

INSTRUCTIONS FOR ASSESSING PROS AND CONS “DEATH WITH DIGNITY”

Abstract

Whether it is called “dignified”, “proud” or “privileged death”, “voluntary killing”, killing at request”, “assisted suicide”, “mercy killing” or “pity killing”... euthanasia’s legal, ethical and actual aspects have been the subject of discussions for centuries. The name of our topic, consisting of just two words, mercy killing, which are at first sight so contradictory (mutually exclusive), speaks for itself. In this paper the author underlines that, due to its increasing application, euthanasia has become unavoidable subject of criminal considerations and social interest. It draws the attention with its controversy, complexity, versatile forms of execution and possibilities for abuse. Through a prism of different theoretical streams and studies and reviews of its application in practice, the author at the very beginning of this paper presents the following view. Reviewing contemporary trends in the field of legal regulation of euthanasia, comparative legislations meander through chaotic paths of mutually connected and confronted stands which can easily turn into a pure façade, that is into an illusion of ideal solutions. This is, unfortunately, the existing general frame within which we can seek answers to some of the questions that this topic raises.

Key words: *authentic human needs, empathy, compassion, and abuse of ordinary murder.*

1. Introductory considerations

In no other form of life, but human life, time plays major role. Human life is not just present time, it is the “touching point” between the past and the future, the epicenter of the unbearable contradiction between life and death.

For all of us time is primary factor since future offers the possibilities of living a quality life, opens new horizons for the realization of our motivations, expectations and achieving of human freedom.

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Discussions on this topic are older than life itself, which is a passing phenomenon, while the deliberation on euthanasia is a constant.

Therefore, the opinions on this issue can be both temporary and inadequate, satisfactory and definite - constantly being upgraded with new stands and changes and critics of the old ones. The history of this issue is full of speculations, scrutiny, unproven and disputable statements...

This is so much true about euthanasia since this phenomenon is complex, extremely plural in its form, with "many faces" of merciful ending of life of a dying patient and with many possibilities for the abuse.

To attempt to explain this phenomenon actually means to shed light on both moments, that is its both sides and make conclusions on the basis of these findings. This is even more important in this moment of the civilization's growth glorifying individual freedoms, but at the same time facing moral alienation as its recognizable trait. Thus, unveiling all the aspects of this human drama becomes a prerequisite by itself.

However, we have decided to take another road.

At the beginning, the author pointed that "mercy killing" is the topic discussed from the aspect of medical ethics, law, philosophy, theology...

But, medicine, before all.

All these disciplines allow a thorough insight into the essence of the discussed issue, but this does not mean that they have established a unique, uniform and undivided stand, mutually shared by all. On the contrary, a number of different opinions have been established, each of them pretending to be "the right one" offering broader, more rightful and adequate postulates, that is arguments in favor or against euthanasia.

Yet, we decided to focus on medical and legal aspects of this problem with a note that it seems that doctors, starting from basic, fundamental principal of their profession, look on human beings and their lives not only as purely existing reality, but also attempting to describe it in a more virtual reality. In other words, they attempt to prolong life of a dying patient by extending "the natural boundaries" over their maximum. In this context, we can understand their stand that, generally, they are against the legalization of euthanasia.

This paper is not the place for bringing up and explaining every single of these arguments. Our intention is to focus only on critical points that should be legally better regulated and reshaped. In other words, we are moving in the direction of bringing up the arguments for and against of limiting human reactions, that is restricting or allowing individuals to realize personal initiative and autonomy, but only taking into consideration all possible aspects and conditions of this form of ending a person's life.

