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# Euthanasia in Serbia: In Need of Enhanced Debate and Regulation<sup>1</sup>

## ABSTRACT

The aim of this paper is to point to the presence of paternalism and disrespect of the principle of autonomy in the current Serbian legal framework regarding euthanasia. Besides that, it is demonstrated that Serbian statutory provision, according to which euthanasia or mercy killing is a criminal offence, represents neglect and violation of the rights of terminally ill patients. Likewise, it is pointed to other omissions of the present legislation and new, i.e. enhanced regulation of this issue is advocated.

**Keywords:** euthanasia, paternalism, autonomy, terminally ill patients.

## 1. Introduction

In Serbian legislation, there is no specific law or act concerning euthanasia. Rather, it is regulated by The Law on Patient's Rights and Criminal Code of the Republic of Serbia. The Criminal Code introduces a provision on merciful deprivation of life and says that "Whoever causes death of an adult from mercy due to serious illness of such a person and at such person's serious and explicit request, shall be punished with imprisonment lasting from six months to five years".<sup>2</sup> Therefore, in Serbia euthanasia, or rather active euthanasia is a criminal offence. So, although it is regarded as a separate and less serious criminal offence in comparison to murder, euthanasia is,

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2 Criminal Code of the Republic of Serbia, Službeni Glasnik, no. 108/2014, art.117.

in fact, considered as some sort of “privileged” murder. Thus, the Criminal Code provides the prison sentence, as I said, of six months to five years for this offence, as opposed to “ordinary” murder for which one can get from five to 15 years in prison.

In contrast to this, based on the right to self-determination (*autonomy*), the so-called passive euthanasia, though not under that name, is legal. Namely, this form of euthanasia is available as a patient’s right to refuse lifesaving and maintaining treatment. The Law on Patient’s Rights regulates “The patient’s right to reject proposed medical measures, even when it leads to rescuing or maintaining his/her life.”<sup>3</sup> Therefore, patients in Serbia who suffer from incurable disease and endure severe pain and torment are allowed to voluntarily terminate treatment – which actually only increases their pain and suffering, but are not provided with the active help to die – which would be, for some of them, morally more acceptable.

## 2. Some Flaws and Disadvantages of the Legal Framework

Flaws and disadvantages of this current legal framework are numerous and it leaves many issues unregulated and vague. Here I will point only to a few of them.

First of all, none of these laws give an explicit definition of euthanasia. There is no reference to etymology of the word *euthanasia*, nor what I think is more important, any explanation of the difference between euthanasia and murder. Here I will suggest few references that good definition of euthanasia, in my opinion, needs to include. These are references to intentions and desires of those upon whom euthanasia is performed, to the motivation of those who perform euthanasia, to euthanasia as a realization of death as being good for the person over whom it is performed and, finally, reference to the so called “medical context”. The last reference means that definition of euthanasia should be explicit about the medical circumstances of the person who requires performing of euthanasia. In other words, a good definition needs the reference to euthanasia as a “medical act” – especially the act that is performed on the person who suffers from an incurable disease and endures severe pain and torment that can no longer be reduced by drugs. Such a person is in the terminal stage of the disease and has no hope of recovery.

Secondly, in the absence of an explicit definition of euthanasia or a description of medical procedures that lead to the deliberate termination of life, it remains unclear whether this act can be performed by omission, and whether and in which cases it

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3 The Law on Patient’s Rights, Službeni Glasnik, no.45/13, art.17.

can be done without the patient's expressed will and consent. Also, it remains unclear what is the difference between voluntary and non-voluntary euthanasia.<sup>4</sup>

Finally, the current legal framework fails to make an important distinction between active euthanasia and physician-assisted suicide. This distinction, however, is important because there are different stages of incapacity of terminally ill patients. Some of them are in coma or persistent vegetative state, so they are incompetent and can't be consulted. Others, however, suffer from incurable diseases but are physically able to commit a physician-assisted suicide, so they can choose physician-assisted suicide instead of active euthanasia. Therefore, terminally ill patients should have access to both of these medical procedures.<sup>5</sup>

Such a current legal framework reflects the presence of two major difficulties in medical practice in Serbia.

The first is disrespect of the principle of autonomy. In Serbian legislation, autonomy or the principle of independent decision-making is not appreciated. But, autonomy is the main of all rights of terminally ill patients, such as the right to have means to relieve pain, the right to dignity (the right to spend last days of life with some sense of the dignity), the right to maintain a personal scale of values, etc.<sup>6</sup> Criminalizing of active euthanasia and the corresponding absence of a specific law or act concerning euthanasia in Serbian legislation entails neglect and violation of some of these rights. Consequently, the issue of euthanasia is as much about control as about dying. The question is "who has the control over the moment and manner of dying of the terminally ill patient"? – In Serbia, this control is only in the hands of physicians. However, the most interesting and the most troubling is the fact that the patient's autonomy is actually, partially recognized. On one side we have patient's right to refuse lifesaving and maintaining treatment, which is based precisely on his right to self-determination, but when it comes to providing him with active help to die, this right is denied. Thus, the competent terminally ill patient, as I said, has the right to

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4 There is one more form of euthanasia - involuntary euthanasia. See: Singer, P. *Practical Ethics*, 3<sup>rd</sup> ed., Cambridge: University Press 2011, p.158. However, involuntary euthanasia is not relevant for this discussion because it is unthinkable in the medical context. Namely, it is bizarre and hard to imagine that physician does not ask and does not require the consent of the patient who is able and competent to consent.

