

SEARCHING FOR THE FOREST AND LOSING THE TREE: DEBATE ABOUT EUTHANASIA IN GREECE

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Introduction

Beyond any dispute the right to life is one of the major human rights protected within both the international and internal, State legal order. Life is an inherent right of man;¹ its protection becomes even more needful because of the irrevocable character of the deprivation of life. This protection may be easily and explicitly found in all legal human rights texts of supranational law as well as in many liberal Constitutions.¹ The structure of all articles where the protection of life is guaranteed is quite similar: 'everyone has the right to life', a structure that underlines the absoluteness of that specific right.

On the other hand, much of debate has started and still continues regarding the right to death and its subsequent notion of *euthanasia*.² From this complex issue which demands an interdisciplinary approach, a fundamental question arises: do people have the right to death? Furthermore, in case of positive response, the research may go further: does the right to death include the assistance to ending life by a third person the case of people that are unable to do so by themselves? And if so, which legal framework would be adequate to protect both the right to life and the right to death, so that the first would not get abused by the second?

Greece is a rather interesting example of this debate. For historical reasons, a long and quite strong religious tradition has been developed through centuries in Greece. This tradition made the Christian Orthodox Church not only a major actor in every social issue, but also engrained its religious values into other social actors. Orthodoxy has the status of prevailing religion in Greece (article 3 of the Constitution) and around 81% of the population believes in God.³ Therefore, the debate concerning euthanasia in Greece has taken special characteristics in terms of ethical background. In this paper, the most important positions regarding euthanasia by major social actors (religion, medicine, law) will try to be reviewed. Emphasis will be placed upon the legal component, which is the most important part in the sense of technical compilation of possible euthanasia law.

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¹ The term is taken from article 6, paragraph 1 of the United Nations (UN) International Covenant on Civil and Political Rights.

¹ *Ibid*, further examples of the first are article 3 of the Universal Declaration of Human Rights, article 2 of the European Convention on Human Rights and article 2 of the Charter of Fundamental Rights of the European Union, while of the second may be article 15 of the Spanish Constitution, article 5 of the Greek Constitution, article 2 of the German Constitution etc.

² Euthanasia can be divided into active and passive variants. For better understanding a brief definition will be given as follow: active euthanasia means acting to bring the death about, while passive means not preventing it; S. Blackburn, *Oxford Dictionary of Philosophy*, Oxford: Oxford University Press 2nd edition 2005, p. 122. For a more extensive view see J. Rachels, 'Active and Passive Euthanasia', *The New England Journal of Medicine* (292) 1975, 78-80.

³ European Commission's Special Eurobarometer on Social values, Science and Technology 2005, p. 9.

I. Orthodox Approach to Euthanasia

The Orthodox Church systematically and explicitly repulses any human right to death, either expressed as committing suicide or as euthanasia. The official position of the Church is that nobody has the right to take his own life or the life of another person, since life is a gift from God and only He may take it away.⁴ Therefore, any kind of life deprivation is regarded to be a major sin as it constitutes an ultimate insult to Him. Within the Orthodox values, life is salvation; even the last second of life may be the path to eternal salvation, hence not even that last second shall be wasted. Cases of people that suffer from incurable and distressing diseases that cause intolerable pain (cases where euthanasia may be applied) are accepted with compassion from Orthodoxy. Nevertheless, the ecclesiastical teaching dictates that those situations are everyone's personal cross that shall be carried as Jesus Christ carried His, before being crucified to save all of us. People that suffer from a disease, even incurable, shall turn to God for strength and not depart from Him by choosing solutions to expedite death. To all the above we should add that an important part of the Orthodox ecclesiastical values is the miracle that may upset the negative situation of the patient.

The above mentioned strong doctrinaire belief concerning life is in principle strictly opposed to euthanasia. However, a somewhat different opinion has been expressed regarding the prolongation of life. The Church may even pray that terminally ill people rest in peace, without insisting that they be subjected to unnecessary and extraordinary medical efforts.⁵ In that way the Church may accept the notion of positive euthanasia⁶ in extreme situations. An honoured death for Church is the one that comes under God's will and is not forced by people by committing suicide or applying euthanasia; so, prolonging life with any possible technical equipments is not the major point for Church, but more, living life until the end that will be blessed under God. The believer should neither chase nor avoid death, but focus on the salvation of his soul by following ecclesiastical beliefs.

