

## EUTHANASIA IN TURKISH LEGAL FRAMEWORK

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### **Abstract**

Through the supremacy of the right to life, euthanasia has been defined as one of the most controversial legal subjects for various legal systems. Due to the criticisms in/by the public, lawmakers prefer not to regulate it directly within the law to avoid provoking reactions. The main question that must be answered to decide the approach of the states is; do people have the right to die or is the right to life above the human will? According to the Turkish legal framework, the answers -to the mentioned questions- have been answered differently for active and passive euthanasia. In this article, the situation of euthanasia in Turkish Law has been examined and compared with the related notions.

**Keywords:** *Euthanasia, Good dying, Right to die, Right to life*

### **A. The Word “Euthanasia” in Legal Terminology**

*Euthanasia (Noun), Euthanatos (Adj.), Euthanatos# (Adv.) and (ap)euthanat(iz)ein (Verb)*

The word euthanasia is the combination of *eu (good)* and *tanatium (death)*. The common usage in the world has been determined as ‘good dying’ according to stick by its roots from ancient times. Today mostly ‘good dying’ is used to explain the aim as well as the scope, however; to determine perfectly the content of euthanasia, the definitions of the word along the centuries must be analyzed in the legal terminology.

First appearance of the word was in the fourth and third Century BCE, they were used firstly by Greek comedy writers –such as Menander, Possidipus and Cranitus- in the meaning of “dying at the happiest moment of the life”.<sup>1</sup>

Another usage of the word has been made by an astrologer Vettius Vallens at the second century CE; it described the word falling asleep from food, satiety, wine, intercourse or apoplexy. Besides those descriptions, the content of good dying was not limited with a painless exit. The word involved ‘crowning a happy life’. According to Alexandrian sophist Aelius Theon there are various personal conditions that deserve acclamation: education, friendship, respect, political position, richness, being blessed with children (euteknia) and last but not least euthanasia.

According to the Emperor Augustus’s biographer Suetonius, the Emperor wished for himself a gentle death:

*“For always when he heard that somebody had died fast and without pain he bade for himself and his family a similar euthanasia, for this is the word he used.”*<sup>2</sup>

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<sup>1</sup> *One thing for my own self I desire—and this seems to me the only death (monos thanatos) that is a one ‘well died’ (euthanatos)—to lie on my back with its many rolls of fat, scarce uttering a word, gasping for breath, while I eat and say: ‘I am rotting away in pleasure.’* Anton J.L. Van Hooff, ‘Ancient euthanasia: ‘good death’ and the doctor in the graeco-Roman world(2004)’ *Social Science & Medicine* 58 Netherlands,975

<sup>2</sup> Anton J.L. Van Hooff, ‘Ancient euthanasia: ‘good death’ and the doctor in the graeco-Roman world’ cit. 975-976

In the 17th century, Francis Bacon referred to the word as an easy, painless, happy death and it accepted one of the duties of physicians to alleviate the physical suffering of the body.

Turkish Language Association has defined the word as ‘**right to die**’.<sup>3</sup> However; in Turkish legal doctrine the usage of ‘good dying’ is a more common and detailed explanation of the word is ‘the mercy killing of a patient who has a non-healing and afflicted illness in a painless way’.<sup>4</sup> In following topics, we will see that there are different types of euthanasia that indicated different elements. Therefore; to avoid misunderstandings authors prefer that general definition.

