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07-08 February 2020, Banja Luka

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Međunarodni naučni skup: „Transformativne tehnologije: pravni i etički izazovi XXI vijeka“

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Introductory Note

The development of new technologies can cause radical changes in the sphere of social and economic relations, as well as radical transformations of dominant ethical stances. The discoveries of steam engines, railways and electric power have already demonstrated the transformative power of technological development, which has become even more pronounced today. Transformative technologies have a profound impact on human lives. The international scientific conference of special importance: "Transformative Technologies: Legal and Ethical Challenges of the 21st Century", held on February 7-8, 2020 in Banja Luka, focused on two subthemes: legal and ethical dilemmas raised by the development of digital and reproductive technologies. The conference was organized by the Faculty of Law of University of Banja Luka, the European Division of the UNESCO Chair in Bioethics (Haifa), and the Center for the Study of Bioethics (Belgrade). The submitted conference papers, selected after a double-blind peer review process, are collected in this volume.

Uvodna napomena

Razvoj novih tehnologija može da izazove korjenite promjene u sferi društvenih i ekonomskih odnosa i dovede do radikalne transformacije dominantnih etičkih stavova. Otkrića parne mašine, željeznice i električne energije već su pokazala transformativnu snagu tehnološkog razvoja, koja je danas postala još naglašenija. Transformativne tehnologije duboko utiču na živote ljudi. Međunarodna naučna konferencija od posebnog značaja: „Transformativne tehnologije: pravni i etički izazovi XXI vijeka", održana 07. i 08. februara 2020. godine u Banjoj Luci, u fokusu je imala dvije podteme: pravne i etičke dileme prouzrokovane razvojem digitalnih i reproduktivnih tehnologija. Konferenciju su organizovali Pravni fakultet Univerziteta u Banjoj Luci, Evropska divizija UNESKO-ve katedre za bietiku (Haifa) i Centar za bioetičke studije (Beograd). Prezentovani radovi dostavljeni u punom obimu, nakon što su dobili dvije pozitivne anonimne recenzije, uvršteni su o ovaj zbornik.

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IMPACT OF ADVANCED MEDICAL TECHNOLOGIES ON THE LEGAL STATUS OF EUTHANASIA

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Abstract: *Science and technology form the basis of human community development, of the improvement of living standards and of the quality of human life. Sophisticated technology is becoming 'the incarnation of immortality' of the human being. Medical technology innovations generate a significant number of new drugs, devices and diagnostic tests that improve health, reduce risks and extend life. What medical technology can do for patients today has changed radically from what could have been done in the past ten years. This paper will highlight in particular the advances in the field of medicine regarding its effect on terminally ill persons. The ethical dimensions of euthanasia in relation to the collision between moral goods resulting from the exponential increase in the number of medical technologies are discussed. It is more and more evident the pointlessness of using new knowledge and technology of medicine in certain individual cases. The focus of the paper is on the possibility of a 'good death'- euthanasia, as an alternative to the rusty option of prolonged and painful dying. Therefore, an attempt is made to show the link between medical prosperity and the impact on the more pronounced need to introduce euthanasia into medical practice. Advancements in medical technology have made the final stage of terminally ill patients very likely to become prolonged and dependent on them. The boundaries of life and death are thus constantly being shifting. Professional and scientific progress has transformed the last phase of human life into a long, difficult and torturous process of dying that is, conducting dysthanasia. Due to this condition, the need to actively consider the legalization of euthanasia becomes more pronounced.*

Keywords*: medical technology, medical treatment, euthanasia, dysthanasia, legalization*

INTRODUCTION

If we use the word technology in its expanded meaning, it means that it encompasses all production processes, products, procedures, as well as knowledge of how to make the most of these contributions. Equivalently, medicine as a science and the art of prevention, diagnosis, treating disease and preserving and improving health is basically a technological discipline. This science depends on the symbolic, cultural and religious context. In other words, technology is not in itself aimed at adequately addressing a particular medical problem, but rather is determined by the general paradigm of disease. In line with that, we can trace its historical development dependent on the general development of intelligence. The ancient period positioned medicine in the frame of hypocritism, and even small technological procedures were based on philosophical observations of the time. Given the characteristics of the Middle Ages, there were no significant technological developments and discoveries during this period (Kalanj Bognar, 2015).

The use of technology in medicine, in addition to the aforementioned factors, is also conditioned by the degree of scientific development of certain scientific fields, primarily biology, physics and chemistry. The development of these sciences and the advent of the new century have also led to significant and frequent technological breakthroughs. One of the nineteenth-century discoveries that forever changed surgical practice was anesthesia as well as the discovery of x-rays in 1895 which can be considered a turning point not only for medicine but for all of humanity. It is undoubted that, among other things, these two findings led to numerous studies being conducted and to the creation of new branches of medicine. Unlike physics, chemistry and biology were later developed, so medicine will rely on them in the late 19th and throughut the 20th century. As a result, the fields of medicine have been intensively developing. In proportion to these contributions, the reduction of human morbidity and the elimination of some of the most serious diseases were all the more pronounced. Bacteriology influenced the discoveries of asepsis and antisepsis, and the discoveries continues throughout the 20th century. The discovery of antibiotics in the first decade of the twentieth century and of antimicrobials is considered a very important contribution. In this way, many diseases have been prevented and became curable, such as pneumonia, which used to be a sign of death and can now be overcome with antibiotics. During the same period, blood transfusion was developed. Thus, with the advancement of one branch of medicine, there has been progress in its other segments