Although well respected, the position of the Orthodox Church towards euthanasia could be characterised as dogmatic. Without dispute, the ethical values that the Church promotes constitute, even for non believers, a system of philosophical ideas that positively affects society (the wrong application of those ideas that mainly create problems is another issue). But when someone gets close to death the situation differs from many points of view; especially in situations of severe and unbearable pain. When a person is dealing with such an extreme disease, describing him as a sinner is a harsh verdict. Since such a verdict is only based on the fact that he is not able to endure such living conditions, this would probably be the last thing this person wants to hear. And taking into consideration that each and every case of a person who suffers has unique characteristics, this approach may lead to the exact opposite of what the Church wants to achieve: it describes the mistake, but rather than giving practical solutions, it stays focused on a dogmatic doctrine that regards all cases in the same way. The outcome may be the creation of the following dilemma: either the patient decides to die

⁴ Bishop of Nafpaktos Ierotheos, 'Euthanasia-Ecclesiastical approach', speech delivered at the symposium on Euthanasia, organised by the Medical Association of Patras, 24 November 2004 (in Greek).

⁵ Rev. Stanley Harakas, 'The Stand of the Orthodox Church on Controversial Issues', at: <http://www.goarch.org/ourfaith/ourfaith7101>.

⁶ Although very important, the conceptual classification of euthanasia will not be part of this paper.

which makes him a sinner, or continues living but under psychological pressure and severe conditions. In that sense, this approach may create more problems of psychological nature to patients, problems that negatively impinge on the already existing situation.

II. Medical Practitioners' Opinion

At this point it would be of the highest importance to try to understand what medical doctors think about euthanasia, since they are the most experienced in facing patient's despair and desolation when combating a fatal, incurable disease. The question that physicians are mainly called to answer is that of assistance to ending life by a third person, as they themselves could possibly find themselves in the position of assisting a patient in terminating his own life.

A first and very strong ethical argument comes from the Hippocratic Oath that all physicians in Greece take in the beginning of their career. In the classical version of the Oath, physicians explicitly swear: "*I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect*".⁷ Although this part of the Oath concerns more the pharmacists who are in possession of the drugs, the interpretation of the phrase indicates that physicians are not allowed to interfere in any terms in possible suicide attempts that patients may think of.⁸ Therefore, it is a primary duty of the doctor to protect his patient even from committing suicide. In line with this thesis, opinions expressed by prominent Greek doctors reject the idea of euthanasia, especially in its active form.

At the 24th Pan-Hellenic Nursing Conference, Professor Dr. Koutselinis underlined that the decision of a patient to end his own life is a personal issue that cannot turn the doctor into an executioner; the doctor is obliged until the end to offer his aid or to create the best possible conditions of living. Following the same line, Professor Dr. Behrakis added that euthanasia may bring a great amount of discomposure in the relations between the doctor and the patient, if the patient understands the doctor not as someone who may help him, but as a possible executioner.⁹ Both well respected medical professors premise the psychological effect that (mainly active) euthanasia has for physicians. The other side of the story may be that a person, at the final stage of a medically described as incurable and cruel disease riddled with pain, that has decided to ask for euthanasia simply because he is not physically able to commit suicide, would probably see the doctor as a deliverer that will relieve him from suffering, and not as an executioner. As each medical case is different, it should be examined on an individual basis regarding that issue as well.

In a survey that took place in 1998, the first of its kind, a scientific committee asked 200 doctors of the General Hospital *O Evangelismos* to reply anonymously to a special questionnaire concerning euthanasia.¹⁰ Out of the 96 that replied, more than half said that they had been asked by a patient to carry out euthanasia (either active or passive) throughout their career. A more important indicator is that 41% of the doctors agree with the

⁷ The translation is taken from O. Temkin & C. L. Temkin (eds.), *Ancient Medicine, Selected Papers of Ludwig Edelstein*, Baltimore and London: The John Hopkins University Press 1987, p. 6.