## B. Types of Euthanasia

<b>1.</b> <i>Euthanasia in the Strict Sense; Broad Sense; and The Broadest Sense</i>	<b>2.</b> <i>Voluntary and Involuntary Euthanasia</i>	<b>3.</b> <i>Medical and Judicial Euthanasia</i>	<b>4.</b> <i>Active, Passive and Indirect Euthanasia</i>
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### 1) *Euthanasia in the Strict Sense, Broad Sense and the Broadest Sense*

- Euthanasia in the strict sense is killing someone who is suffering from a painful dying process intending to alleviate pain. The essential element -to make different from the other types- is ‘*someone who is in the death process*’.
- The broad sense of euthanasia is helping a patient who has an incurable disease with a commissive act with the intent to relieve his pain. The main difference with the strict sense is the patient is not on the death bed. The death process of the patient can last years as well. In the Swiss literature; suicide, encouraging suicide, and killing upon request have been considered as the types of euthanasia under the title of the broadest sense<sup>5</sup>. However, each of them was evaluated as different types of crime according to the Turkish Criminal Act.
- The broadest sense of euthanasia –in other words, ‘The Unreal Euthanasia’- is the destruction of the lives that are not worthy enough to be lived. The most recognized example had practiced along 1939-1941 on the 3rd Reich Nazis Term in Germany.<sup>6</sup>

### 2) *Voluntary and Involuntary Euthanasia*

- Voluntary euthanasia has been done within the direct consent of a patient. The consent has been declared without failure, fraud nor acknowledgement. In this type, a doctor performs the act that directly causes the death.
- In involuntary euthanasia, the patient would not be able to explain his consent due to the loss of consciousness which means the situations that the will of the patient cannot be learned through

<sup>3</sup> Türk Dil Kurumu Sözlükleri, < <https://sozluk.gov.tr/>>

<sup>4</sup> Erdem Özkara, Ötenaziye Farklı Bir Bakış: Belçika’da Ötenazi Uygulaması ve Ülkemizdeki Durum (2008), TBB Dergisi, Sayı 78, 106

<sup>5</sup> Prof.Dr. Mehmet Emin ARTUK; Arş.Gör. A. Caner YENİDÜNYA, Ötenazi (2001) Dr. Turhan Tufan Yüce’ye Armağan, Dokuz Eylül Üniversitesi Yayını İzmir, 300

<sup>6</sup> The most common examples were certified and patients in a vegetative state. Due to the racisms, the scope of the group had extended. 70.000 victims had been murdered until the practice stopped in 1941.

the psychological and neurological causes. The will of the patient has tried to be determined according to the assumptions.<sup>7</sup>

### 3) *Medical and Judicial Euthanasia*

- In some of the countries that euthanasia is free; besides the medical decision, a court judgment is necessary to perform euthanasia. This is called judicial euthanasia.
- On the other hand, in some countries, the only necessary condition for euthanasia is a medical decision. As an example, in the Netherlands, a doctor can perform euthanasia according to the consultation that has been made with a colleague.

### 4) *Active, Passive and Indirect Euthanasia*

- Active euthanasia is ending a patient's life who has been suffering due to an incurable illness by an active act of a doctor. In these situations, the medical methods that cause death would be directly performed. In the Swiss legal system, active euthanasia is divided into two different groups: Direct Active Euthanasia and Indirect Active Euthanasia.<sup>8</sup> The definition above is valid for direct active euthanasia however, indirect active euthanasia is not considered under the title of 'active euthanasia' in Turkish legal framework. It has been reviewed as an independent group named 'Indirect Euthanasia'.
- Passive euthanasia is the euthanasia that the doctor has not administered the treatment that must be done. It is directly associated with patients' autonomy and right to refuse treatment. Not starting or quitting the treatment can be given as examples of passive euthanasia. On some occasions quitting the treatment has been done with an active act. Therefore in the doctrine, it is still a controversial issue that those situations must be considered as active or passive euthanasia.<sup>9</sup>
- As has been mentioned above, indirect euthanasia is another column in the Turkish legal system. Indirect euthanasia aims to relieve the patients' pain with the medicine. However, the side effects of the medicine are shortening life. In the legal doctrine, indirect euthanasia has been explained as a different group nevertheless, law-maker has not been mentioned anything about indirect euthanasia.

