Active Euthanasia: Legal perspectives

Portuguese System
Definition: Euthanasia

In ancient Greek – verb euthanatêo – to die from a nice death, to die well.

Nowadays – verb to euthanize – to kill painlessly someone suffering from an incurable illness.

Euthanasia – Disthanasia – Orthothanasia
Conceptual Distinctions

Euthanasia

- Direct
  - Active
  - Passive
- Indirect
Active Euthanasia

Intention → Motivation → Behaviour → Result

Intention: Relief patient’s pain + give him a painless death
Motivation: Assist the patient in the best way possible
Behaviour: Administration of drugs
Result: Patient’s death
Active Euthanasia

- *In extremis* positions:
  - National-socialism conception – Hitler.
  - Vitalist conception – extending human life at any cost.
Explaining the Controversy: Ethical Questions

- Is it really life to live connected to machines?
- What is the cost of euthanasia?
- Is it killing or caring?
- Should we restrain those who are in unbearable pain the right to choose?
- What is the reason to believe that to leave a person to die is ethically more acceptable than to put to an end his/her life with a lethal injection, for instance?
Arguments In Favor

- Human Dignity.
- Self-Determination.
- Liberty of disposition of the life and body.
- Personal autonomy.
- Prevention of cruelty.
- Duty of solidarity.
- Prohibition of arbitrary medical intervention.
- There isn’t a legal duty to maintain by any means a lost life.
- Choice between two deaths.
- Legal irrelevance of suicide.
Arguments Against

- Right to live.
- Human Dignity.
- Right to personal integrity.
- How do we assess the psychological state of the patient?
- Risk of wrong diagnosis.
- Other ways of ending the pain: palliative care.
- The role of the doctor is to save lives, not to kill.
- Possibility of new medical findings.
- Can become a means of health care cost containment.
- Slippery Slope Risk:
  - Would not only be for people who are “terminally ill”;
  - Exposing vulnerable people.
- Preventing “Angels of Death”.

STOP!
Euthanasia = Felony
Religious perspective

- Pastoral Note from the Portuguese Episcopal Conference (12th November 2009).


- Euthanasia’s Declaration from the Sacred Congregation for the Doctrine of the Faith (5th May 1980).

- Discourse for an international group of physicians from the Pope Pius XII (24th February 1957).
«(…)The human existence is the result of the divine goodness (…) and does not excuse us from the responsibility of taking care of it.»

«Moral obligation to give to human life a special protection (…) – “You shall not kill” (…) The respect to this principle is incompatible with any form of direct aggression to the human life.»

«It is ethically unacceptable to legalize any form of euthanasia (…) It is a violation, although consented, of human dignity.»

«Medicine and society have other methods of helping terminal patients.»

«Euthanasia is a way of denying to accompany the sick person.»

«To anticipate death through euthanasia (…) has as a result an expropriation of death, withdrawing the possibility of a personal death.»
Law perspective

- Portuguese Republic Constitution: articles 1 and 24 to 26.
- Criminal Code: articles 131 to 135.
- Universal Declaration of Human Rights.
- Code of Medical Deontology.
- Basic Law for Health.
- Law 25/2012 of 16th July.
- Convention on Human Rights and Biomedicine.
- Declaration of Venice on Terminal Illness.
- Opinion 11/CNECV/95 on the Ethical Aspects of Health care regarding the end of life of the National Council of Ethics for the Life Sciences.
- Hippocratic oath.
- Recommendation 779 (1976) on the rights of the sick and dying (CE).
- Resolution 1859 (2012) – protecting human rights and dignity by taking into account previously expressed wishes of patients (CE).
Comparative view

**Euthanasia laws around the world**

- **Japan**
  - Only "passive" euthanasia is permitted (non-prolongation of life) for patients who have been in a coma for more than three months

- **Germany**
  - Euthanasia is defined as murder, due to the large number of cases under the Nazi regime

- **Finland**
  - Passive euthanasia is permitted for anyone who has declared a desire for it in advance

