike - Botim i Fakultetit të Drejtësisë të Universitetit të Tiranës; Nr.1 / 2005, Tirane 2006, p. 54.

These states have a strong religious influence in legislation.

Italian practice faces several murder cases in terms of euthanasia. Among them we can mention the case of 23 May 2000, when a young man from Viaregio helped a friend of his, to suicide by a dose of insulin and now he risks 15 years of imprisonment, despite the victim's parents consider the act was a “gesture of love”. In the case of Eluana, who was paralyzed and unconscious for eight years, her father tired of looking her being held in life by a nasal gastric tube requested the court to interrupt the treatments, a request that was rejected. Another case is that of the engineer Forzatti who turned off the device which kept in life his wife lungs. He was initially convicted of premeditated murder, but further he was found not guilty in the appeal because it was considered that he had not had the opportunity to kill a person who was considered dead for a long time. The data in Italy show that about 39% of physicians take requests to execute euthanasia; only 4% of these requests have been applied.

For further information see: C. CATANZARO, "Eutanasia: aspetti a confronto", available in: <http://www.sophia.unical.it/tesi/eutanasia/default.htm>

See article 77 of the “Austrian Criminal Law Code”.

See articles 228-229 and 235-236 of the “Norwegian Criminal Law Code”.

The form found by the Norwegian legislation to prohibit euthanasia, has been by exempting from punishment persons who commit murder at the request of the victim, leaving in the discretion of the Court to impose a lower sentence case by case. Even this legislation does not require the request to be continuous. It is sufficient to be clear to apply a lower sentence.

See article 213 of the “Iceland Criminal Law Code”.

See article 300 of the “Greek Criminal Law Code”, 1950.

Even the Greek legislation, although is largely influenced by religious institutions, has more lenient penalties for people who commit murder at the request of the victim, of course, it does not allow euthanasia or assistance in committing suicide

See “Criminal Law Code of Costa Rica”, 1970

Let's take an example from the opposite side. If a person who suffers from an incurable and deadly disease, owes a substantial amount of money to a person B and repeatedly asks B to kill in exchange for the debt that he has and if B will kill the sick person, this murder would not qualify as euthanasia, but as the murder of another kind, the author shall be punished as usual despite the demand of the sick patient, because he did not commit the murder for mercy, but for other reasons

See Danish Law of 1998 on Passive Euthanasia

See article 216 of the “German Criminal Law Code”.

This issue has become subject to review by the European Court of Human Rights, which found no discrepancy between the European Convention of Human Rights and euthanasia.

See article 409 of the “Spanish Criminal Law Code”.

See article 114 of the “Swiss Criminal Law Code”, 21 december 1937.

Further see: [www.euthanasia/U.S.A./ history/html](http://www.euthanasia/U.S.A./history/html)

See article 150 of the “ Criminal Law Code of Poland”.

See article 436 of the “ Somalian Criminal Law Code”, 1963.

See www.euthanasia.com.

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