The topic has been discussed at the 9th Italian Anesthesia Congress on 24.02.1957. Pope XII Pius had rejected euthanasia according to religious principles; however, he pointed out an exception with indirect euthanasia. Hereunder this exception, if the narcotic medicines cause to relieve patients' pain and on the other hand shorten their lives; they can be used when the advantages and disadvantages of two situations have been balanced considered. In the following year on 09.09.1958 Pope had expressed that if a patient agreed on that, it is allowable to be given the narcotic medicines which are easing the pain and speeding the death process.<sup>10</sup>

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<sup>7</sup> Artuk;Yenidünya, Ötenazi (2001) cit.306

<sup>8</sup> Brunner, Andreas ; Thommen Marc, *Rechtliche Aspekte von Sterben und Tod* (2009) Zurich Open Repository and Archive, University of Zurich, 70. ZORA URL: < <https://doi.org/10.5167/uzh-140294> >

<sup>9</sup> i.e.: Pull out the plug of a patient in vegetative state, this is a situation of quitting the treatment with an active movement.

<sup>10</sup>. Artuk; Yenidünya, Ötenazi (2001) cit.306

### C. Related Legal Subjects with Euthanasia

The only direct regulation about euthanasia has been regulated in the Patients' Rights Regulation Article 13. According to the related article:

*“Euthanasia is forbidden.*

*No patient can renounce the right to life on any occasion. No one's life can be ended even if the patient or someone else gives permission.”*

However, the related article does not include the essential elements of euthanasia to distinguish it from the related terms such as: killing upon request and suicide. The fundamental bases have specified in the legal doctrine by authors, the well-accepted conditions of euthanasia are:

- The person who is the subject of euthanasia must be a patient. The “illness” has been interpreted in a broad sense therefore, every kind of illness are included in the scope.
- The illness is required to be incurable according to the last technologies of modern medicine. The accidents that have been caused by incurable situations can be added to this group.
- The disease must be at an excruciating level. The pain that arises from the illness is not supposed to be continuous; that would be sufficient if it's strong.
- The direct or implicit consent of the patient is necessary. Therefore, euthanasia cannot be performed if there is no consent or the refusal can be understood within the movements of the patient according to the principle of: “Despite everything, a patient who wants to live cannot be euthanized.”

When a patient is not capable to declare consent, the legal representative or relatives are able to approve euthanasia.

- Doctors are entitled to perform euthanasia. Besides the doctors, third parties can perform euthanasia as well according to the definition. In addition to this, the well-accepted opinion has been stated that only doctors are entitled to euthanize.<sup>11</sup>
- Euthanasia must be performed to rescue the patient from suffering.
- Ending life must base on the idea of the highest benefit of the patient.
- Euthanasia must be performed painlessly and regarding this, it cannot be more agonizing than the illness.<sup>12</sup>

These are the points to distinguish euthanasia from the related legal subjects that have been regulated as different crimes according to the Turkish Criminal Code.

To understand the scope of euthanasia; it's necessary to inspect each of these subjects from a comparative point of view.

#### 1) *Killing Upon Request – Euthanasia*

Firstly, there is no specific legal provision about ‘killing upon request’; it has been involved by the crime of ‘Intentional Killing’.

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<sup>11</sup>“ Brunner;Thommen, Brunner, Andreas ; Thommen Marc, *Rechtliche Aspekte von Sterben und Tod* (2009) cit.69

<sup>12</sup> Dr. Özge Gülmez, ‘Türkiye’deki Hukuk Profesyonellerinin Ötenaziye Bakış Açısı’ (2015), T.C. Hacettepe Üniversitesi Adli Tıp Anabilim Dalı Ankara, 7

Intentional killing has been regulated in articles 81, 82, and 83 in order of titles: Intentional Killing, Qualified Cases, and Intentional Killing by Act of Omission.

Killing upon request has two fundamental elements; firstly the request from the victim, secondly the homicide act has been done by the killer.

As said above, the permission of the victim does not make difference in the consideration of homicide.<sup>13</sup> If euthanasia and killing upon request would be commented in the same group, performing euthanasia by the doctors is going to be considered as a homicide. In the circumstance, it must be answered that murdering someone and ending the life of a patient who is suffering equal?