- **France**
  - A stormy debate erupted a few years ago following the suicide of a patient who had conducted a public struggle for her right to euthanasia
  - **The Netherlands, Belgium, Luxembourg**
    - Assisted suicide is performed by doctors based on a patient’s request while he or she is still conscious

- **Great Britain**
  - The legislature has rejected any initiative on the issue

- **United States**
  - In Washington and Oregon, a doctor can prescribe a substance that the patient can purchase in a pharmacy

- **Colombia**
  - Euthanasia was approved in 1997; due to pressure from the church doctors could perform assisted suicide starting in 2012

- **Switzerland**
  - The only country that permits euthanasia for foreign citizens
Portugal

Murder (Article 131) → Manslaughter (Article 133) → Murder upon request (Article 134)

Maybe attenuated (Article 72) → Assisted Suicide (Article 135)
Comparison of regimes

**Murder (article 131)**

«Whoever kills another person is punished with a prison sentence of no less than 8 years and no longer than 16 years.»

- General Provision.

- Possibility of attenuation: article 72 Criminal Code.

**Manslaughter (article 133)**

«When the murder takes place under an understandable violent emotion, compassion, despair or other socially or morally relevant motive, such as to significantly diminish the murderer’s degree of guilt, the agent will be punished with prison for 1 to 5 years.»

- Ethic plausibility of motivations – social understanding of the behavior.

- Intensity on the will of the agent.

- Compassion (resemblance + empathy).
Comparison of regimes

<table>
<thead>
<tr>
<th>Murder upon request (article 134)</th>
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<tbody>
<tr>
<td>«When the murder is carried out at the serious, constant and explicit request of the victim punishment is prison till 3 years.»</td>
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<tr>
<td>- Request has to be: 1) serious; 2) constant; 3) explicit.</td>
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<td>- Agent has to be determined by the request.</td>
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<td>- There has to be an internal conflict in the agent between the prohibition of killing and the respect of the victim’s will.</td>
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<td>- Altruistic motivation.</td>
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<th>Assisted Suicide (article 135)</th>
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<td>«1 - If someone incites or assists another person to commit suicide, he or she is sentenced to prison till 3 years, if the act of suicide is consumed or attempted. 2 - The punishment is increased to a prison term of 1 to 5 years, in the case the victim is under 16 years old or has, in any way, his or her capacity impaired.»</td>
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<td>- Euthanasia by induction or suggestion.</td>
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<td>- Agent brings the means.</td>
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## Comparison of regimes

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<thead>
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<th></th>
<th>Consent</th>
<th>Author</th>
<th>Victim</th>
<th>Punishment</th>
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<tbody>
<tr>
<td>Murder</td>
<td>No</td>
<td>Doctor</td>
<td>Patient</td>
<td>8 years – 16 years</td>
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<tr>
<td>Manslaughter</td>
<td>No</td>
<td>Doctor</td>
<td>Patient</td>
<td>1 year – 5 years</td>
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<tr>
<td>Murder upon request</td>
<td>Yes</td>
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Contributions for a Project of Law

- Clear definition of which behaviours substantiate the concept of euthanasia;
- The patient has to be *terminally ill*;
- Request has to be *serious, clear and instant*;
- **Written** request by the patient;
- **Information** to the patient;
- Requirement of *second medical opinion*;
- Evaluating Commission.
Case Study

Meet “João” and “Ana”
Case Study

i) “João”, 50 years old;

ii) Two kids: 20 years old; 16 years old

iii) Amyotrophic Lateral Sclerosis (ALS);

iv) Can’t move from the neck down;

v) Losing speech capacities;

vi) Diagnosis: will lose all speech capacities and the capacity to eat by himself.
Case Study

i) “Ana”, 35 years old;

ii) Three kids: 11 years old, 7 years old and 3 years old;

iii) Severe Cerebrovascular accident (CVA);

iv) Can’t move from the neck down;

v) Can’t talk by herself – has a communicative system;

vi) Improving diagnosis: none.
AH, WHAT THE HELL... TWO OUT OF THREE AIN'T BAD!

ASSISTED DYING

TERMINAL CASE ............

UNLIKELY TO LAST 12 MONTHS

OF SOUND MIND ............
The End.