5 As opposed to this, the advocates of physician-assisted suicide usually are opposed to active euthanasia. Their argument is that the process of the completion of patient's own lives is likely to be autonomous and less influenced by external pressures (social and economic pressure and inauthentic desire to die) when it is controlled by the patient. See, for example, P. Battin, Margaret „Euthanasia: The Way We Do It, The Way They Do It“, *Journal of Pain and Symptom Management*, 1991 (5): 298–305; Quill, T.E., Cassel, C.K., Meier, D.E., "Care of the Hopelessly Ill. Proposed Clinical Criteria for Physician-Assisted Suicide", *New England Journal of Medicine*, 1992, Vol. 327, No.19:1380-4. However, the prohibition of active euthanasia on this basis would be unjust because it would exclude those who have made equally thoughtful and autonomous request to die but are not physically able to commit a physician-assisted suicide.

6 Certainly, these are moral rights, not legal rights. They are actions that do not interfere with others' rights, and do not coerce.

choose a withdrawal of treatment but is not permitted to hasten death by means of additional medication given by a physician. Fully recognition of this right, however, demands that if the patient's right to self-determination is already to some extent acknowledged (e.g. his right to reject proposed medical measures) then we need to respond to his demands to die with dignity and provide him an active help to die.

The second difficulty in medical practice in Serbia is the presence of paternalism, and it is actually the consequence of the first one. Logically, when neglecting the principle of autonomy, there is a danger of the emergence of paternalism. In Serbia, the traditional paternalistic model of medical profession is still present. Physicians continue to have the ability to override a competent, terminally ill patient's wishes, and to insist on the right to "know best" in this crucial end-of-life decision. However, this perception that if someone is suffering from an incurable illness and wants to end their life, there is another person who knows better about what life path that person should take (even when this path is against that person's personal views, desires and expectations) is immoral and cruel. Since the autonomy is not a highly valued principle and paternalism is present, patients and families in Serbia do not have the right to participate in end-of-life decisions. For example, in case of a patient who is in a coma or persistent vegetative state, the ultimate decision about a patient's life or the termination of artificial life support is still made by physicians, primarily on the basis of medical criteria and findings of the consultative team. This is, however, opposed to the contemporary attempt to share this responsibility between doctors, family members and even the courts and their assessment of the best interests of the patient.

Thus, the consequence of this current legal framework is that criminalizing of euthanasia is effectively the prohibition of suicide for many terminally ill patients. This situation is unjust, due to the fact that terminally ill patients are often too debilitated to take active steps to end their suffering and provide a desired death. Therefore, with this legal framework they are effectively denied private options available to the non-terminally ill. On the other hand, active euthanasia and physician-assisted suicide could prevent some "premature suicides", while patients would know they had control over the time and manner of their death. Also, the decriminalisation would provide terminally ill patients with the implementation of their end-of-life decision carried out in their own country, which would certainly reduce costs and allow the presence and intensive participation of family members in last days of their lives.

### 3. Some Guidance for the Debate

In euthanasia the most important thing is the motive, which is not hatred or ill will, but mercy or empathy. Euthanasia is motivated by concern for the suffering of the dying patient. Namely, the motive is to terminate his/her unbearable suffering. Therefore, people should be given the right to choose a dignified death in the case of an incurable disease – because it does not only matter how you live, but also how you die. A democratic society that honors justice and liberty, the society that Serbia aspires to be, should allow the terminally ill a degree of freedom as to when and how to die. Therefore, it is necessary to enhance the rights of terminally ill patients by decriminalizing euthanasia. In order to achieve this, we need to initiate a public debate on this issue with the aim of increasing knowledge and reducing prejudices related to euthanasia. I will give only a few suggestions on how this debate can be made more fruitful. In my view, we should:

1. Focus on the practice of euthanasia in Belgium and the Netherlands, which is a result of a long and serious debate, and in a way that might be of interest for Serbia.
2. Make comparative analysis of legislative requirements (laws, regulations, reports) of the selected European countries concerning euthanasia.
3. Conduct opinion polls.<sup>7</sup>
4. Conduct a survey of physicians based on the questionnaire with the aim to determine a percentage of deaths in Serbia that involved a medical end-of-life decision.<sup>8</sup>
5. Inform the public about the different views among scholars regarding the moral justification of active euthanasia.

### 4. Conclusion

This kind of approach would greatly contribute to creating the conditions for the establishment of the appropriate public policies on euthanasia and adoption of the appropriate legislation of euthanasia. Likewise, it would help the public to gain the better knowledge regarding the specific issues and problems related to euthanasia,

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7 This step is important because in Serbia there is no public opinion research on the issue of whether terminally ill patients should obtain medical aid in dying.

8 This step is important since the passive euthanasia is legal in Serbia, but there are no records on the number of cases performed so one cannot make comparisons from year to year, nor run any statistic.

and to be able to make their own value judgment about the moral justifiability of active euthanasia.

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## Eutanazija u Srbiji: potreba za poboljšanom debatom i regulativom

### SAŽETAK

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Cilj je rada ukazati na prisutnost paternalizma i nepoštovanje principa autonomije u aktualnom zakonskom okviru Republike Srbije koji se tiče eutanazije. Pored toga, u radu je pokazano da zakonska odredba po kojoj je eutanazija ili ubojstvo iz milosrđa krivično djelo, predstavlja zanemarivanje i kršenje prava terminalno oboljelih pacijenata. Ukazuje se i na druge propuste aktualne legislativne i predložena je nova, takoreći poboljšana regulacija ovog pitanja.

**Ključne riječi:** eutanazija, paternalizam, autonomija, terminalno oboljeli pacijenti.