We are here presenting some of extraordinary circumstances over which law should exercise "general control" since the law is the only

medium that can comprise all aspects and conditions related to this form of ending of life, that is all objective circumstances at the same time strictly regulating subjective human reactions, thus maybe restricting their freedom, but offering them security in exchange, as well as preventing the abuse.²

2. Arguments pro significance and contesting

- The right of a person to choose life or death

Legalization of euthanasia allows a person to have a complete control over his own life. He may or may not choose to resort to euthanasia. As long as euthanasia remains illegal, a person does not have a total control over his life, that is, he cannot legally opt for this form of dying. Should individuals be deprived of such a choice?³

- The right of a person to choose the quality of life over the length of life

This problem is also connected with the right to choice, that is to choose according to your beliefs whether the quality of your life is more important than its length.⁴ As long as euthanasia remains illegal, those who believe in the quality over quantity of life are deprived of the freedom of expressing their beliefs.

- Suffering is painful

Does a person suffering from incurable painful condition and wishes to die have the right to end his life or is forced to live on by law?⁵ Should we force a suffering individual to live in pain against his will?

- Relying on the latest and expensive medical equipment and medications and/or knowledge

Since the price of medical treatments is in a constant growth, is it justifiable to use the latest expensive medical equipment, procedures medications in cases where the only expected positive result is the prolongation of life, without hope for recovery or for the improved quality of life?

²http://www.iaetf.org/fcthall.htm/nowwhat.cog7.org/life_death_and_euthanasia-resources/, 15.07.2016.

³ <http://on-ramp.ior.com/čjeffw/faqsfn.htm>, 16.12.2014.

⁴ <http://euthanasia.com/britain>, 28.01.2015.

⁵ <http://www.nhs.uk/.../Euthanasiaandassistedsuicide/.../Introduction>, 16.07.2016.

- Decreasing the risk of legal implications of those who are helping these patients

Since euthanasia is today covertly happening, its legalization would prevent criminal investigation of those allegedly involved. Although euthanasia is still illegal, courts are often reluctant to prosecute these cases or judges are lenient towards the offenders. Moreover, given the fact that these cases are difficult to prove, legalization of euthanasia would prevent long and expensive court processes.⁶

2.1. Fearing euthanasia

The problem of God -fearing people?

Euthanasia represents a very complex religious problem.

Five religious views on life

1 “It is forbidden to end life”

Biblical laws forbid any form of killing. Ending a human life includes killing out of mental instability, hatred and animosity (killing), as well as mercy killing (euthanasia). Regardless the mental state or motives, the bible forbids any form of ending life.

2 “Life makes sense”

Atheism rejects the belief that life full of suffering makes sense. From the atheistic perception of life, it makes sense only if it is fun and enjoyable. If fun and joy disappear and life is not optimally enjoyed due to old age or disease, the life loses its sense and may be ended through euthanasia.

Almost all religions, namely monotheistic, believe that life (existence) on this world has its purpose – there are many things that need to be fulfilled in one’s lifetime, and not all of them are pleasant and enjoyable. This means that even if something in our lives is not functioning well and in optimal way, there is still a reason to carry on with life.

3 “Life has a mission”

The view that life makes sense is in line with the belief that life is something more than daily existence, that is, that every human being has a mission, assignment or a role to be fulfilled in his lifetime. This view is in accord with the opinion that line “life makes sense” cannot be applied to coma patients and those suffering from severe dementia. One’s life makes sense only when there is an assignment to be fulfilled. Also, it is possible to imagine that someone lives on, even in deep coma, just to test

⁶ <http://www.rochford.org/suicide/infor/esseys/9802>, 12.02.1998.

his family members.

Fulfillment of this assignment varies depending on one's religious beliefs and way of life. The main argument is that what you do in your life has strong impact on your afterlife and reincarnation.

In their declaration issued after the Bishops Conference of the Netherlands, this body stated that it was a good thing that euthanasia remained a punishable offence as a reminder of God's gift of human life, meaning that, no one, but God, has a right to govern anyone's life. Even the right to govern your own life is not absolute. A person cannot be the owner of his life and decide when he will be born and when he will die, and how his life will be governed.