during this period. The foregoing inventions are merely stark indications of the speed of development of modern-day medicine (Woolf, 1990). In former times, it was rare for anyone to "die of old age". At that time, not even a diagnosis was developed to determine which disease caused the fatal outcome. Such diseases are today prevented or routinely treated. An example of this is a disease that is very common today and its name is cancer. It is certain that there were fewer cancer patients before, because the life expectancy was much shorter, and therefore many patients with the disease today would not experience years in which they would get cancer due to other diseases such as measles, tuberculosis or other disease. According to recent measurements, in 2018 alone there were 18 078 957 new cases worldwide (World Health Organization [WHO], 2018). In the mid-last century, a turning point occurred regarding the average life expectancy of a human life

New medical technologies are eagerly welcomed and quickly accepted as ordinary means of intervention. In addition to these new technologies, we are faced with new, spontaneously created, rules in medical practice. That rules are related to the belief that we should make every possible step in order to save a life. But, we need to consider the option that the goals of new medicine are not always worthwhile and meaningful. Physicians need to remind themselves from time to time, that there are always some limits and that every improvement has the other, not so much positive, side. Throughout history, man has been equally exposed to fear and uncertainty due to illness. Against that fact, every grand medical discovery has brought us a key step closer to resolving the complex mysteries of disease and medicine generally. Because of that, we have been able to invent specific medicines and treatments. Some of them are instrumental in saving human lives. Medicine as we know it, began to develope after the Industrial Revolution in the eighteenth century. During the nineteenth century people made many scientific discoveries and inventions. It has been made rapid progress in recognition and suppression a lot of illnesses, and also in understanding how bacteria and viruses function, and there is still plenty of room for research in this area. New technologies and treatments are already in use or will be ready for use soon. On the contrary, this medical progress is hard to be followed by an adequate legal progress and significant challenges still remain (Knottnerus & Tugwell, 2017).

Due to the advancement of medicine, we are today in a situation where the disease can be prolonged as much as possible. This is not always the desired condition of the patient. Sometimes it is the person who has the lowest level

of sustainable functions. Such conditions, which were not possible decades ago, today create inhumane conditions in which patients are often forced to exist. The use of electroencephalography (EEG)[1] has changed the concept of death medically and legally. In most developed countries of the Anglo-Saxon and Continental legal areas, brain death is accepted as the legal definition of death.[2] Formerly, life interruption was associated with cardiopulmonary function interruption, while laws have now been adopted to confirm brain death as relevant, which has also been accepted by jurisprudence in a number of countries. In the case of brain death, the individual is medically and legally dead, and the physician can end intensive medical treatment by switching off the device that sustained the patient's life.[3] There are several legal limitations to this definition of death. From a practical standpoint, the legal definition of death as death of the whole brain is inadequate. As a result, there is some effort to instead comply with the criterion by which patients would be classified as dead because of the higher parts of the brain ceased to function (neocortex death). Such a change would initially make it easier to deal with cases where these parts of the brain have stopped functioning, for example if the patient is in coma[4] or permanently vegetative state. As life is often reduced to merely maintaining functions in an artificial manner, and it is unknown if such a person feels pain, there are more and more individual requests to end such life. At the same time, the law has been elaborated to such an extent that today's individuals are accused of crimes that are fundamentally human and always practiced. An example of such an act is euthanasia.

Euthanasia has been known since ancient times. It originally refers to a wide range of situations. It has been de facto used throughout history and justified for a number of reasons. Given that there is no established, commonly accepted definition of euthanasia, what is described here approximates to what is today considered official euthanasia. It can be said that euthanasia

1 Graphical representation of brain electrical activity.

2 The criterion for irreversible coma (brain death) was developed by the Ad hoc committee of Harvard University in 1968. Cessation of cerebral currents is determined by EEG, while a dead person is considered to be one whose irreversible cessation of respiratory and circulatory functions or all brain functions are maintained.

3 In the event that life support is continued in these circumstances, the liability of the physician for the violation of the patient's personality rights may be established.