⁸ *Idem*, p. 9.

⁹ The opinions were taken from P. A. Kesaris, *About Euthanasia*, Patras: Achaian Publications 1999, pp. 71-72 (in Greek).

¹⁰ G. Tripodianakis, G. Metaxatos & H. Istikoglou, 'Euthanasia: the position of doctors of a general hospital', *Epitheorisi Ygeias* (50) 1998, 42-45 (in Greek).

termination of treatment to terminally diseased person under the fact that this treatment could prolong his life for only a short period of time. Regarding active euthanasia, 47% want a legal framework for no indictment and in case of existence of such framework 41 doctors would proceed to euthanasia. This small survey clearly demonstrates that doctors of this particular hospital do feel comfortable with euthanasia and that the major burden they face is the absence of a concrete legal framework.

Different outcomes derive from a recent Pan-Hellenic and statistically more accurate research on euthanasia conducted by the Unit for Pain Relief and Consolatory Treatment of the University of Athens in 2010 regarding patients suffering from late stage cancer.¹¹ 20,5% of the doctors participating in that research replied that at least one patient had demanded euthanasia and 5,1% had experienced the death of a patient because of a decision of termination of medical actions. An important percentage, 47% of the doctors surveyed, are in favour of the legal regulation of euthanasia, but an enormous 60,5% believes in the homily of the Church. It is to some extent controversial that more than six out of 10 doctors do follow the ecclesiastical traditions that totally oppose euthanasia and at the same time, almost five out of 10 want an explicit legal regulation on euthanasia. Furthermore, as stated in the introduction of the paper, the historical connection of Church and State in Greece has infused the Orthodox values on a large amount of people and sometimes makes them prejudiced. This seems to be the case in this research where the majority of doctors, although understanding the problem or even having faced with it, stays focused on and is guided by religious beliefs.

III. The Legal Concept

The Constitution of Greece clearly protects the right to life. As stated in article 5 (2), section 1 "*all persons living within the Greek territory shall enjoy full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs*". This provision guarantees life protection in an absolute way by prohibiting any basis of discrimination in the enjoyment of this right. In addition, it does strictly prohibit any kind of eugenics policy on behalf of the State or State organised euthanasia.¹² A negative State obligation therefore primarily derives from section 1 of article 5 (2) under which the State and public authorities are enjoined to abstain from any kind of unlawful deprivation of life of any person in the Greek territory.¹³ Also a positive State obligation derives as the State must take appropriate measures by establishing effective criminal laws to safeguard life as an ultimate right.

Another major right protected in article 5 (3), section 1 of the Greek Constitution is the one of personal liberty in the sense of physical liberty. In conjunction with the indisputable right to development of personality that everyone shall enjoy, personal physical liberty is substantially connected to every other fundamental human right; if a person could not use his own

¹¹ D. Kouklaki, 'How do we respond in the Dilemma if Euthanasia', at: <http://www.tovima.gr/default.asp?pid=2&artid=344326&ct=1&dt=21/07/2010> (21-7-2010-in Greek).

¹² This was the case in ancient Sparta where the mother of the child, shortly after birth, bathed it in wine to see whether it was strong. If the child survived it was brought before the Gerousia (State authority) by the child's father. The Gerousia then decided whether it was to be reared or not. If they considered it 'puny and deformed', the baby was thrown into a chasm on Mount Taygetos. See for that issue P. Cartledge, *Spartan Reflections*, London: Duckworth 2001, p. 84.

¹³ The conditions under which deprivation of life may be allowed are described in article 5 (2), section 2 of the Constitution.

physical existence in his own way, the application of all the other fundamental rights becomes impossible.¹⁴

The interpretation of the provisions above has led to a variety of opinions concerning a possible constitutional foundation for euthanasia with two of them being the most relevant. In one opinion, the right to life and its inviolable use against public State authorities is guaranteed and not the right to inviolable use in terms of self-destruction from the carrier himself.¹⁵ Therefore, the right to life cannot include the exact opposite situation, death. Agreeing in principle with the last statement, another opinion argues that the Constitution guarantees the right to life, but not the obligation of a painful and distressing life. Thus, the Constitution does neither allow nor prohibit euthanasia, but leaves the legislative free to decide on the legality of euthanasia as well as on the circumstances under which it can be legal.¹⁶