When the conditions of euthanasia have been examined, it's clear that they are different from homicide. Besides that, the most important point to distinguish euthanasia from homicide is the '**motivation**'.

The motivation of euthanasia is helping a patient who is suffering from an incurable disease; therefore it would not be fair to consider a person who performs euthanasia as a 'desperate criminal'.

## 2) *Suicide– Euthanasia*

Émile Durkheim has defined suicide with the following words:

*“Death resulting directly or indirectly from a positive or negative act of the victim himself, which he knows will produce this result”<sup>14</sup>*

The conditions to consider an act as suicide in Turkish Criminal Law are related to this definition. There are 3 requirements to refer an act as suicide:

- The person has to be aware of and know the conclusion of the suicide act
- The act must be performed by the person's himself/herself.
- The death must take place. When the death result does not occur, there would be attempting suicide instead of suicide.<sup>15</sup>

The victim and perpetrator of suicide are the same people therefore suicide is not a punishable act.

Besides that, the law-maker has accepted that there is no public good as a consequence of punishing someone who committed suicide. Due to these reasons; suicide and attempting suicide have not been regulated as crimes in the Turkish Criminal Code. Article 84 related to the suicide in the Turkish Criminal Code has not been involved the victim (and perpetrator); the subject for this article is a third person who is directing suicide. According to the article:

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<sup>13</sup> Dr. iur. Dr. rer. pol., LL. M Fabian Taichmann; Alica Köb; Celine Hürlimann, *Strafrechtliche Aspekte Der Steberhilfe Fallen Für Anwälte und Notare* (2014) Zürich, 402

<sup>14</sup> Howard I. Kushner PhD, and Claire E. Sterk PhD, *The Limits of Social Capital: Durkheim, Suicide, and Social Cohesion*, Vol 95 Issue 7 (24 December 2004) A Publication of the American Public Health Association <URL:<https://ajph.aphapublications.org/doi/epub/10.2105/AJPH.2004.053314>>

<sup>15</sup> Yaprak ÖNTAN, 'İntihara Yönlendirme Suçları'(2015) , Prof. Dr. Nevzat Toroslu'ya Armağan, C.2, Ankara, 845

*“(1)Any person who incites, or encourages, another person to commit suicide, or who strengthens an existing decision to commit suicide or who, in any way, assists a person in committing the act of suicide, shall be sentenced to a penalty of imprisonment for a term of two to five years.*

*(2) Where death occurs, the person shall be sentenced to a penalty of imprisonment for a term of four to ten years.*

*(3) Any person who publicly encourages others to commit suicide shall be sentenced to a penalty of imprisonment for a term of three to eight years. (Second Sentence Abolished on 29 June 2005 – By the Article 10 of the Law no. 5377)*

*(4) Any person who directs another to commit suicide, where the capacity of that person to understand the meaning and consequences of the act is compromised or lacking, or if a person compels another person to commit suicide by using threat or force, they shall be culpable of the offence of intentional killing.”<sup>16</sup>*

In a word, suicide and attempting suicide have not been regulated as crimes in the Turkish legal system. However, whenever a third person has directed to suicide; it shall be sentenced.

First and above all, euthanasia differs from suicide due to the performer of the act. Euthanasia must be performed by a doctor (or a third person) under specific circumstances. However, when someone ended his/her own life it's a suicide, there are no requirements as in euthanasia.

#### **D. Arguments Regarding Euthanasia**

During the ongoing discussion in Turkish doctrine about the legal features of euthanasia, two main groups have appeared: the ones who count and do not count euthanasia as a crime. In the following part, different arguments will be examined.