Responsibility

Law enforcement and abiding

The Bishops believe that by punishing those who end life, life preserves its effectiveness. They demand from the authorities and the Parliament to monitor whether effective punishable measures are being applied to those who violate the laws, and not only in cases of the patients with diminished capacities.⁷

According to the conducted researches, the main goal of the Law on euthanasia (to determine the scope if this practice) has not been achieved, since only 40 % of such cases have been reported. The fact that almost 60% of cases of the intentional ending of life remained unreported, that is concealed, speaks about the possibility of serious offences being committed in these cases. The research was conducted for the year of 1995 when 3 200 requests for euthanasia were reported. In 1990 the number of requests for assisted dying was 2200. It has been estimated that the number of "unrequested" assistances, that is the number of unreported cases of euthanasia is about 900 per year. The Bishops therefore concluded that officials' control over physician-assisted dying had not been applied according to law.⁸

2.2. Who is a "candidate" for assisted suicide or active voluntary euthanasia?

The most conservative responders to this question would allow assisted suicide or active voluntary euthanasia only in cases when the patient who is suffering from a permanent physical disease causing serious uncontrollable problems places such a request. But these requirements

⁷ <http://euthanasia.com/colum2.html>, 17.07.2016.

⁸ Choice between life and death, Joint body of Dutch Reformed Church Pastorate, Dutch Reformed Church and Evangelical Lutheran Church in the Netherlands, established in the General meeting of July 5th, 1997

considerably narrow the scope of candidates for assisted suicide and, very often, the situation goes to quite opposite direction – towards the liberation of these conditions on which grounds several laws on euthanasia are based. For example, the condition of permanent illness is missing in Hawaiian legislation in N.V. 342 (1975): the only condition is that the patient is suffering from an incurable disease causing severe problems. In this way, for example, quadriplegic patients would be allowed to request an assisted suicide. In this context, the draft of this law excludes another condition – incurability of disease, so that a patient with small chances of being cured, or even with a possibility of being cured, but only if he undertakes painful and excruciating treatments (for example, in case of severe burns) could resort to this unorthodox measure. On the other side, this way of determining the conditions can be interpreted extensively, so that the nature of disease can be extended to include mental illnesses. This is what N.V. 137 (1973) and N.V. 256 (1975) Montana laws and N.V. 143 Idaho law (1969) exactly do, only restricting the scope of mental diseases to those caused by “brain injury”. However, the proposed law could be interpreted in a more liberal way to include mental diseases that cause severe problems, such as some forms of depression or anxiety, but which are not caused by organic brain disorders with no chances of recovery (cure).

Finally, we can raise the question of the patient’s competence, which is the case of N.V. 1207 Wisconsin law that allows a seven-year old patient to request assisted dying. This can go further and, in order not to discriminate mentally handicapped persons, laws can be further liberalized and allow these category of patients a possibility to resort to euthanasia.⁹

If the question: Who is a “candidate” for assisted suicide was asked in a simple context of determining who has reasons to die, liberalization would, undoubtedly reach its maximum. Life cannot be considered as something unconditionally good, but rather as something which is worth only in cases when a person has a “possibility to get desired experience”. Thus, if a person cannot have desired experiences, or any other experience but unwanted ones, then, such a person has a reason to die. This means that, according to this rational, the group of patients who would like to die, would include those with permanent, incurable conditions, as well as those with mental problems.¹⁰

However, we cannot raise the questions about the candidates for euthanasia by asking who has a reason to die. We also have to take

⁹ <http://www.rights.org/deathnet/understanding.html>, 16.12.2014.