4 Specific state of person which causes consideration of possibility to implement euthanasia is deep state of unconsciousness named coma. Persons can be in coma as a result of a traumatic accident or a medical condition. Current knowledge on coma isn't on a high level. How many patients are conscious during a coma is still unknown. Also, the level of consciousness of patients that are conscious while they are in coma is still unreachable to the medical science. There are no instruments to be used in order to predict how long coma will last. Some people wake up after a few weeks in coma, but against that fact, some of them may go into a vegetative state or minimally conscious state. Physicians do not have option to precisely predict whether patients will recover. One of the stimulations on which persons in coma do not respond is pain (Laureys, et al. 2004).

is a generic term for problems that arise when a patients choose to begin, continue, or refuse treatment for the purpose of preserving their life or requiring a medical staff member to use a particular medical device to accelerate certain and imminent death, and for the removal of suffering and pain that are extremely unbearable and which can't be alleviated or eliminated in any other way.[5] So, in todays discussions, euthanasia is mentioned as a term related to one specific state of terminally ill person and it means that there have to be a few main elements (like- the need to help, unbearable pain that negates life itself, being merciful..) of that status in order to be the predispositions of a person to declare for euthanasia. Mentioned meanings are dependent on the specific era, on the scientific field, on the provenance of the author. Thus, there is no widely accepted definition of euthanasia. However, for the purposes of this paper, the meaning of euthanasia will be reduced to that one which is given through modern medical practice. This discourse is consequence of the work of British historian Lekia, under whom euthanasia started to be a term for depriving the life of a hopelessly ill patient (Simocic & Simeunovic-Patic, 2017:317).

The broad question of euthanasia is dealt with in many fields. Although the increasingly common syntagm is dignified death, the question is raised- is the relevance of "human dignity" considered in the debate on euthanasia? Considering human dignity there happen to be some theoretical difficulties. Meaning of human dignity is so vague that it leads to inflationary and contradictory use. It can be interpreted from the perspectives of different scientific disciplines and within each one there are many currents of reflecting on human dignity. And, with the development of bioethics, there was a new wave in its interpretation. But every one of this sciences and disciplines has similar main characterization of human dignity- it is a central human value that originates from overall quality of human life and one partly from the spiritual and material. Also, it is something intrinsic, essential and inalienable that is not determined by external causes or conditions. That fact is very important for many traditional bioethical topics, as euthanasia is. Euthanasia is well known as a phenomenon that is related to preserving human dignity

5 The World Medical Association (WMA) defines euthanasia as the act of deliberately ending the life of a patient when there is patient's own request or the request of close relatives. WMA has an explicit statement that it is an unethical phenomenon that doesn't belong to a good medical practice. According to the 2002 resolution to euthanasia, WMA clearly confirms beliefs that euthanasia is in collision with main ethical principles of good medical practice. Through that resolution, WMA sent message to all National Medical Associations and all physicians from all over the world to refrain from participating the process of euthanasia, even in the situations when euthanasia is questionable in country which national law allows it or decriminalizes it under certain conditions (World Medical Association [WMA], 2019).

and aspect of dignity in every process of human life periods. The discourse of human dignity is very broad and resilient, with capacity to be pulled in many directions by interested protagonists to justify all outcomes. That nature of human dignity combined with the claims and counter-claims linked with the human rights appears as good argument for those who try to use it to assert their right to die with dignity (Azize, 2007).

Euthanasia appears as a problem waitting to be solved since last decades of 20th century. Many authors are convinced that problem of arising interest for the euthanasia topics is solvable in a different way from expected (Rakowski, 1994).

This paper will address certain ethical issues related to euthanasia through the analysis of specific court cases with this request. Some of these questions are:

1. Is the morally justifiable possibility for someone to decide the time and manner of their own death?
2. Is there a moral justification for suicide in certain situations?
3. Does the recognition of the right to die by human beings imply that other persons associated with the medical treatment of the person (doctor in charge) are obliged to help, or at least not interfere, with achieving death?
4. Should euthanasia be legal?

Is it moraly justified for a person to choose how to die?

Brittany Maynard was one of the patients that chosen to die on her own terms, and she did it on November 1, 2014. Brittany had glioblastoma, an aggressive deadly brain cancer. There didn't exist any treatment that could save her life. Only option which was possible for her was full-brain radiation which could have brought her to a few extra months. In that case, such treatment would probably end in one of the hospices intended to assist terminally ill patients in the last stages of their illness.[6] However, after all the chances of finding a therapy that would significantly help the patient to make some

6 A hospice care palliative approach is an important component of quality care and can offer many benefits to patients and their patients and also to general health care system. Some of that benefits are: pain and symptom management, coordination of care, improved quality od life and decreased use of potentially aggressive end-of life care (this end may be expensive and not in accordance with patient's wishes). Although hospices are emerging as an option to help fewer deciding to euthanasia from the patients, they can not be an option that eliminates the need to legalize euthanasia.

progress in treating the disease were futile, she made the decision to withdraw from the offered treatment that would extend her life. In one interview, she explained that she made that decision because the whole-brain radiation she could choose was potentially cruel and the possible consequences were expressed as blindness and damage to mental and physical health. In her opinion, it is not life-saving but a horror that destroys quality of life in the hope of maybe getting some extra time. Since the main idea of her rejection of dysthanasia[7] was to maintain the quality of life on the highest possible scale, she made the decision to prevent the natural unwanted course of the disease and to die with dignity (Maynard, 2014).