1) Those Who Criminalize Euthanasia	2) Those Who Does Not Criminalize Euthanasia (Secular Approach)
<p><b>A) <i>The approach that considers euthanasia as intentional killing</i></b></p> <ul style="list-style-type: none"> <li>• The perspective that considers euthanasia from the value of human life: <ul style="list-style-type: none"> <li>❖ According to the religion</li> <li>❖ According to the nature and society</li> </ul> </li> <li>• The approach that considers euthanasia</li> </ul>	<b>A) <i>Due to the moral element of act</i></b>
	<b>B) <i>Due to the casual link with illness</i></b>

<sup>16</sup> Turkish Criminal Code

<URL: [https://www.legislationline.org/download/id/6453/file/Turkey\\_CC\\_2004\\_am2016\\_en.pdf](https://www.legislationline.org/download/id/6453/file/Turkey_CC_2004_am2016_en.pdf)>

<p>from the medical perspective</p> <ul style="list-style-type: none"> <li>• The approach that considers euthanasia from its abusable nature</li> </ul>	<p><i>C) Due to the notional similarity between suicide and euthanasia</i></p>
<p><i>B) The approach that considers euthanasia as a different and independent crime</i></p>	

## 1. THOSE WHO CRIMINALIZE EUTHANASIA

### A) *The approach that considers euthanasia as intentional killing*

Intentional killing and euthanasia have been distinguished above. Despite the idea that intentional killing and euthanasia cannot be considered the same due to the criteria of ‘motivation’, in the doctrine some jurists state that there is no difference between euthanasia and intentional killing according to the following approaches:

- **The perspective that considers euthanasia from the value of human life:**

This perspective has been originated the idea of the progress of mankind can be continued with the ambition of treating patients, not ending their lives. Doctors’ main responsibility is trying to save patients and apply the treatment regardless of their ages, and medical conditions. That principle is coming from the Hippocratic Oath.

In accordance with Ludwig Edelstein’s translation and interpretation of the Hippocratic Oath:

*“And I will not give a drug that is deadly to anyone if asked [for it]”<sup>17</sup>*

However, Edelstein’s translation has been criticized in terms of linguistically. The principle was supposed to about not giving drug to patients with someone else’s’ requests which means assassin. It had became a rule in consequence of popularity that the fear of being poisoned.<sup>18</sup>

<sup>17</sup>Anton J.L. Van Hooff, ‘Ancient euthanasia: ‘good death’ and the doctor in the graeco-Roman world’ cit. 983

<sup>18</sup> “*In the Greek text, the ‘anybody’ to whom the deadly medicine is not given is in the dative, whereas ‘requested’ is nominative, going with the subject, the ‘I’ who swears. If the person who requests and to whom the fatal drug is not given were to be one and the same person, the ancient Greek would be something like ‘to anybody requesting’, both words in the same case, i.e. dative, especially as the words follow each other. Now the different cases, dative and nominative, are indicative that the two words are not to be linked. The person who requests is not necessarily the person to whom the poison is (not) given. The Hippocratic doctor only swears that under no circumstance shall he lend himself to murder by poisoning on the request of a third person since, being in close contact with a patient, he was in a position to kill secretly. We should remember that the fear of being poisoned was common in antiquity. Many a sudden death that was probably due to food poisoning was ascribed to a criminal act. However, a patient who hired a Hippocratic physician could be sure that he did not run the risk of being murdered by a criminal doctor.*” by Anton J.L. Van Hooff, ‘Ancient euthanasia: ‘good death’ and the doctor in the graeco-Roman world’ cit. 983

The value of human life mainly based on two baizes; religion and nature-society.<sup>19</sup> In both approaches the stated view is, due to the high value of human life; nor is person himself entitled to end his life.

- ❖ When the value of life considered in nature-society point of view, it seems that the value based upon the immunity of life.
- ❖ In Islamic religion, Allah is entitled to give and take a life. The main responsibility of people is taking care of their lives until Allah takes them back. Therefore, even killing someone in the death bed would be considered as a murder and it's one of the most serious sins that going to be punished seriously at afterworld. In Christianity, based on the five command of Bible; Catholic Church had refused to shorten a life until the declaration of Pope XII Pius on 09.09.1958 at his speech. As have been mentioned on previous titles, Pope had stated that, it is allowable to be given the narcotic medicines which are easing the pain and speeding the death process. It was a milestone for religious approach of euthanasia.