¹⁰ *Ibid.*

into consideration possible dramatic abuses and wrong interpretations where such legalization may lead us? Allowing children and mentally handicapped persons to choose assisted suicide opens an opportunity for various abuses. Once we abandon the notion that the patient's disease must be physical and his death unavoidable, we have to face the possibility of an increasing number of wrong medical diagnosis and prognosis whether a patient will accept his situation and adapt to it and what is going to be considered as worth to continue living for. A mistake can be made if the patients suffering from mental conditions, such as severe incurable depression, or from permanent diseases, such as quadriplegia or severe injuries, are allowed to request assisted suicide.¹¹

This reasoning has led us to face a liberal answer to the question related to the selection of candidates for euthanasia and a conservative answer that there are numerous possibilities for mistakes and abuse. It is clear that it is not easy to choose the right path. Legalization is an experimental process which cannot solve once and for all the question - what will be the impact of this law? Therefore, we have to risk and try one solution in order to see what results it will yield. Unfortunately, our discussions on this matter, which is always a heated topic to argue about, without the attempts to be implemented in practice turn into pure theoretical debates about all its deficiencies.¹²

Incompetent persons should not be the actors included in the Law on voluntary euthanasia due to the fact that they are not capable of taking voluntary actions. They may be capable of making a request for assisted suicide, but cannot do it with understanding which characterizes voluntary request. This means that they should be denied voluntary euthanasia, something we should no longer discuss here, since it should be the subject of involuntary euthanasia whose justification goes in other direction – what is discussed here is not autonomy, but relieving of suffering – and diverts us from our topic.¹³

However, should we restrict the law on voluntary euthanasia only to competent patients, it needs to be liberalized in some other way – there is a doubt whether we will get the best law if we allow that the question: Who has the right to die, exhausts all other relevant questions. There is a need to make a difference between those who are denied to request euthanasia and those who want it with good reason, even if this increases the possibility of abuse. It is considered that the importance to preserve a person's autonomy is so great that only a great danger of possible abuse can restrict it, but it seems that here there is no danger of that. The

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

possibility of abuse can be brought to minimum by ensuring a careful implementation of all procedures and by avoiding misdiagnosis seeking a second opinion. Still, medical errors and misdiagnosis will remain, abuses too. But it would be rather paranoid to predict a scenario with so frequent cases of abuse to reject the entire law.¹⁴

If we seriously consider to allow competent persons take care about their own lives, logically, they have to be given freedom to make their own decisions related to the medical advice they receive and make best judgment accordingly, although there is always a risk of making a mistake. If we allow people freedom to make major decisions, we allow them a possibility to make major mistakes, as well.¹⁵

2.3. Why criminal sentence is often avoided ?

The jury members are more often lenient to those facing court trials for assisted suicide than to other offenders. They are often doctors, or family members, or friends of the assisted suicide victims.¹⁶ Even when the prosecutors and judges are convinced that these people committed a criminal offence, although they subjectively believed they were doing the right thing, it is difficult to try and punish them as ordinary criminals. Indeed this is the area in which all law enforcement officers are reluctant to enter and would rather resort to preventive than punitive measures.

Thus, in one article related to some legal reviews the local prosecutor wrote: "District attorney's office does not investigate such cases and initiates a criminal investigation only in cases when one of the actors files a complaint". One other prosecutor stated: "The criminal investigators should avoid these cases as much as possible". Here should be mentioned that our system foresees an absolute "prosecution discretion" and there is no legal obligation for a prosecutor to investigate and prosecute a person, even if he openly admitted a wrongdoing.

If a law suit leads to a trial and the prosecution is, even against odds, secured, then a dilemma is opened. If a judge sentences an offender to prison, he may very well be viewed as a martyr, but if the sentence is lenient, then the law loses its preventive role of deterring future offenders. In any case, the adhering to the law is decreasing and the pressure for its abolishment is rising since it is viewed to be either draconic or inefficient.

What can be done to make laws that sanction assisted suicide more effective? The ultimate goal should be to protect possible suicide victims from those who "would like to help" them in this act, rather than to make

¹⁴ *Ibid.*

¹⁵ <http://www.iaetf.org/whatnow.htm>, 20.01.2015.