In 2014, Brittany Maynard had to move from California to Oregon and ask a *physician aid-in-dying* -PAD. She did nothing illegal, Oregon had a law permiting the terminally ill adults to request a prescription of lethal drugs. On October 27, 1997, Oregon enacted the Death with Dignity Act that allows terminally ill patients to decide to end their lifes by voluntarily self-administering lethal medications prescribed by a physician for that purpose.

But, questionable is whether she did something unethical. Was it morraly justified for Brittany Maynard to choose how she would die? Even excluding all the circumstances that contributed to the moral justification of her decision, according to the human freedoms every human being has a right to decide what actions are good for him. People are free to make decisions over the life cycle about what they do with their own body. If they seek out medical care, they are automatically making choices on how long they will live. At the contrary, if they smoke to much or drink, drive too much, if they are not vaccinated, etc. they are making decisions about how soon they will die.

Concept of the sanctity of life has been well-known since the medieval ages. The sanctity of human life implies that no human being has the right to speak of the interruption of life which is the supreme human value. The sanctity of life is at the top of the list of hierarchical values. Understood as a factor in the process of life, holiness is simply the need to be alive and it communicates to the outside that the quality of life is subordinated to its very continuity. This further leads to the very negation of someone else's personality and leads to the acceptance of universalization on the basis of morality, which is wrong. Importance of that concept is being more and more significant, but there are

7 Some cases of dysthanasia, which is increasingly appearing in the literature as greater evil than euthanasia itself, will be presented here. The artificial extension of life beyond the limit determined by common biological processes, postponing death as long as possible usually involve slow death with suffering, pain, anguish. This fact means that by this process could be undermining the person's dignity (Clark & Dudzinski, 2013).

some cases in which we could legitimately discard the main meaning of it. With the increasingly accepted process of individualization in medicine, primary importance is given to the individual patient rather that the life beyond the individual. Brittany Maynard used steroids to treat her illness, which led to some side effects on the immune system. The steroids she was taking to control the inflamation in her brain made it difficult for her to identify herself. Already suffering from excruciating headaches and frightening attacks, she feared a condition in which no amount of morphine could help. That is why it is impossible to look at this area from the legislative and moral point of view. It is necessary to individualize all segments of action and decision making. It is true that pain can't be articulated rationally. Pain is a complex area of human experience (Halliday, 1998). Pain leads to the loss of a part of autonomy because it invalidates everything that precedes the right to autonomy. At the same time, pain allows others to think about deciding on behalf of another person, which is also a negation of autonomy. The solution to this irrational view is not to deny euthanasia and to prevent its legal form, but in the previously given consent. However, in a situation where the practice of consenting to a particular treatment or willingness to terminate one's life is not ubiquitous, it is absolutely irrational to think in that direction when it comes to the procedure of adjudicating on an individual patient.[8] A modern society that refers to industrialized societies is prepared enough to face these particular problems mentioned above.

Life and moral theory in the case of euthanasia should be based on facts that propagate an individual's quality of life, and less on life as a term of theorizing. The pain and mercy associated with euthanasia are relative categories, inadequate to determine a lasting, legal framework. However, these phenomena stimulate the process of identifying other persons with the patient and thus trigger the moral need to do something that would eliminate such feelings (Brody, 1988). This is sufficient to think of the introduction of euthanasia as a legal exception. Such an exception would, in its practice, lead to the destruction of relative categories and to the formation of legal rules that focus on human being.

8 In the US, living will laws are used (laws on permanent authorization to represent the exercise of personal right to decide one's own health), in Germany - Patient testament, in the Netherlands - Declaration of euthanasia, in Switzerland - Hospital disposition.

Is there ever a moral justification for committing suicide?

Immanuel Kant argued that suicide violates our moral duty to honor and value rational creatures. These aspirations are linked to the proclamation that life has been given to us and that as such we must respect it and have no right to interrupt it (Guyer, 1995). On the other hand, logic tells us that if we can direct the processes of life, that in the same way we can direct the process of dying that results in death.

Do not murder! - It is one of God's commandments written in the Bible and the basis of many religions and cultures. Main arguments for rejecting euthanasia by medical organizations and acts are based on deontological principle- *doctors must not kill*! The aforementioned imperative cannot be considered absolutely correct in the conditions which human life is artificially maintained with the help of medical technology. Recognizing the will of God in all individual cases of dystanasia can be considered a trivialization of the divine. Once a person is confronted with the consequences of adhering to personal principles, those principles can be shaken. This is especially the case when one nurtures principles that most other people do not respect. This is the reason why principles should not be applied to numerous phenomena. So these principles can be changed, and attitudes about certain situations can be changed, too. This also happens when a person is guided by a principle at a time significantly different from the one in which principles were created. Therefore, it can be concluded that whatever assumption we have about euthanasia, the principles and attitudes about this phenomenon are easily changeable. It is far from important to look at the time of maximum creation and the time of silent volume (Vood, 1998).