Turkish Civil Code Article 23(2) has been regulated based on the term of 'valuableness' of life:

*"Neither a person may waive his/her freedom nor anyone may impose restrictions on a person contrary to the laws and ethics."*<sup>20</sup>

The right to life is the most fundamental human right. Under the Turkish Civil Code, due to the importance of the right to life; no one is entitled to renounce it. To sum up, when life and peoples' autonomy have been compared; the supremacy of the right withholds people from deciding on their own body and future.

- **The approach that considers euthanasia from the medical perspective:**

The first argument of the perspective is based on the idea that; due to the progress of medicine, it's not possible to absolutize a disease as incurable. Besides that, in virtue of medicine's nature; it's possible to misdiagnose therefore, it is not acceptable to end a patient's life based on irremediableness.<sup>21</sup>

As the second argument, it has been stated that euthanasia impedes on the progress of medicine and pharmacy. When the patients, who are suffering from incurable diseases, have been euthanized; the studies to cure these kinds of diseases would be blocked.

- **The approach that considers euthanasia from its abusable nature:**

This approach is the biggest reason to reject euthanasia. In this point of view, the most given example is the practice of euthanasia programme by Nazi area in Germany.

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<sup>19</sup> Selman Karakul, The Right to Health in the Case-Law of the European Court of Human Rights (2017) II, Journal of İstanbul Medipol University School of Law 4 (1) .51

<sup>20</sup> Turkish Civil Code <URL: <http://www.lawsturkey.com/law/turkish-civil-code-4721>>

<sup>21</sup> Prof.Dr.Köksal Bayraktar, Kasten Adam Öldürme (Voluntary Manslaughter) (2013) , Prof.Dr.Nuri Centel'e Armağan, T.C. Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi C.19 S.2, 64



If the performance conditions of euthanasia have not been taken under control, it would be considered a huge risk for human rights. Especially, inheritance cases can be given as current examples.

***B) The approach that considers euthanasia as a different and independent crime***

According to the current Turkish Criminal Code, someone who performed euthanasia will be accused under the article 81 which is intentional killing. However, as mentioned in the paragraphs above, euthanasia and intentional killing cannot be considered as the same legal subjects through their 'motivation' differences.

According to this approach; even euthanasia is not an intentional killing, it must be regulated as a different crime. The reason for this is the duality of euthanasia: It is not an aggravated crime as intentional killing nor it is not an act that not be punished.

**2. THOSE WHO DOES NOT CRIMINALIZE EUTHANASIA (SECULAR APPROACH)**

***A) Due to the moral element of the act***

That view has come from the same basis with '*The approach that considers euthanasia as a different and independent crime*'.

The aims of euthanasia are not harming or making someone suffer distinct from intentional killing.

Ending a patient's life who is suffering from an incurable disease is a duty of humanity. The practice has been based on 'mercifulness', therefore it cannot be evaluated as the crime of intentional killing or another different crime.

***B) Due to the lack of the causal link between euthanasia act and illness***

It has been stated that in euthanasia, doctors' acts that end the patients' lives are not the reason for the deaths. The cause of death is related to the physiological conditions that have taken place before the performance of euthanasia. Therefore, there is no link between death and act.

***C) Due to the notional similarity between suicide and euthanasia***

The essential elements of euthanasia and suicide have been compared before. The common point for these subjects is the 'decision of ending own life'.