¹⁶ <http://www.istor.org/stable/1141990>, 26.03.2010.

law a means of symbolic punishment. It seems reasonable to believe that if a person assisting a suicide knew he would be sued and found liable for compensation payments to the victim's family, they might be able to experience the deterring effects of civil law, which could not be said for criminal law which will not be able to secure a sentence for the same act. Even if a person assisting a suicide obtains a consent from the victim's family (as was the case with Jack Kevorkian), he can never be sure that a family member will not eventually sue him, either because he changed the mind or because of financial incentive. If the law could find a simple way to prosecute serial "assistants" such as Jack Kevorkian, than the court would be able to enforce its deterring role in a greater number of cases, except in those involving the most determined euthanasia activists.¹⁷

2.4. How and why civil law measures may be effective?

The concept of civil law allows individuals (such as the family members of suicide victims) to give testimony in court and thus accuse those involved in assisted suicide. This means that discretion policy of public officials can no longer stop the undertaking of concrete measures against the assisted suicide offenders. Also, it has been underlined that assisted suicide is not a crime if there is no victim and in this case there are also many "secondary victims, that is the victim's family members which is powerful element for exercising pressure on the judge and jury.

There are two types of civil measures: civil orders and civil damages. Court order has many advantages. It foresees the measures for preventing death before its occurrence. It also allows a case to be quickly brought before judge who can immediately respond and prevent a possible offender to commit offence. That person knows that if he violates the court order the judge can seek harsh punishment for civil contempt. To a great number of physicians this may be more frightening and deterring than when he knows that there is no chance to receive a prison sentence.

As much as doctors fear punishment for their malpractice, financial "punishment" is also extremely efficient since the court may order the confiscation of property or taking money from their wages.

Civil damages assume that the defendant must pay monetary compensation to the family of the assisted suicide victim, similar as to paying damages for malpractice. It can be expected that insurance companies will put a big pressure on doctors making them avoid the practices that may lead them to such lawsuits.

¹⁷ *Ibid.*

Kevoorkian,¹⁸ who obviously enjoys his role of controversial martyr, would possibly wave off the word bankruptcy. But there are few men like him. Although there are some eminent doctors who would like to come out and legally practice euthanasia without fear of criminal investigation, civil liability still remain powerful deterring weapon.

If a law foresees that the family of the assisted suicide victim may file a law suit against the physician although they gave him a consent, doctors will be reluctant to perform this practice without family on their side, who can resort to lawsuit in any time driven by financial incentive.

Civil measures have one more advantage – criminal prosecutors are paid out of public funds and the prisons are also financed by tax payers, including the offenders who pay reasonable fees to their attorneys if the case was won.¹⁹

What happens if the civil law measures lead to proliferation of groundless law suits?

If a law suit is filed without evidence or with bad intention, the plaintiff may also be punished by paying all legal fees to the defendant, including the fees of his attorney. This practice not only compensates the wrongly accused defendant, but also serves as an efficient deterring measure for those who would like to file a lawsuit without sufficient evidence.

2.5. Is there any precedent for using civil law measures?

A large number of adopted civil laws “were not derived from criminal laws” but rather through the use of orders which were issued either during the civil cases led by government officials or those initiated by ordinary citizens represented by the counselors who defend public interest.

Law suits filed to get orders against discrimination in schools, public institutions, etc. have often resulted in the decisions empowering the plaintiffs to follow and monitor future actions of defendants checking whether they would be violating the order.

These measures are often used today as principal means for preventing racial discrimination. Now it is time that civil law measures are added to the existing preventive and protective measures against assisted suicide. We have to be active in our fight to protect vulnerable patients from those who are ready to help them die instead of offering them comfort and medical help.²⁰

¹⁸ <http://www.ohiolife.org/issues>, 26.07.2016.

¹⁹ *Ibid.*

²⁰ *Ibid.*

2.6. Why assisted suicide should not be legalized?

Many think that a decision to commit a suicide is a one's private choice that should not be the subject of public discussion.

This view assumes that suicide is the result of an independent rational decision of competent people to end life. Society cannot interfere with the individual decisions to live or to die which do not affect anyone else, but those who commit suicide.