Life is not necessarily worth living. It is true that every human life, regardless of its quality, has basic values on which some basic human rights are based. This further implies that every life has certain elements of dignity inherent in life as such. However, a life deprived of crucial goods is not worth living. A painful life can initiate more harm, both to the person who lives it and to its surroundings, than ending of such a life. Illness can take a life to the point of rendering it meaningless. If the act of suicide/murder is the cause of greater happiness and benefit, holistically, then it is certainly a strong enough argument to justify ending one's life. This attitude is also necessary when it comes to numerous social and legal norms that justify the death penalty, killing in war, or killing in necessary defense. The background is different in this case, but such an exception confirms the rule that certain categories of people, ie.

people in certain circumstances can and must exempt from generalizations. Peter Singer is one of the authors who is guided by the principle that future, expected quality of life would be a sufficient determinant for the moral justification of actions taken in advance to end life (Singer, 2003). Such an approach confirms the moral justification of suicide in the case of Brittany Maynard.

Antony David Bland was one of the injured in the Hillsborough disaster. Resuscitation from his injuries could not avert brain anoxia and it led to persistent vegetative state (PVS).[9] A few months after disaster his doctor and parents came on conclusion that withdrawal of treatment including artificial nutrition and hydration would be in patient's best interest. We need to make distinction between ANH and other medical interventions. In this case, the act that allow withdrawal of ANH was primarily granted by the Court of Appeal.[10] Several elements were considered: the futility of life-sustaining therapy and any circumstance related to an adult incapacitated patient. While this procedure was lasting Lord Golf of Chieveley noted: "It would, in my opinion, be a deplorable state of affairs if no authoritative guidance could be given to the medical profession in a case such as the present, are that a doctor would be compelled either to act contrary to the principles of medical ethics established by his professional body or to the risk prosecution for murder… I do not consider that, in circumstances such as there, a doctor is required to initiate or continue life-prolonging treatment or care in the best interests of his patient" (Szawarski & Kakar, 2012:126). If long-term treatment cannot be considered to be in the best interests of the person, the treatment may be lawfully refused and treated differently. The issue, therefore, focuses on all the consequences of such an interpretation of the case and its decision-making. Specifically, more complications were provoking because other patients in a completely different state of health (such as intensive care patients) began connecting with this. In this way, a new problem arises regarding the potential generalization of the basis on which the decision in this particular case was based on, which could

9 The vegetative state is a neurological condition in which patients appear to be awake but show no sign of awareness of themselves or their environment. This condition is perplexing because there is an apparent dissociation between the two cardinal elements of consciousness- awareness and wakefulness. This patients appear to be awake but lack any sing of awareness of themselves or their environment.

10 The legal reasoning was that the act of removing the feeding tube was an omission, and so that act was not murder. But, if a third party had removed tube, for any reason, then it would have been an act of murder (Edmonds, et al, 2016: 62). The process of withholding or removing artificial feeding from patients as young as newborns to elderly people has been common-place in medicine in many parts of the world. The Bland judgement made it possible for doctors to cause the death of the patient by removing feeding without being liable for murder. (Interestingly, the legal reasoning was that the act of removing the feeding tube was not an act, it was an omission, and so the removal the feeding was not murder. However, if a third party had removed Tony Bland's feeding tube, for reasons of some personal gain, that person would seem to have been guilty of murder.)

be interpreted as a “slippery slope”. Perhaps the most significant consequence is the misinterpretation of this case for judicial precedent.

In the process, Tony Bland’s Lord Mustill’s statement has attracted considerable attention from those interested in the topic, and it still sounds true: “It would in my opinion be too optimistic to suppose that this is the end of the matter, and that in the future the doctors (or perhaps the judges of the High Court) will be able without difficulty to solve all future cases by ascertaining the facts and applying to them the precepts established in the speeches delivered today. The dozens of cases in the American courts have shown that the subject is too difficult, and the situations too diverse, for the law to be settled by a single appeal“ (Szawarski & Kakar, 2012: 128). The case law experiences have been requiring dealing with individual cases pragmatically. The more complex the medicine is, the more practical legal solutions are needed. Each individual example of legal approval of a life interruption involves a moral decision and a legal justification for such decision. By indirectly denying the death, or terminating the patient’s life, the doctors, adopting modern medicine, assume what is means to live a life worth living. In the same way, the bases on which decisions to extend medical treatment when there are indications that neurological recovery is impossible are being created. Medical practice can thus lead to erroneous logical conclusions about future cases.

Case of Karen Ann Quinlan become meaningful in 1975 and years after as case after which the relation between medicine and law would never be the same. This case became one of the exceptions that implies that each life is unique to itself and that there is no place for universal rules when it comes to managing its processes. This case involves American public of that period in overtly reflection on many neglected terms and ways of understanding life. Is it immoral to let nature to take its course? This case is just about that- about the removal technological equipment and permitting the illness to lead to death. On the basis on the Quinlan case “Right-to-die” movements started throughout Europe. Summarizing all facts related to this case we can conclude that Karen Ann Quinlan was mute spokesperson for euthanasia. Actually, Karen lost consciousness and she stopped breathing as a reaction to prescription medication and light alcohol. Her brain was damaged because she was without oxygen long enough, and so that she fell into a persistent vegetative state. The result of that condition was that she would never be recovered and that’s why her parents decided to try to get a legal permit to remove of her respirator. The New Jersey Supreme Court granted a request a year later. Despite this,