Turkish Criminal Code has not specified suicide as a crime therefore euthanasia must not be sentenced as well. There is no difference between the act of someone who does not receive help to end his/her own life and the doctors' act to end patients' life under certain conditions.<sup>22</sup>

The adverse opinion is based on the idea of 'states' responsibility to pursue the right to life'. That responsibility can seem clearly in the European Courts of Human Rights (ECoHR) cases.<sup>23</sup>

When two incompatible approaches have been considered, a question about the value of human life arises again. There is no common answer for this question; therefore ECoHR leaves its determination

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<sup>22</sup> Prof.Dr.Köksal Bayraktar, Kasten Adam Öldürme (Voluntary Manslaughter) (2013) cit.63

<sup>23</sup> i.e. ECoHR Case of Pretty v. the United Kingdom Application no.2346/02 [29 April 2002]

<URL:<https://hudoc.echr.coe.int/tur?i=001-60448>>

to the member states according to the margin of appreciation. In Turkey, the approach of this question can be answered differently for active and passive euthanasia. In the following part, the situations of active and passive euthanasia have been specified.

## **E. The Situations of Active and Passive Euthanasia in Turkish Legal System**

### ***1) Active Euthanasia***

The current Turkish Criminal Code has been entered into force on 1 June 2005. At the draft of the Code in 2003, law-maker had regulated active euthanasia on article 140, apart from intentional killing. According to the article, someone who ends a patient's life who is suffering from an incurable disease due to the patient's consent and behest would be imprisoned for one to three years. However, this article has been removed from the task during the passing process.<sup>24</sup>

If article 140 has not been removed from the draft, a defendant who had performed euthanasia would be imprisoned for one to three years however, today the punishment for the same action is life imprisonment. Therefore, it can be mentioned that during the law-making process; euthanasia has been considered as a 'matter of mitigation' (connected with the approach that considers euthanasia as a different and independent crime) however, the current Turkish Criminal Code has been shaped according to the approach that considers euthanasia as the crime of intentional killing.

Instead of Criminal Code, law-maker has been regulated euthanasia in the Patient Rights Regulation (which is the reason for huge criticism). According to article 13 of the regulation:

*"Euthanasia is forbidden.*

*Nobody can renounce the right to life due to medical necessities or under no circumstances. No one's life can be ended even the patient or somebody else gives consent."*

Law-maker has not been specified which type of euthanasia is in the content of this article. However, due to the following articles about the patients' right to receive treatment, it can be stated that the word euthanasia is used to express 'active euthanasia'. The detailed information will be given under the title of 'Passive Euthanasia'.

It is the only direct article about euthanasia in the Turkish legal system. The other related regulations have been determined with general explanations, such as the Turkish Medical Deontology Regulation.

The Turkish Medical Deontology Regulation has been come into force in 1960 to specify the professional standards and rules for doctors and dentists.

The first article of the Regulation related to euthanasia is article 2 (1):

*"The primary duty of doctors and dentists is respecting human health, life, and personality. "*

The second and more detailed article is 13:

*"Doctors are not entitled to perform any actions which can reduce patients' physical or mental abilities without the intention of diagnosis, treatment or protection of the patient."*

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<sup>24</sup> Dr. Özge Gülmez, 'Türkiye'deki Hukuk Profesyonellerinin Ötenaziye Bakış Açısı' (2015), cit.39

It's clear that even the law-maker has not been mentioned the word 'euthanasia', it is not lawful to perform it according to the Regulation.

In a summary, the performance of euthanasia has been forbidden by the Patient Right Regulation and through its consequence (ending someone's life); according to article 81 of the Turkish Criminal Code the act has been considered as intentional killing and sentenced to life imprisonment.

## 2) *Passive Euthanasia*

As has been mentioned before, passive euthanasia is directly related to the right to refuse a treatment. Therefore, it has been issued more complex than the scope of active euthanasia.