But, according to the opinion of the professionals who conducted research on suicide, these assumptions are wrong.

A British study from 1974 which included detailed research of medical reports and numerous interviews established that 93% of the research patients who committed suicide were mentally ill. The similar St. Luis study, published in 1984, revealed that 93% of the patients who committed suicide had mental disorders. There are also numerous psychological studies suggesting that those who attempt suicide are ambivalent, that is that they want to kill themselves for different reasons and do not want to die. In most of the cases these people are suffering from various mental diseases.²¹

2.7. Shouldn't the choice, after all, reside with the individual?

Almost all the people who attempt suicide, in this way subconsciously seek help rather than believe that they would be better off dead.

Suicide attempt²² is a powerful means to draw attention to someone's state of mind. We should respond to this cry for help in a human way by mobilizing all psychological and social services in order to attempt to resolve problems that could lead to this extreme behavior. These counseling and psychological services seem to be efficient in preventing death. One study that included 886 suicide survivors shows that only 3.84% of them died in the following 5 days after the suicide attempt. Another Swedish study (that is being conducted in continuation for 36 years) reveals that only 10.9% repeated the suicide and eventually killed themselves. Surprisingly, it seems that those who once attempted suicide and were saved, had a better chance for a happy life than those who never attempted a suicide but suffered from the same disorders. According to dr Ervin Stangel, the psychiatrist "a suicide attempt is an efficient, but dangerous way of alerting others and its consequences are often permanently damaging."

In short, suicidal persons should be offered help to solve their problems instead of assisting them to die.²³

²¹ *Ibid.*

²² <http://www.iaetf.org/sus.htm>, 20.01.2015.

²³ *Ibid.*

3. Conclusion

Cruel reality often puts us in a position to make certain choices and reach decisions. On the border between life and death, making choices is inevitable responsibility. Such decisions, that is choices between two evils, are often subject to legal evaluation and contesting. Which decisions are competent and which are disputable depends on various views and starting points. However, this does not mean that individual choices and decisions should not be respected. Everyone is responsible for his own choices and his own deeds.

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UPUTSTVA ZA RAZMIŠLJANJE ZA I PROTIV “dostojanstvene smrti”

Rezime

Nazivali je “dostojanstvena”, “ponosna”, “privilegovana” smrt ili “ubistvo na zahtev”, “na molbu”, “milosrdno”, “ubistvo iz samilosti”, “ubistvo iz milosrđa”,... eutanazija je etički, zakonski i praktično, predmet rasprave stotinama godina. Naša tema od dve reči: ubistvo iz milosrđa, već na prvi pogled toliko protivurečne (međusobno isključujuće), dovoljno govori sama o sebi. Autor u ovom tekstu ističe, da prilikom eksplikacije odnosnog fenomena, zbog sve veće učestalosti, “eutanazija” postaje sve više nezaobilazni predmet krivičnopravne misli i društvenog interesovanja. Ona koncentriše pažnju svojom kompleksnošću i atraktivnošću, raznovrsnošću u svojim oblicima ispoljavanja, mogućnošću strašnih zloupotreba. Kroz panoramu različitih teorijskih struja i kroz proučavanje i razjašnjavanje primene ove mere u praksi, vladajuće mesto, odmah, na početku zauzima sledeća konstatacija. U razmatranju savremenih tendencija na terenu zakonskog regulisanja eutanazije, danas preovlađujuća zakonodavstva “funkcionišu” kroz pravu “haotičnu masu” međusobno nepovezanih i suprotstavljenih gledišta koji se lako pretvaraju u puku fasadu, ili pak daju privid idealnih rešenja. To je, nažalost, nužan opšti okvir koji u sadašnjem,

aktuelnom trenutku može da nam ponudi odgovore na neka od postavljenih pitanja.

Ključne reči: autentične ljudske potrebe, saosećanje, samilost, zloupotreba i obična ubistva