she lived for nearly a decade since the nuns who were caring for the patient were opposed to such a decision of the Supreme Court, and as a result, they began accustoming her to life without a respirator. At the time of the court's decision to remove her respirator Karen could already live without it. She continued to live because her nasogastric tube that supplied her body with food was not removed. Although it is a medical device, it is not considered to be apparatus that is to be removed in such a case. Thus, the impact of this difference in means contributed to keeping the patient alive (Kenny, 2005). Is it reasonable that after assessing a patient's case to be hopeless and that there is no purpose in keeping her body alive, that the maintenance of her life is ultimately determined simply by the classification of medical equipment? The objective was not achieved, but the procedure was followed, as was the decision of the Court, which provided for the removal of all ancillary means (not including those considered to be common).[11] A case like this is a typical example of a man who obeys the rules, the same ones that should serve him.

If one has a "right to die" does that mean that others must help?

Doctors have an obligation to treat but also to reduce pain and provide the patient with relief and maximum well-being. Helping someone end their life in a painless way is not only an act of mercy, but can also be portrayed as a moral duty. When that moral obligation grows into a legal obligation, then it is difficult to associate mercy with necessary duty, making euthanasia a possible part of general medical practice. In countries that have legalized certain forms of euthanasia at the national level, the right to die initiates the duty of others to assist, ie. not to obstruct a person from exercising that right. Sometimes the question is who are those having the obligation to assist, which is often explained in more detail by specific national law. However, physicians are prevented from being part of the Hippocratic Oath invoked by opponents of euthanasia and use the oath as an act of greater power even as part of national law, although the specific oath is an act without legal obligation. The principles of the Hippocratic Oath are considered sacred by today's physicians. It is known that most graduating medical-school students swear to some form of the Hippocratic Oath, in fact they swear they will: treat the sick to the best of one's ability, preserve patient privacy, to pass on the secrets of

11 The absurdity in the whole case is that the patient passed away ten years after the Court's decision to slaughter additional life-sustaining aids by not using antibiotics prescribed for pneumonia, which means that her life was interrupted by passive euthanasia.

medicine to the next generation, and so on. It could be understood as an ideal conduct for the physician by the aspect of some anti-euthanasia movements. Within the Hippocratic Oath, there is a significant provision on this subject that states- I will neither give a deadly drug to anybody even if I am asked to, nor will I make a suggestion to this effect.[12] All physicians are hereby obliged to refrain from acts signifying euthanasia in view of the broader description of this phenomenon mentioned above. There is no doubt that the Oath is an act of undoubted value, an act that moderated the work of the medical staff for an extremely long period. However, it is difficult to adapt medical behavior to the maxims of the Hippocratic Oath in the face of contemporary challenges. World that has witnessed huge scientific, political, social, and changes in every other aspect, a world of legalized physician-assisted suicide and abortion, is not a world in which the Hippocratic Oath is adequate (main) act of medical ethics. The Hippocratic Oath should be radically modified in which case it wouldn't be act of that moral importance that is based on history and originality, or it could be abandoned altogether- which is maybe the best solution taking in consideration nowadays improvements (Van Hooff, 2004).

One more case that is interesting for this topic is case of Diane Pretty. She died due to natural causes on 11 May 2002, but struggled to choose the time and manner of her death with her husband's help. These efforts was a resounding legal failure. She was suffering from motor neural disease, a paralyzing, degenerative and incurable illness. This led to the Diane's entire body being paralyzed from the neck down. Given the overall condition, Mrs. Pretty wanted to die with dignity. The English Divisional Court and the House of Lords, followed by the European Court of Human Rights, denied that her rights under the European Convention on Human Rights had been infringed. The refusal of the Director of Public Prosecutions to exempt her husband from prosecution and, from the other side, the domestic legal prohibition on assisting suicide (the Suicide Act 1961) had led to the disregard of Article 3 of the European Convention (prohibition on inhuman and degrading treatment). Respect for human dignity is not expressly articulated in any of the substantive rights guaranteed by the Convention, but it can be viewed as one of the fundamental objectives of all that rights (such as rights that may be endangered by such a judgment: right to life, right to respect for private life, freedom of conscience and belief, prohibition on discrimination). However, the Court also found no violation of the Convention. According to the strong points,

12 The essence of the said provision is related to assisted suicide, but in fact it is generally understood to refer to any form of doctor's activity aimed at interrupting a patient's life.

the right to life can't encompass decisions that would deny life, while Article 3 itself does not imply actions aimed at ending one's life, and it must be interpreted in accordance with Article 2 which does not entitle an individual to state seeking to allow or assist one's death (Millns, 2002).

