



Original Communication

The issue of euthanasia in Greece from a legal viewpoint

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ABSTRACT

Modern Greek society appears to be split regarding the legalization of euthanasia. The Greek Orthodox Church maintains a negative attitude. Research shows that some forms of euthanasia are carried out “behind closed doors”. There is no specific legal provision. The government avoids bearing the political cost of regulating this marginal issue. According to the dominant view of Criminal Law jurists, some forms of euthanasia are considered permissible *de lege lata*, under certain conditions. The safety of the concurrence of these conditions, safeguarding of the acceptability of forms that are considered permissible and – mostly – the need to regulate the prohibited forms in exceptional cases, all force the legislators to promptly fill any legal vacuums.

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1. Introduction. Euthanasia in Greece: a legal and social problem

In Greek Criminal Law, euthanasia is defined as¹ providing a painless death to the patient who is dying due to a certain disease, injury, or old age. In a wider consideration, the concept of euthanasia also includes the termination or non-prolongation of the lives of neonates suffering from severe malformations (early euthanasia), as well as termination of the lives of those being in a persistent vegetative state (a coma that may be prolonged for a long time as a result of the advances in medical technology). In particular, euthanasia includes²: behaviour of a third party (physician), which may either be an act or a failure to act, a patient who is dying or is terminally and irreversibly in a coma, and a painful or undignified state of the patient. The behaviour of the third party has a cause-effect relation with the acceleration of this (inevitable) death, so as to relieve the patient from pain or help him die with dignity.

Although there is no unanimity in science, death phase is called the phase when there are two situations^{3,4} considered to be *sine qua non*: (1) an irreducible damage of an organism, a state of permanent and final loss of the vital functions of an organism, so that this state cannot be reversed with the use of all available medical means, and (2) death is expected to come within a short period of time.

The legal theory in Greece follows the typical distinction among the following: (1) pure euthanasia (*pura*), (2) direct active euthanasia, (3) indirect active euthanasia, (4) physician-assisted suicide

(participation in suicide), (5) passive euthanasia by consent (bilateral), (6) passive euthanasia by consent (unilateral), or unilateral delimitation of a physician's duty, (7) the (so-called) early euthanasia, and (8) interruption of any artificial life-support means, when a physician's duties have been exhausted. In addition, euthanasia is divided into voluntary and involuntary euthanasia. Involuntary euthanasia (against the patient's will) is a priori considered unacceptable. A prerequisite for the acceptance of a form of euthanasia either *de lege lata* or *de lege ferenda*, is the existence of the patient's valid and (fully) informed consent. At least, when the expression of such consent is not possible, the opposition of the patient should not be inferred.

Criminal Law in Greece has no special regulations justifying or even allowing any act of euthanasia. In contrast, the recent Act 3418/2005 (Code of Medical Ethics) explicitly states in article 29§3 that, even when the patient has a will to die and his/her death is expected within a short period of time, this does not constitute sufficient grounds for justifying any act that may cause his death. Criminal Law theory in Greece has occasionally suggested *de lege ferenda* solutions to the issue of euthanasia, but mostly attempts to deal with this issue *de lege lata*, interpretatively, even trying *contra legem* interpretations of the criminal (and civil) laws in force, as well as of the corresponding dispositions of the Constitution.

Despite the fact that relevant research shows that several practices of euthanasia have been reported to take place without receiving any publicity (Newspaper “Ta Nea”, 2.12.2000, 22.2.2002, 18.5.2004), no such case has ever appeared before the Greek courts so far, consequently, there is no relevant case-law established. Modern Greek society seems to be split regarding the issue of accepting euthanasia. In conjunction with the fact that

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this issue has never been seen as a socially controversial issue and the fact that the Greek Orthodox Church⁵ has an clear position against all forms of euthanasia, advocating the protection of life to the utmost degree, considering life as a holy gift from God, on which He is the only one to decide. The Greek government avoids taking this difficult and marginal issue of reconciliation of the wider recognition of the right to self-determination with the maximum protection of human life before the Parliament through a relevant legislative proposal, thus avoiding the social conflict this implies.

The Greek Orthodox Church is clear in its position as an ardent opponent of any attempt made to decriminalize euthanasia. The Ad Hoc Committee on bioethical issues, which was appointed by the Holy Synod on 14.12.2000, rejected all forms of causing death by human choice, characterizing euthanasia as a “Blasphemy” against God and an insult to the medical profession per se.

From a social point of view, there seems to be wide consent, at least with regard to indirect active euthanasia and voluntary passive euthanasia. Th. Papapetropoulos (Newspaper “Ta Nea”, 22.2.2002), Professor of Neurology in the University of Patras, showed in a survey with 1960 respondents (physicians, medical students, lawyers, and judges), that there has rarely been any support for direct active euthanasia or physician-assisted suicide, while 62% of physicians, 58% of lawyers and 63% of judges, gave a negative response to the question whether they had the slightest hesitation regarding passive euthanasia. As for the medical students, this percentage ran into 70%. In a sample of 1148 physicians, one in four admitted that he had performed, or at least participated in passive euthanasia. Some reputable scientists, such as D. Trichopoulos, Professor of Epidemiology at the Universities of Harvard and Athens, Ch. Avramidis, elected President of the Hellenic Union of Physicians (Newspaper “Ta Nea”, 2.12.2000), as well as the aforementioned Professor, Th. Papapetropoulos, argue that euthanasia is a frequent phenomenon in modern Greek society, although this issue is never referred to.