Having accepted the second opinion, I would conclude that the right to death is not contrary to the Constitution of Greece. Apparently, the absence of a defined provision does not make any direct guarantee and the interpretation of article 5 (2) and (3) concurs in favour of that position, but the freedom of decision that the Constitution grants to the legislative may provide an adequate legal basis for the right to death. For example committing suicide is an expression of the right to death: an expression that is not prohibited, as there is no Criminal Law provision penalising suicide and that is not anti-constitutional because this Criminal Law absence has been based in the fact that the Constitution provides such freedom. Thus, both theoretically and practically speaking, everyone is free to commit suicide and any unsuccessful attempt is not against any law of the State.¹⁷

The same should apply to euthanasia. Euthanasia is an expression of the right to death as well. The difference is that the person interested is not in a position to commit suicide because of physical inability; therefore a second person needs to provide assistance in order for the suicide to be committed. The difference is then observed in the fact that committing suicide is a self-insult of one's life while euthanasia needs an action (active euthanasia) that brings a heterogeneous-insult to life. Even in that case, the heterogeneous-insult comes as the result of a decision of the person who will accept the insult (voluntary euthanasia): a person that is simply physically unable to do so by himself. This fact, in conjunction with the distressing position that the person that decides to accept euthanasia is in and the feelings of mercy on behalf of the one who provides assistance should be adequate prerequisites in legalising (voluntary) euthanasia.

Cases of 'assistance' in committing suicide to people that have not decided and expressed the will to commit suicide, even when dealing with extremely desolating and painful diseases (involuntary euthanasia), cannot be included under the same legal umbrella and is practically just a deprivation of somebody else's life, an action that is extremely and strictly punished. In my opinion, neither the mercy that the immolator may feel for the victim, nor the situation of the victim itself should justify the application of euthanasia in such a case.

¹⁴ A. Manesis, *Individual Liberties*, Thessaloniki: Sakkoulas Publications 1982, p. 126 (in Greek).

¹⁵ A. Raikos, *Fundamental Rights C'*, Athens-Komotini: Ant. N. Sakkoulas Publishers 1986, p. 24 (in Greek).

¹⁶ P. D. Dagtoglou, *Constitutional Law, Individual Rights A'*, Athens-Komotini: Ant. N. Sakkoulas Publishers 2nd edition 2005, pp. 203-204 (in Greek).

¹⁷ That was the case, for example, in England and Wales where according to section 1 of the 1961 Suicide Act, it is a crime for a person to commit suicide. Fortunately this provision has been abrogated.

From a personal point of view, another legal basis for possible legalisation of euthanasia could be found at the Constitution. As mentioned above, article 5 (2) protects not only the right to life. At the same level of protection, it determines that the right to honour and liberty shall be fully enjoyed within the Greek territory. The notion of honour is multi-dimensional: it primarily expresses the negative obligation that the public authorities have not to humiliate citizens in any aspect of their lives. Moreover, it substantially creates the concept of self-honour that demands a better life quality, which can be damaged in cases of incurable diseases, especially in later stages when the symptoms become even more distressful. The State could not of course make any type of euthanasia obligatory, but it has a positive obligation to safeguard honour in those situations, by giving to every individual patient the freedom, , to have the choice of death. In fact, patients do have the absolute right to terminate or to decline receiving medical treatment even in fatal cases, a right that derives from the principle of self-determination as a notion of liberty.¹⁸ Therefore the non-legalisation of voluntary euthanasia in situation of incurable diseases at the latest stage becomes hypocritical.

From a criminal law point of view, the article most similar to a regulation of euthanasia is article 300 of the Greek Penal Code, which punishes homicide under the victim's consent with imprisonment from 10 days to 5 years. In order for article 300 to be applied, there must be a strong and persistent demand to die on behalf of the patient, who suffers from a fatal and incurable disease, expressed in periods that the patient's intellect and capacity to make decisions are unimpaired. The concept of strong and persistent demand shall reflect the real will of the patient, not expressed in times of impermanent depressions and not an unstable or changing will. It is highly important to observe here that the punishment set in article 300 is far softer from the one for homicide (life sentence). This clearly demonstrates a distinction that the State makes: a distinction based on the ground of the special conditions under which patients suffer from an incurable, fatal disease.