In June 2014, nine Justices of the Supreme Court considered the case of Tony Nicklinson, who was a men with locked-in syndrome, and he fought for the right to legally end his life. Main, legal argument on his behalf was that the current law on assisted suicide was incompatible with his right to a private and family life under Article 8 of European Convention on Human Rights. He was also paralyzed from the neck down, and he communicated by blinking. The case went further than previous challenges to the law in England and Wales on assisted suicide and murder. The case was contested on the issue of "necessity" arguing that the only way to end Mr Nicklinson's suffering is to allow him to die. The Supreme Court ultimately decided by a majority of seven to two against making a declaration of incompatibility in Mr Nicklinson's case. Some of the Justices considered that the compatibility of the law on assisted suicide with Article 8 was an "inherently legislative issue" that should be left to Parliament (Richard, 2014).[13]

Such a process already happened in the UK, in a different way. In the case of Tony Bland, law lords authorized the removal of a feeding tube that was keeping him alive. All medical staff and his family judged that continued life was not in his best interests. If they had the right to decide on behalf of the patient, how could the patient, Tony Nicklinson, not make such a decision on his own behalf? If patients receiving palliative care are entitled in certain cases to the use of analgesia and sedation, why should other groups of patients be exempted from this case? The law of course would classify such act as murder. For that reason, it is not performed in the UK. But ethically, if a man such as Tony Nicklinson has the right to refuse to eat any longer because finds his life intolerable, he has the right to be relieved of the suffering of starvation, quickly and painlessly. However, he had the right to refuse artificial nutrition. No one had the right to force him to eat, because it would be an encroachment on human rights.

13 Parliamentary activities in the field of euthanasia have been carried out on several occasions in the United Kingdom. There have been several attempts to liberalize the law. The most recent of these was the Assisted Dying Bill in 2014–15, introduced by Lord Falconer of Thoroton. The Bill did not progress beyond Committee stage in the Lords. In the United Kingdom, under the 1961 Suicide Act, suicide was not considered a criminal offense, but 14 years in prison could be obtained to assist with the suicide of another person.

Should euthanasia be legal?

The act is not wrong unless the person in question is considered for the one that needs to be punished in a certain way for it; if not according to the law, then according to the system of informal control- either through the condemnation of society or at least through the guilt of conscience. There is a widely accepted assumption that euthanasia is an acceptable and socially desirable phenomenon. Its legalization comes from the society, and such will of the society is legalized by the current authorities when it is possible. This means that euthanasia can be seen as a practical issue that would be desirable to shape the law legally for the benefit of society.

A crucial starting point for the legal formulation of euthanasia is in the judicial system, which is not fully functional in many countries. A crucial starting point for the legal formulation of euthanasia is in the judicial system, which is not fully functional in many countries. This can be observed in numerous cases that are often dealt with by the family of a patient already suffering a loss of a loved one that is certainly to be in a near future. Thus, each state has a specific individual approach to addressing this issue. Activities in countries that do not have legislation on this phenomenon are primarily related to the decriminalization of euthanasia. The reasons for carrying out these activities are growing.

The right to life and the right to private and family life under the European Convention on Human Rights should include decisions on quality of life, including decisions on death if life has lost quality. Today's situation in the world is such that people who are able to travel abroad to use the right to help end their lives do so. This situation leads to many injustices and discrimination. Other countries are prevented from amending such existing enacted laws, but are able to more closely legally determine the issue of euthanasia within their territories and thus exercise their right under their control and supervision. In addition to this discrimination, there are many downsides to the lack of legal regulations on euthanasia. Today, there are more consequences of this situation than there would be in the case of a comprehensive legal definition of this area. The abuse of the potential legalization of euthanasia would be precluded if it were to show exhaustive conditions that would compound over time. It will definitely be necessary to complete and harmonize this area with the applicable legal regulations, and it is better to start considering legal rules in order to protect people. We need to be aware of the fact that euthanasia is

already being implemented in some form, and that is a main reason way it doesn't need to remain legally unformed.

As for the legalization of euthanasia by country, the matter is quite complicated. When it comes to the European continent, euthanasia was first legalized by the Netherlands through the Law on End of Life on Demand and Assisted Suicide in 2002. Belgium legalized euthanasia in the same year by the Bill on Euthanasia. Luxembourg passed the Law on euthanasia and assisted suicide in 2009. These legal solutions are defined to a similar standards. There are more conditions that must be fulfilled before euthanasia is approved. The patient must be in a state of unbearable pain caused by a condition of incurable disease. The request for euthanasia must be explicit and voluntary. This patient's condition must be confirmed by at least one other relevant medical professional. Final act aimed at disruption of life must be carried out in a medically predetermined manner by a predetermined person. The patient must be a certain number of years, the lower limit is 12 years, while the minors need the consent of the parents or guardian.[14]

Assisted suicide is predicted by the laws in the Netherlands, Belgium, Luxembourg, Switzerland, Estonia, Albania, Germany, Canada, Cambodia, Japan, and some countries in United States of America (Washington, Oregon, Montana, California, Colorado, Vermont).