Another survey reports that, 7 out of 10 physicians and 8 out of 10 nurses, point out that they do not take the initiative in disconnecting the life-support machines, 60% for moral reasons, 10% of nurses and 12% of physicians for fear of the law. However, 80% of respondents think that such machines do not allow for a dignified death (Newspaper “Vradini”, 24.4.1998, Survey of the Medical School of Athens and the Laboratory of Hygiene and Epidemiology, Athens Faculty of Medicine).

2. Constitutional issues

Finding solutions to any constitutional problems and conflicts is of paramount importance in order to deal with the issue of euthanasia (e.g. art. 2 § 1 of the Greek Constitution on human dignity and art. 5 § 1 of the Constitution on the free development of one's personality, along with the Code of Medical Ethics, Act 3418/2005, art. 11 and art. 12, and the European Convention on Human Rights and Biomedicine, Oviedo, 1997, which was ratified and now constitutes national law by virtue of Act 2619/1998, i.e. respect for the patient's free will, self-determination and self-rule, through the constitutional protection of human life, considering the right to protect human integrity, privacy and family life etc.). The advocates of euthanasia defend a wider right to self-determination. Some think that the right to self-determination, when it comes to life per se as judged by the living person, is delimited by the dignity of that person,⁶ at least as long as the sick person is not “objectified” in any way (as in the case of irreducible vegetative states), while others think that it is only delimited by the dignity of a third party.⁷ It has been argued that there is a right to death in extreme situations,⁸ as well as non-existence of such a right in a society

where a person is considered to be a “co-participant” and his right is a power given by a society, even a liberal one.^{9,10} The constitutional science in Greece has even accepted^{11–13} the existence of a right to death (in a wider interpretation of the right to life), as well as the fact that an eventual legalization of euthanasia will not conflict with the Constitution. In the attempt made not to turn the right to life into an obligation to live, it is worth noting that the European Convention on Human Rights (ECHR), in its jurisprudence (Mrs. Pretty's case, 2002) accepted a limitation of the right to death when it comes to “assisted suicide” (when the patient is incapable of committing suicide due to his condition), through a narrow interpretation of the relevant articles; what has also been supported is the limitation of the power to renounce a constitutional right to life due to the factor of human dignity of the very same person, at least as long as life itself has not already been reduced to an irreducible vegetative state. In addition, article 2§1 of the Constitution was considered to be the ground for liberating the entire issue of euthanasia. Certainly, a regulation of the issue *de lege ferenda* can hardly institute an *ex officio* right to death, solely recognizing a physician-centered¹¹ model of permissibility under strict conditions (mature – well-considered – valid request of the patient, notification of the Public Prosecutor's Office, etc.), as in the highly liberal legislations of Belgium and the Netherlands (2002).

The right to death may be widely or narrowly accepted, in relation with the pathological state of the patient (and his “imminent” death). In the field of euthanasia, there is a concurrence of the physician's duty to provide help, the patient's right to self-determination, and the duty to protect the most important and legally-protected right to life.

3. Forms of euthanasia

3.1. Genuine or pure (*pura*) euthanasia or euthanasia in the literal sense

This is a very narrow grammatical interpretation of the concept of euthanasia. According to this interpretation, both physical and mental relief is offered to the patient without hastening death, which is inevitable. Through the application of this form of euthanasia, the patients' wishes are restricted, so as to apply other, inadmissible forms of euthanasia, e.g. direct active euthanasia.³ According to Greek Law, this form is not only admissible, but also imperative. This is clearly and explicitly stated in article 29§1 of the Code of Medical Ethics (Act 3418/2005). Moreover, its non-application may create criminal liability as long as physical and mental suffering may constitute bodily injury (article 308 of the Penal Code) and torture¹⁴ (art. 137 A § 1 Penal Code), provided that the patient is deliberately left to suffer for a long period of time. In addition, the omission of the physician, who has a “special legal obligation” towards the patient he has undertaken to treat, is legally (and socially) equivalent to an act (positive action). The basis of human dignity, which is safeguarded by the Constitution (art. 2 § 1 of the Constitution), self-determination (art. 5 § 1 of the Constitution) and personality (art. 57 of the Civil Code), are violated. In any case, the medical world is not sufficiently educated to provide physical and mental support to the dying patient.³

3.2. Direct euthanasia

This refers to the hastening of inevitable death, through an intentional act, so as to relieve the patient from his sufferings. Such an act – as in most European countries – remains wrongful both in the first and final degree. This is the most unacceptable form of euthanasia. In the conflict between the interest in protecting

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