Conclusion

As seen in the main part of the paper, major social actors seem to be reluctant to take a step further regarding euthanasia. The Orthodox Church that intensively and strongly influences Greek society does not even discuss any possibility on legalising euthanasia and condemns all alternative approaches. It expresses a very conservative opinion firmly given in general terms that does not focus on the main problem and at the very end, does not propose practical solutions.

Medical practitioners are seen to have been highly influenced by the opinions of the Church. What is more important is that they have clarified the extent of the problem; a large number of patients would prefer an honourable death to a miserable short life. Doctors do understand better that a legal act would make them feel more secure when facing relevant situations. Unfortunately, although they describe it correctly, the majority of doctors do not seem to contribute to a possible solution.

¹⁸ Case *Pretty vs. The United Kingdom*, (2346/02) [2002] ECHR 423 (29 April 2002), paras. 62-63. See also I. Kriari-Katrani, 'Euthanasia and individual rights - The international and comparative law point of view', *Elliniki Dikaosini* (43) 2002, 1543 (in Greek).

Respect of fundamental human rights is a foundation of democracy. One of the major rights is freedom; freedom in all senses, even the most appalling, death. Therefore, under the freedom to legalise on euthanasia that is granted by the ultimate national Law, the Constitution, a possible insert on the Greek penal code shall be forwarded, under the following prerequisites:

- 1)** The patient combats with an incurable, fatal disease at its latest stages and suffers from distressful and severe pain.
- 2)** Strong and persistent demand of the patient as described in article 300 of the Greek penal code.
- 3)** Physical inability of the patient to commit suicide.
- 4)** Compassionate feelings of the one that participates in euthanasia towards the patient. Technically, the most appropriate person to perform such an act would be a physician¹⁹ because of expertise in accomplishing euthanasia without causing any side effects on one hand and on the other, because of lack of personal gain from the physician's side since those kind of services will be provided free of expense.
- 5)** More than two doctors should predicate on the nature of the disease; its rigours are not transient, death would anyway ensue within days, no effective medical treatment for relieving the pain exists.

In my opinion, this legal approach may be well received for further discussion. On one hand the major scope, which is the legalisation of the freedom to choose on euthanasia, is fulfilled. On the other hand, the prerequisites set, guarantee protection for patients against abuse. Thus, whenever those prerequisites are fulfilled, the person who has assisted the patient would stay unpunished.

It is of the highest importance that the strong and persistent demand of the patient is addressed. A possible legalisation of euthanasia clearly aims at giving people that really suffer and regard euthanasia as the only solution, the freedom to choose on how to proceed with their own lives. People that, despite the fact of the existence of an incurable disease, have not expressed any will towards euthanasia must be highly protected by the law, that should be imperative in cases of involuntary euthanasia; this is not a choice but a violation of the ultimate right to life.

As a liberal country, Greece should respect the will of its citizens. Thus, legalising voluntary euthanasia becomes a necessity so that every patient would, even under strict prerequisites, have the applied freedom to choose. At the very end, every situation is different so no-one knows the difficulties and no-one can describe the severe conditions better than the patient himself. As physicians have clearly stated, patients do demand euthanasia, a fact that simply cannot be overlooked. Hence we must stop searching for the idealistic and focus on reality; stop searching for the perfect forest and at the end lose sight of the tree. Opinions of important social actors shall be taken into account, but personally speaking, the form of the debate on this particular issue shall be detached from possible legalisation of euthanasia to how any possible legal act will make the situation better; how it will not get abused by artful dodgers that might find a perfect chance to develop their own interests against the ones of the patients.

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¹⁹ This is also the example of countries that have legalised euthanasia like the Netherlands and Belgium, M. Adams & H. Nys, 'Comparative Reflections on the Belgian Euthanasia Act 2002', *Medical Law Review* (11) 2003, 358.