Other countries, too, have their own form of regulation in this area, such as Germany, Denmark. However, the problem is compounded by the fact that many authors distinguish between euthanasia, assisted suicide, and various forms of physician assistance. There are even currents in the literature that judge that what is covered by the term passive euthanasia is not euthanasia in its essential meaning. Nevertheless, it is de facto that these individual activities relate to the interruption of life for the same reasons and because of the same impulses. It is therefore inappropriate to explicitly prohibit certain of these activities, while others are permitted. In 1941, Switzerland legalized suicide with or without the help of a doctor. Although it does not prohibit foreigners from performing euthanasia on its territory, they must have strong reasons for doing so. This type of assistance to foreigners in Switzerland is provided by the *Dignitas* organization, which offers euthanasia services in specially prepared premises at a cost of a couple of thousand euros. Although this way enables the exercise of these rights to those who would not be able to do so

14 However, Belgium took a radical step in 2014. by removing age from the prerequisites for euthanasia. Such a decision requires a strict procedure to be followed. The aforementioned change has caused many ethical dilemmas.

in their own country, such a law discriminates against the material status of persons who decide to take such a step. The Australian state of Victoria has legalized assisted suicide after more than 100 hours of heavy parliamentary debate lasting two days and two nights. Victoria is the first Australian state to approve it (Steck, et al, 2013).

The legalization of euthanasia or other forms of assistance to patients in order to interrupt their lives is being done in many ways. Cambodia is a specific example in this regard. Considering the request of the opponents of euthanasia to increase the criminal reaction of the state to this phenomenon, the Constitutional Court decided quite unexpectedly that there was no place for the criminal liability of the person who helped the terminally ill patient to end his life. The Court found that the right to self-determination and the free expression of the will is stronger than the duty of the state to protect a specific human life and thus in 1996 legalized active euthanasia (Pereira, 2011). Here, the individual case had an impact on the entire legal system. The same can be said of the Brittany Maynard case which was one of the reasons that led to the legalization of PAD in California.[15]

Euthanasia is actively being considered in many countries. Parliamentary activities are present which are increasingly leading to a more liberal approach to this idea. The current state of law does not follow developments in the field of biomedical achievements. It is imperative to set standards that would give direction to the future legal formulation of this area in a manner that respects basic human rights.

The goals of the medical profession should continue to be life-saving, but this should not be at the expense of compassion and right of a terminally ill person to choose to end his or her life and die with dignity.

CONCLUSION

Legal science can be seen as a necessary set of rules defining areas that are of social interest. Subsequently, the task of legal science is to establish certain objective-moral laws. Due to such a goal, law has to focus on its value roots.

15 The legalization of euthanasia or other forms of assistance to patients in order to interrupt their lives is being done in many ways. Cambodia is a specific example in this regard. Namely, considering the request of the opponents of euthanasia to increase the criminal reaction of the state to this phenomenon, the Constitutional Court decided quite unexpectedly that there was no place for the criminal liability of the person who helped the terminally ill patient to end his life. The Court found that the right to self-determination and the free expression of the will is stronger than the duty of the state to protect a specific human life and thus in 1996 legalized active euthanasia (Pereira, 2011).

Traditional bioethical themes have influence on law by requiring it to value certain phenomena. In this way the fundamental principles are being created. Sometimes they are presented in a consistent manner in the context of different situations in which case the specific area of law is branching. We could see that nowadays the focus of law is intensely directed on the values inherent to human life as the unique purpose of all legal rules (Spielman, 2007). Gradual branching of a law in domain of some bioethical themes (like abortion, eugenic, extracorporeal fertilization and others) started when certain aspects of human life were threatened.

Euthanasia is a topic of increasing debate in modern times. Although there are no generally accepted international standards, most modern states are progressively involved in the processes of legal formulation of euthanasia. Such a position of euthanasia is a consequence of accelerated social change. Even so, there are many more countries that deny the need to adopt certain legal rules at national levels on this issue. People who are in the terminal stage of an incurable disease do not have much opportunity to manage the rest of their lives. As one of them, palliative care is offered in certain countries. This makes it easier to manage the patient's pain and offers a sedation option that often replaces conventional treatment for the disease. Because such practices often speed up the process of dying, it can be called indirect euthanasia. On the contrary, there are always patients who are not helped by palliative care in achieving a generally tolerable condition of the body. An additional option for such patients is legalization of euthanasia. Just one of the many benefits of the potential legalization is the patients' sense of control over their lives. Sometimes the knowledge of legalized euthanasia is more important than its practical application.

Given the aforementioned usurpation of many human rights because of the ability of medicine to artificially sustain human life, it is likely that legal systems will be forced to delineate the area of euthanasia in a more detailed way that will allow its implementation. Considering the ethical and legal problems of euthanasia, it can be said that the existing legal solutions are not morally or intellectually optimal. That is why it is important for society as a whole to set boundaries in the physician-patient relationship, and to provide detailed procedural requirements for the implementation of each individual form of euthanasia that is legalized and for that forms which are going to be legalized. Passive euthanasia is inevitable and widespread, although it is most often not

legally framed. As it is evident that the practice of euthanasia exists, it is very important for it to be formulated legally in order to curb its current abuse.

Therefore, it is certain that this legal area will be further developed, but it is important that in the near future such a need is recognized by many relevant entities for a particular topic. This would already be a significant step towards aligning the rules with the current medical trend.

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