Article 22, 24, and 25 of the Patient Rights Regulation are based on the principle of patients' autonomy for getting a treatment. Consent for treatment is necessary according to article 17 (2) of the Turkish Constitution:

*"The corporeal integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; and shall not be subjected to scientific or medical experiments without his/her consent."*<sup>25</sup>

Due to the hierarchy of norms, article 17 (2) has been grounded on the other regulations. In the light of the Constitution, the most important article from the Patient Rights Regulation to understand the consideration of passive euthanasia is 25 (1):

*"Except the compulsory situations that have been specified by the law; patients are entitled to refuse and quit the treatment with taking the responsibility of the entire negative results. In this position, the results of quitting the treatment must be explained to the patients and their legal representatives and a written document must be taken as proof of informing."*

To sum up, inviolability of bodily integrity has been guaranteed as a Constitutional right therefore, even the State has the responsibility to protect and maintain the right to live according to the domestic and international law as a member state of the European Convention on Human Rights (ECoHM), this responsibility can be only on the table in situations that public safety and security are in danger. No patient can be forced to receive treatment when doctors fulfill their disclosure obligation and become able to prove it with a written document; they cannot be responsible for the consequences. Therefore, it is possible to be mentioned that passive euthanasia has not been forbidden in the Turkish legal system.

## **F. Opinion of the Prosecution About Euthanasia**

Besides the domestic law, there is no ECoHR case related to Turkey that has been held about euthanasia.

The Chief Public Prosecutor in Turkey has been interpreted euthanasia through a criminal case.<sup>26</sup>

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<sup>25</sup> Constitution of the Republic of Turkey <URL: [https://global.tbmm.gov.tr/docs/constitution\\_en.pdf](https://global.tbmm.gov.tr/docs/constitution_en.pdf)>

*Summary of the case:*

The defendant (Ö), the victim (M), and one of their friends (who was the witnesses) (O) had been drunken alcohol and decided to become blood brothers.<sup>27</sup>

Firstly, the witness and later the defendant cut his wrist; the victim tried to cut his wrist however he could not therefore he asked for help to cut his wrist from the defendant. Due to the effect of alcohol, the defendant cut the victim's wrist deeply through the bleeding could not be stopped; they went to the hospital. According to the doctor's report, there was a 4 cm cut on the right wrist that had caused the loss of 5 workdays.

The discussed point, in this case, was: Can the consent of the patient and the act's feature (intentional or negligent) be caused to cease the crime?

The Chief Public Prosecutor has been stated that no one is entitled to waive on the corporeal integrity and related rights therefore, the consent cannot be valid for those invasions.

If the consent of the victim waives the crime of injury; this conclusion has been led us to accept euthanasia which has been considered as intentional killing.

There are only two justifications for the invasion of corporeal integrity: Sports competitions and medical interventions. Apart from these, when any interventions have occurred; public actions must be prosecuted without the requirements of the victim's complaint.

The Supreme Court has not been commented about euthanasia.

It has clearly understood that the Chief Public Prosecutor's approach has been based on the value of human life therefore even someone who has harmed gives consent to the action; that action becomes the topic of public prosecution. However, the question must be answered that if this approach prevents to benefit of human rights.

***Conclusion***

In the Turkish legal system different approaches have been accepted for active and passive euthanasia. Active euthanasia has been strictly forbidden by the Patients' Right Regulation according to the idea that based on the value of human life; however, for passive euthanasia, the legal system has been given the freedom to patients about the determination of their own life with rejecting and quitting treatment. Suicide has not been determined as a crime in the Turkish Criminal Code therefore, a patient who is suffering through an incurable disease has to be free to choose the best option for herself/himself as an effect of the individualism which puts forward the terms of 'person' and 'autonomy'. The main reason for the approach differences between active and passive euthanasia is due to the moral, traditional and religious elements; the society would not easily accept the concept of active euthanasia.

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<sup>26</sup> Yargıtay Ceza Genel Kurulu 2005/9-213 E., 2005/3 K [1 February 2005]

<sup>27</sup> A man who has promised to treat another man as his brother in a ceremony in which they cut themselves and mix their blood together, Cambridge Dictionary <URL:  
<https://dictionary.cambridge.org/tr/s%C3%B6z%C3%BCk/ingilizce/blood-brother>

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